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

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Paul Se Hui Oei,
Canadian Manu Immigration & Financial Services Inc.,
0863220 B.C. Ltd., 0905701 B.C. Ltd., and Organic Eco-Centre Corp.

Panel	Nigel P. Cave	Vice Chair
	Audrey T. Ho	Commissioner
	Suzanne K. Wiltshire	Commissioner
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Appearing		
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Findings

I. Introduction

[1] This is the liability portion of a hearing under sections 161(1) and 162 of the *Securities Act*, RSBC 1996, c. 418.

[2] In a notice of hearing issued September 26, 2016 (2016 BCSECCOM 323), the executive director alleged that, between July 2009 and August 2013, the respondents directly or indirectly, engaged in or participated in conduct in relation to the securities of Cascade Renewable Carbon Corp. (CRC), Cascade Renewable Organic Fertilizer Corp. (CROF) (CRC and CROF, collectively, Cascade), and Organic Eco-Centre Corp. (OEC) when they knew, or reasonably should have known, that the conduct perpetrated fraud, contrary to section 57(b) of the Act.

[3] In particular, the notice of hearing alleges that:

a) Oei and the corporate respondents (other than OEC) raised approximately $13.3 million through 64 investments;
b) these investors were told that their funds would be forwarded to Cascade and that Cascade would then use those funds for start-up costs;
c) less than $6.4 million of the investors' funds were transferred to Cascade and the respondents (other than OEC) used the remaining funds on expenses unrelated to Cascade;
d) Oei subsequently solicited the same investors who had invested the original $13.3 million to invest in OEC and did not tell the investors that less than half of their original investments had been given to Cascade;
e) Oei and OEC raised $202,000 from 18 investors; and
f) as a consequence of the above:
    i) Oei committed 82 contraventions of section 57(b) of the Act;
    ii) Canadian Manu Immigration & Financial Services Inc. (Canadian Manu) committed 64 contraventions of section 57(b) of the Act;
    iii) 0863220 B.C. Ltd. (0863) committed 34 contraventions of section 57(b) of the Act;
    iv) 0905701 B.C. Ltd. (0905) committed 30 contraventions of section 57(b) of the Act; and
    v) OEC committed 18 contraventions of section 57(b) of the Act.

[4] During the hearing, the executive director called ten witnesses, one Commission investigator and nine investors, tendered documentary evidence and made written and oral submissions.

[5] The respondents called one witness, tendered documentary evidence and made written and oral submissions.

II. Background

The Respondents

[6] Oei was a resident of British Columbia at all times relevant to the matters set out in the notice of hearing.

[7] Oei was formerly registered in a limited capacity under the Act. He was not registered under the Act in any capacity during the time relevant to the allegations in the notice of hearing. Oei was registered by the Insurance Council of British Columbia throughout the relevant time period.

[8] Canadian Manu was incorporated under the laws of British Columbia on February 28, 2006.

[9] Canadian Manu was registered by the Insurance Council of British Columbia throughout the relevant time period. Canadian Manu was not registered under the Act in any capacity during the time relevant to the allegations in the notice of hearing.

[10] Oei was a director and officer of Canadian Manu from its incorporation to March 1, 2010. Oei's spouse, LL, became a director of Canadian Manu on November 9, 2009 and remained the sole director of the company after Oei's resignation in March 2010. Both Oei and LL, in interviews under oath with Commission staff, said that following Oei's resignation as a director of Canadian Manu he continued to control the company, including the company's bank accounts.

[11] During the time relevant to the matters in the notice of hearing, Canadian Manu operated an insurance business that incurred expenses unrelated to the matters set out in the notice of hearing.

[12] 0863 was incorporated under the laws of British Columbia on October 6, 2009. 0863 was not registered under the Act in any capacity during the time relevant to the allegations in the notice of hearing.

[13] Oei was the sole director and officer of 0863 from the date of its incorporation.

[14] 0905 was incorporated under the laws of British Columbia on March 16, 2011. 0905 was dissolved on August 31, 2015. 0905 was not registered under the Act in any capacity during the time relevant to the allegations in the notice of hearing.

[15] Oei was a director and officer of 0905 from the date of its incorporation until its date of dissolution. Oei confirmed, during his interview with Commission investigators, that he had sole control and direction over 0905 during that period.

[16] OEC was incorporated under the laws of British Columbia on March 14, 2012. OEC was not registered under the Act in any capacity during the time relevant to the allegations in the notice of hearing.

[17] Oei became a director of OEC on June 20, 2012. In an interview under oath with Commission investigators, Oei confirmed that he was the controlling mind and management of OEC during the time relevant to the allegations in the notice of hearing.

The Cascade investments

[18] CRC was a start-up company planning to build a facility in Port Coquitlam, British Columbia that would recycle garbage into compost. It had a business plan that described building multiple facilities across Canada.

[19] CROF was a related entity to CRC. CROF had a business plan to construct a facility in Abbotsford, British Columbia that would produce fertilizer.

[20] GS was the President of both CRC and CROF. GS was interviewed by Commission investigators in December 2015. Transcripts of those interviews were entered as evidence in these proceedings. GS died prior to the commencement of the hearing.

[21] GS and Oei both confirmed in their interviews with Commission investigators that they met some time in 2009. Neither was able to say exactly when they first met.

[22] Oei was asked by GS to find Chinese investors who would invest in the Cascade projects. There were discussions about the ability of Chinese investors to use the investment in the Cascade projects under government approved immigrant investor programs.

[23] GS and Oei both told Commission investigators that Cascade was not interested in an investment structure that would result in Cascade having to deal with a large number of direct equity investors. They said that Cascade had a preference for investors to invest through an indirect investment structure.

[24] Oei told Commission investigators that he sought legal advice from a local law firm (PC) on how to structure an indirect investment in Cascade.

[25] GS and Oei both told Commission investigators that their plan, in the broad sense, was for the Cascade companies to issue securities to Canadian Manu and that investors would then acquire their interest in the Cascade companies indirectly through that entity or entities related to Canadian Manu.

[26] The investment documents, given to investors in connection with their investments in Cascade and that set out the investment structure purportedly offered to the investors, are nearly indecipherable from a legal perspective.

[27] The evidence of what was actually issued, and to whom, is, in some cases, unclear. For example, the offering documents given to investors in places describe the security being issued to investors as a share (common or preferred) in CRC or CROF. Yet, in other places in these same documents, they mention the payment of interest on these shares, which is inconsistent with the concept of share ownership. We were told by the respondents, and this was supported by the evidence, that the corporate records of the various corporate entities entered as evidence are partial and incomplete on the question of what securities were issued, to whom and when.

[28] In addition, the evidence included the investment documents of some of the investors, but not all.

[29] Notwithstanding these issues, we are able to make the following findings based on the totality of the evidence:

a) investors acquired “securities” (our analysis of this issue, from the legal perspective, is set out below) of either CRC or CROF or both;
b) Canadian Manu acquired securities from CRC/CROF (in what numbers and for what consideration is not clear from the evidence);
c) investors purchased a security of either CRC or CROF (or both) from Canadian Manu and Canadian Manu agreed to hold this CRC/CROF security in trust for the investor under an “Investment Trust Agreement”;

d) during the relevant period, 34 separate investments were made using investment documentation for CRC and 30 separate investments were made using investment documentation for CROF;
e) 0863 or 0905, as the case may be, then issued shares to the investor, purportedly as "security" or collateral for the investor's investment in CRC/CROF (what role these shares of 0863 or 0905, as the case may be, actually played in the investment structure or how they did, or even could, act as "security" or collateral for the investment in Cascade is not clear from the documents); and
f) in most cases, the investors paid their invested funds into an account with the respondents' counsel, PC.

[30] Investors received a document called an "offering summary". Parts of the offering summary make little or no commercial sense, but its essential terms are:

- that investors were purchasing securities in CRC/CROF (some of the versions of the offering summary describe common and preferred shares but then describe interest payments on the securities in one place and dividends in another);
- that CRC/CROF was raising proceeds that would be used by them, in the case of CRC, to construct a 100 ton per day In-Vessel Composting Plant and, in the case of CROF, a 100 ton per day fertilizer recycling plant;
- some, but not all, of the offering summaries described a more specific use of proceeds - that CRC/CROF proposed to use the funds raised from the offering to lease lands and construct facilities;
- that there might be fees or expenses involved in the purchase of the securities;
- the percentage interest in CRC/CROF that would be acquired with an investment;
- a description of certain risk factors, including the risk of a full loss of the investment;
- another risk factor describes the "Corporation" (undefined) as a "limited partner" of CRC/CROF, which would have limited rights and must rely on the management of CRC/CROF (how or what this means is not decipherable from the documents in evidence).

[31] There is no mention of Canadian Manu in the original version of the offering summary.

[32] Not all of the offering summaries are the same. A version dated "October 2012" does suggest that Canadian Manu might provide information to the investor and this document also had a shorter description of risk factors (which did not include the reference to the Corporation being a limited partner of CRC or CROF).

[33] While most investors appear to have received the earlier version of the offering summary, the evidence is not clear, with respect to all investors, which form of the document they received. Oei told Commission investigators that all Cascade investors received a copy of the offering summary (without being specific as to which version of the document each investor received).

[34] None of the versions of the offering summary in evidence contain any disclosure:

- that some of the proceeds of the offering would be retained by any of the respondents for their personal or corporate use (i.e. uses unrelated to Cascade), other than a general reference to the fact that there might be fees or expenses involved in the purchase of the securities; or
- that investors would be acquiring an indirect ownership interest in Cascade.

[35] Investors were also asked to sign (and some did sign) a direction authorizing PC to release investor funds at and to the direction of the "Paul Oei Group" (undefined) and/or CRC or CROF. A number of investors were asked, at a later date (in some cases significantly after the date of their original investment), to re-sign (and some did re-sign) another form of authorization that more specifically referenced a release of funds to a variety of combinations of the following list of persons or entities: Canadian Manu, CRC, CROF and Oei (personally).

[36] As will be discussed below, the total proceeds raised by the respondents in connection with Cascade, through this indirect investment structure, was contested by the parties.

CRC bankruptcy and CROF

[37] At some point in 2011, Oei became a director of CRC.

[38] GS was the principal operator of CRC until August of 2012. On August 11, 2012, GS was terminated by CRC, purportedly for breach of fiduciary duty and financial mismanagement.

[39] Oei then became the chairman of the board of CRC and took control of CROF.

[40] By no later than March of 2013, CRC experienced serious financial difficulties. Oei told Commission staff that he stopped making any payments to or on behalf of CRC by the end of February 2013.

[41] CRC formally went into bankruptcy proceedings on May 13, 2013.

[42] Canadian Manu filed a claim in the CRC bankruptcy proceedings, as a purported creditor of CRC, in the amount of $5,500,000. The evidence is not clear whether this claim was withdrawn by Canadian Manu or rejected by the trustee in bankruptcy; however, all parties at the hearing agreed that this amount was not properly characterized as a debt owed by CRC to Canadian Manu and that the funds advanced by Canadian Manu were an investment in CRC and not a loan arrangement.

[43] GS told Commission investigators that the total amount of funds forwarded to Cascade by Oei (or entities controlled by Oei) was approximately $5.3 million. He estimated that approximately $2.5 million of this amount was provided to CRC and $2.8 million of the funds were provided to CROF. However, CROF then lent all of the $2.8 million to CRC, such that all of the (approximately) $5.3 million went to CRC. The reason for this loan of funds from CROF to CRC was not clear from the evidence.

[44] There is no evidence that CROF ever carried on any active business separate and apart from that of CRC. When CRC declared bankruptcy, the collective business activities of Cascade (i.e. the collective business of CRC and CROF) also ceased. CROF has never declared bankruptcy. However, there was no suggestion that its securities are anything other than worthless.

OEC Investments

[45] Oei incorporated a new company in March 2012. He changed the name of that company to OEC in 2013 and that company then bid on the equipment of CRC being offered for sale by CRC's bankruptcy trustee.

[46] Oei approached the investors who had previously invested in Cascade and asked them to advance an additional 15% of the amount that they had originally invested in Cascade to OEC in order to allow OEC to purchase the CRC equipment and continue the development of a facility to process organic waste and recycle it like the one that had previously been worked on by CRC.

[47] Eighteen investors who had previously invested in Cascade did purchase securities of OEC on this basis, for total proceeds of $202,000. This figure of $202,000 was not challenged by the respondents in this case.

[48] Evidence was tendered that showed that OEC also raised substantial sums of money from investors subsequent to the time relevant to the notice of hearing.

[49] OEC was the successful bidder and purchased CRC's equipment from its bankruptcy trustee.

[50] We do not have sufficient evidence to determine the status of the investors' investments in OEC.

Commission's bank account review

[51] Commission investigators obtained and reviewed the banking records for all of the bank accounts of CRC and CROF. They also obtained and reviewed the banking records (commencing from May 1, 2009 and ending on March 14, 2013) for six of the bank accounts of Canadian Manu and Oei (three Canadian Manu accounts, two personal accounts of Oei and one account that Oei held jointly with a third party). These six accounts were chosen as the bank accounts to review, as they were the six accounts into which investor funds were dispersed by Oei's law firm, PC.

[52] In addition to the banking records described above, Commission investigators also collected investment documents directly from investors and trust account reconciliation records from PC.

[53] Subject to the discussion in paragraph 55 below, that evidence confirms that 64 total investments in Cascade were made during the relevant period, for proceeds of

$13,349,000 (where the investors' money went to some of the respondents either directly or, in the majority of instances, indirectly, through PC's trust accounts). There were other amounts raised from investors for Cascade that went directly to one of the Cascade entities that are not relevant to the allegations in the notice of hearing.

[54] Of this $13.349 million, $9,298,704 was paid in Canadian dollars and $4,050,443 was paid in US dollars. The executive director did not attempt to convert these funds into a common currency (i.e. CDN$) for the purposes of the liability portion of this hearing. As will be seen below, the quantum of the misappropriation of investors' funds was so significant that issues of currency conversion are not material for the purposes of determining liability in this case. However, currency conversion may be material for the purposes of determining the appropriate sanctions in this case. We would expect to receive submissions from the parties on that issue for our consideration during that part of these proceedings.

[55] The amount of $13,349,000, as the amount invested in the 64 investments in Cascade, was challenged by the respondents during the hearing. There were three issues raised by the respondents:

- one investor did not pay cash for their investment but, instead, was issued securities having a value of $86,400 in lieu of commission;
- one investor provided $1,000,000 to the respondents on August 28, 2012 – that investor received documentation, at that time, consistent with having made an investment in Cascade; however, in an interview under oath with Commission investigators, the investor's daughter said that Oei, at a later date, had offered to exchange the investor's investment in Cascade for an investment in OEC without further consideration; and
- one investor, in an interview under oath, said at one point in that interview that her investment of $25,000 was an investment in OEC but at a later point in the same interview, after being shown investment documents, confirmed that she had intended to invest in Cascade. This investor received documentation, at the time of investment, consistent with having made an investment in Cascade.

[56] We will deal with each of these submissions by the respondents later in our findings. For the remainder of this background section of our findings we will continue to use the $13,349,000 figure alleged by the executive director.

[57] The investment documents provide that, of this $13,349,000 amount, approximately $8 million was provided with an investment intent to acquire securities of CRC and the remaining (approximately) $5,349,000 was provided with an investment intent to acquire securities in CROF. However, the evidence also clearly established that there was no real separation of CRC and CROF funds or capital raising activities such that funds can be traced to either entity in a manner consistent with these figures.

[58] During the period June 2009 through March 2013, the banking records show that the total amount advanced to the Cascade companies from the respondents was $5.563 million (of which $803,200 was advanced to Cascade in US$).

[59] The Commission investigator testified that August 19, 2009 was the date of the deposit of the funds relating to the first of the 64 relevant investments. The investigator further testified that she chose March 14, 2013 as the end date for her review of the Oei and Canadian Manu accounts as Oei, in his interview with Commission staff, told them that he had stopped sending money to Cascade or otherwise financially supporting Cascade by the end of February of 2013.

[60] The investigator further testified that she had analyzed all of the transactions in the six bank accounts of the respondents during that time and determined that a further $876,000 had been spent by the respondents on expenses that appeared to be connected to Cascade.

Investor Evidence

[61] Nine investors testified at the hearing.

[62] In their submissions, the respondents submitted that certain of the witnesses were not credible. They submitted that certain of the witnesses had a financial reason to be untruthful due to existing or past civil litigation. They further submitted that there were inconsistencies in the testimony of several of the witnesses (either within their testimony during the hearing or in the testimony during the hearing as compared to information provided to Commission investigators in earlier interviews).

[63] We found all of the witnesses to be credible and have generally accepted all of their evidence. Where there were inconsistencies in the testimony of several of the witnesses, those inconsistencies were not material to our findings in this hearing nor were they sufficient for us to question the credibility of the witness.

[64] The following is a summary of the relevant evidence given by these witnesses.

<u>Investor A</u>

[65] During the relevant time, Investor A was a resident of Hangzhou, China.

[66] Investor A first heard about CRC in August 2009 from a friend. Investor A met Oei three times before investing on behalf of himself and six other investors. Over the course of these meetings, Oei told Investor A that he and his wife were shareholders in CRC, having invested $800,000.

[67] Oei told Investor A that his investment would be directly in CRC and that every CDN $1 million invested would entitle Investor A to a 7.5% interest in CRC.

[68] Oei told Investor A that the money he invested would be used solely for building the CRC plant. Oei did not tell Investor A that the money would be kept by Oei himself, or any of Oei's other companies, or for any purpose other than CRC business.

[69] Investor A was told by Oei that an investment in Cascade might be used as the basis for an immigration application to Canada. Investor A was told that immigration assistance would be provided to him for free (i.e. not out of the proceeds of his investment).

[70] Oei did not tell Investor A about receiving commissions, paying commissions to other people to find more CRC investors, lease payments for Oei's car, legal fees for processing Investor A's investment, donations, advertising, or funding beauty pageants.

[71] However, Investor A did testify that he (on behalf of his investment group) did incur significant fees in connection with the foreign exchange transactions that were required for his investment in Cascade. Investor A testified that he and Oei reached an agreement that Investor A would be reimbursed for a portion of those fees, which amount turned out to be US$446,200. Investor A testified that he was not told that this reimbursement would come from the funds that he or his group invested in Cascade.

[72] Investor A did not enter into a written agreement with Oei or CRC at the time of his investment. Oei told him that after he invested $1 million, he would receive 7.5% of CRC shares and a share certificate.

[73] Investor A testified that he was asked to sign an offering summary and irrevocable instruction to a law firm to release funds in 2013. He had not seen those documents before. Because the documents were dated April 2010 and he was asked to sign them in 2013, he would not sign them. He testified that it was not his signature on signed copies of these documents that were entered as exhibits in the hearing (ie. that the signatures were forgeries).

[74] Investor A ultimately invested US $3.72 million in CRC, which was equivalent to CDN $4 million, as part of a group with six other investors.

Investor B

[75] Investor B is a resident of Vancouver, BC.

[76] Investor B learned of CRC at the end of 2010 or beginning of 2011. He was introduced to Oei as someone who would be able to sell him life insurance. After advising him about life insurance options, Oei discussed with him the possibility of investing in CRC. Oei told Investor B that he could invest his money in CRC and, once the company went public, he would help Investor B sell half of his investment and Investor B could then use the proceeds to buy life insurance.

[77] Oei told Investor B that CRC was a waste treatment project, supported by the government. He met with Oei many times before investing. Oei told him he was a major shareholder in CRC. Investor B never met anyone from CRC before investing and he got all of his information about CRC from Oei.

[78] Oei asked Investor B to invest approximately $1.9 million to buy 20% of the shares of CRC and then after a year, Oei would, on Investor B's behalf, be able to resell half of those shares.

[79] Oei told Investor B that his investment would be used for construction expenses. Investor B said that he was told by Oei that the project had already received $10 million in investments and that construction on the facility was to begin immediately, for which CRC needed an additional $2 million. Investor B told Oei he wanted his money to be used for construction expenses only and not on wages for the workers.

[80] Investor B received an offering summary, a summary of his oral agreement regarding his investment in Cascade, and various irrevocable instructions to the law firm (PC) to pay out the funds he deposited into the firm's trust account. Investor B says he did not understand what was written in those agreements, but trusted that they reflected the agreement he had with Oei. A summary of oral agreements, dated June 5, 2012, (entered into evidence at the hearing) specifically states that Investor B's investment was to be used for construction purposes only, not on salaries.

[81] Investor B invested CDN $1.7 million in CRC in four tranches between June and September of 2012. Oei told Investor B that he was getting a specified percentage of CRC shares for his investment and that he would get share certificates after a year.

[82] Oei never mentioned Canadian Manu to Investor B.

[83] Oei also gave Investor B one or more promissory notes in connection with his investment in Cascade, under which Oei was obligated to repay Investor B's funds. The note(s) were to expire when construction began on CRC or someone purchased Investor B's shares in CRC. Oei also paid Investor B interest on some of the money he invested, after construction on CRC was delayed.

[84] Investor B testified that Oei never said that any part of the $1.7 million investment was for Oei to keep personally or was to be kept by Oei as a commission. Oei did not tell Investor B that his funds might be used to pay commissions to find other CRC investors or for lease payments for Oei's car.

[85] In September 2012, Oei agreed to convert $1.5 million that Investor B had invested in CRC to a personal loan. How or why this occurred was not explained in the evidence. Investor B retained a $200,000 investment in CRC. Oei paid Investor B an aggregate total of $1.53 million in loan repayments and in settlement of a subsequent civil suit relating to these matters.

Investor C

[86] At the relevant time, Investor C was living part time in Vancouver, BC and part time in China. Investor C invested with his wife.

[87] Oei told Investor C he was a shareholder in CRC and CROF.

[88] Investor C and his wife met Oei through Oei's wife, who had sold them auto and life insurance. Investor C originally met Oei in 2009. Oei initially recommended that Investor C invest in CRC, but ultimately Investor C invested in CROF. Oei told him that CROF was developing an environmental project that was to turn waste into fertilizer and that the project had strong government support.

[89] Oei told Investor C that he would receive 6% interest on his investment until CROF started production.

[90] Investor C testified that he understood he was buying shares in CROF directly.

[91] Oei did not tell Investor C that he would keep any of the investment money for himself, or that any of the investment would be spent on: commission payments to find other CROF investors, lease payments for Oei's car, legal fees for processing Investor C's investment, donations, or advertising. Oei told him his money would be invested in the construction of the CROF plant and, more specifically, that the funds would be used to order machines and lease land for the company. Oei did not tell Investor C that Oei would get a commission or finder's fee for introducing Investor C to CROF.

[92] Investor C and his wife invested $1 million in CROF.

[93] Investor C signed an offering summary and an irrevocable instruction to PC to release funds to Paul Oei Group or CROF. Oei told him that the investment funds would be put into PC's trust account and once CROF's legal process had been completed, the entire $1 million would be transferred from the trust account to CROF.

[94] Investor C received $60,000 in interest payments on his investment in CROF before the interest payments stopped. He has not recovered any of his original investment amount.

Investor D

[95] Investor D and her mother invested in CROF. Investor D's mother had passed away by the time of the hearing. At the relevant time, Investor D was in China and her mother was in Canada. Investor D spoke with her mother about the investment over the phone. Oei sent emails to her mother, which her mother forwarded to Investor D. Investor D also received emails directly from Oei.

[96] Oei told Investor D's mother about CROF. Oei told Investor D's mother that if they invested $500,000 in CROF, Investor D would be able to use the investment in Cascade as the basis for her to qualify to immigrate to Canada. Oei did not tell Investor D that any fees related to this immigration process would come from the $500,000 that they invested.

[97] Oei told Investor D's mother that her investment would be used to build a processing plant for fertilizer. Oei told Investor D and her mother that the money would be used for

construction expenses for CROF. Oei told Investor D's mother that she would receive interest on the investment and would be buying shares in CROF.

[98] Oei sent Investor D and her mother a presentation about the CROF facility, information about the immigration process, an offering summary and an instruction to PC to release the invested funds.

[99] Oei did not tell Investor D's mother that he would keep any of the money invested for himself, or that any of the money was going to be paid as a commission to anyone.

[100] Investor D testified that her mother did not receive any interest payments on her investment in CROF nor was their investment repaid.

Investor E

[101] At the relevant time, Investor E was a resident of Burnaby, BC.

[102] Investor E met Oei at a seminar on financial products in 2009 and became friends with him. At some point later, Oei told him about CROF. Oei told Investor E that he was an investor in CROF, which was a recycling business. Investor E did not speak with anyone other than Oei about CROF before he invested.

[103] Oei told Investor E that if he invested he would be buying shares in CROF and that the money would be used for CROF's expenses.

[104] Investor E did not recall being told that his investment would be used to pay commissions to other people. He was not told it would be used on lease payments for Oei's car. Oei did not tell Investor E that he would keep any of his investment for himself or that he would receive any commission for introducing him to CROF. Investor E testified that he understood that it was possible some of his investment could be used for costs such as advertisements by CROF.

[105] Investor E invested $25,000 in CROF. He deposited his investment into the PC trust account, on Oei's instruction.

[106] Investor E also invested $3,750 in OEC. Oei told him that CROF had gone bankrupt and that investing in OEC was an opportunity to continue the green business. Oei told him that the funds invested in OEC would be used by it to buy CROF's equipment from the bankruptcy trustee.

[107] Investor E received some interest payments on his investment in CROF (the exact amount was not made clear). He has not recovered any of his original investment amount.

Investor F

[108] Investor F is a resident of Vancouver. She is 75 years old.

[109] Investor F met Oei through Oei's wife, who sold her insurance. Oei told her that CRC was an investment in recycling and that he was a member of senior management of the company.

[110] Oei told her that she would receive 6% interest on her investment in CRC. Oei told her she would be buying shares in CRC. He did not tell her that he was selling his company's (Canadian Manu's) CRC shares. On cross-examination, Investor F stated that she was not sure whether she was investing directly or indirectly in CRC. She said that her money could go to Oei, but Oei would then provide these funds to CRC.

[111] Oei told her that her funds would be used on the start-up of a plant and to pay for machinery and equipment. He told her that all of her money would be used on CRC business expenses.

[112] Oei did not tell Investor F that her money might be used on commissions to other people or on car lease payments for his personal car. Oei did not tell her that he would keep any of her invested funds for himself or that he was getting any commission for introducing her to CRC. She acknowledged in cross-examination that start-up costs could include paying interest to investors, bringing potential investors to the site leased by CRC for the facility, legal costs and advertising and promotion.

[113] In 2010, Investor F invested $40,000 in CRC. She signed an offering summary, investment trust agreement, irrevocable instruction to PC to release funds, a subscription agreement and received a share certificate for shares in 0863. Investor F testified that she thought it was a share certificate for shares in CRC.

[114] In 2011, Oei spoke with Investor F about investing in another project, CROF. Investor F invested a further $80,000 in CROF. She expected to receive shares in CROF and that her invested funds would be used for CROF business expenses. Oei did not tell her that he would keep any of the funds for himself. In connection with this investment, she signed an offering summary, irrevocable instruction to PC and investment receipt.

[115] For some time after her investments, Investor F received interest payments on her investments in CRC and CROF from one or more of the respondents.

[116] In 2013, Oei told Investor F that CRC had declared bankruptcy. He told her about OEC, which would be in the same business as CRC and CROF. He said she could save her investment in CRC and CROF if she invested an additional 15% (of her originally invested funds) in OEC. Investor F invested $21,000 in OEC.

Investor G

[117] At the relevant time, Investor G was a resident of Vancouver, BC. She worked as a financial services representative and insurance agent.

[118] Investor G met Oei in 2012 through her work as an insurance agent. She had learned of CROF, a recycling project, and approached Oei about it. Oei told her that CROF was

planning to build more plants and that the company may go public at some point. Oei told her that he was the head of the "investment side" of CROF. Oei told Investor G that the minimum investment amount was $100,000 if she wished to invest.

[119] Oei told Investor G that she would receive 6% interest on her investment until the CROF project became operational. Oei told her that the money that would be used by CROF to pay these interest payments came from money that CROF had borrowed from CRC. Oei told her that she could not invest in CRC because investment in that company had reached its maximum.

[120] Oei told Investor G the money she invested would be used by CROF to buy equipment and for CROF business expenses. Oei did not tell her that her investment would be used to pay commissions, lease payments for Oei's personal car or for advertising. Oei did not tell her that he would keep any of her investment for himself.

[121] In August 2011, Investor G and three other people invested $25,000 each to meet the minimum investment amount. She understood that she was buying shares in CROF. Oei did not tell her that he was selling her his own shares in CROF.

[122] Investor G received an offering summary and signed an investment agreement for her $25,000 investment. She also signed an irrevocable instruction authorizing PC to release her investment funds to the Paul Oei Group or CROF. In November 2011, she signed another irrevocable instruction, authorizing PC to release the funds to Canadian Manu or CROF. She received a share certificate in 0905.

[123] Oei told Investor G that she could get commissions for introducing people to Oei who would invest in CROF. Oei (or one of his related companies) paid her at least $30,000 as commission payments for introducing Oei to other investors who invested in CROF. Investor G testified that she always brought potential investors to meet with Oei before they invested or if they had questions about the investment.

Investor H

[124] At the relevant time, Investor H was a resident of Richmond, BC. Investor H was introduced to Oei through Oei's wife. Oei told Investor H that CROF was about to build a fertilizer plant. Oei told Investor H that he was a member of the CROF board. He told Investor H that the minimum investment amount was $100,000 if Investor H wished to invest.

[125] Oei told Investor H that, while CROF was constructing its plant, an investment in CROF would receive 6% interest. Oei did not explain to Investor H how CROF would be able to pay 6% interest on the investment if the plant was not yet built.

[126] Oei told Investor H that his investment would be used to build a plant. He did not tell Investor H that his investment would be used to pay commissions to other people or for lease payments for Oei's personal car. Oei did not tell him that he would keep any of Investor H's investment for himself, that he would take a commission for introducing

Investor H to CROF, or that the money would be used for any purpose other than CROF construction expenses. Investor H acknowledged on cross-examination that he knew that his money could be used to pay interest.

[127] In August 2011, Investor H invested $100,000. He understood he was buying shares in CROF.

[128] Oei did not tell Investor H that Oei was selling his or Canadian Manu's shares in CROF to him. He testified that he did not know if he was buying his shares directly from CROF or from Oei or someone else. He does not recall any discussions regarding Canadian Manu.

[129] In connection with his investment in CROF, Investor H signed an offering summary and irrevocable instruction to PC to release funds to Paul Oei Group or CROF. In September 2011, he signed an investment agreement, subscription agreement and received a share certificate in 0905. In November 2011, he signed another irrevocable instruction, authorizing the release of his funds to Canadian Manu or CROF. He testified that he did not notice or pay attention to the various documents that he signed and that he did not understand why 0905 was named in the later agreements.

[130] Investor H initially received interest payments on his investment in CROF. In 2013, he stopped receiving interest payments. When Investor H asked Oei why, Oei told him that CROF had run out of money and that Oei could save his investment if Investor H invested a further 15% in a new company, OEC. Oei told him that if he did not invest a further 15%, he would lose all of his investment.

[131] Investor H invested $15,000 in OEC. He understood that the effect of this investment would be that his $100,000 investment in CROF would be added to this amount, such that he would have invested $115,000 in OEC. He understood the money would be used for OEC business expenses.

[132] Investor H received some interest payments on his investment in CROF (the exact amount was not made clear). He has not recovered any of his original investment amount.

Investor I

[133] At the relevant time, Investor I was a resident of Vancouver, BC. She worked as an insurance agent and knew Oei's wife. Oei's wife introduced her to Oei, who told her about CRC.

[134] Oei told Investor I that CRC was a recycling business that used garbage to make organic soil. He told Investor I that he was an investor in CRC. He said she would receive 6% interest on any amount invested in CRC.

[135] Oei told her she would be investing in CRC and that her invested funds would be used for construction expenses. He did not tell her that her money would be used to pay

commissions or for lease payments on Oei's personal car. Oei did not tell her that he would keep any of the $100,000 that she invested. Investor I testified that she was told that the entire amount of her investment would go to CRC.

[136] In September 2010, Investor I invested $100,000 in CRC. She signed an offering summary. Investor I signed an irrevocable instruction authorizing PC to release her investment funds to Paul Oei Group or CRC and an investment receipt for her investment in CRC. She received a share certificate for shares in 0863, which she understood would invest in CRC. Oei told her that the certificate proved that she owned shares in CRC.

[137] Investor I knew she was buying shares from Canadian Manu and knew there was a numbered company involved. Oei told her this was because so many people were investing in CRC and if a company had over 50 shareholders it would be a problem, so he was using a numbered company to invest in CRC.

[138] Investor I initially received interest on her investment in CRC. At some point, Oei told her about CRC's bankruptcy. Oei told Investor I that he was trying to save investors' money by starting a new company, OEC, to continue the fertilizer business. Investor I and a friend invested $9,000 in securities of OEC. She expected the investment to be used for OEC business expenses.

[139] Oei told Investor I that she could earn commissions if she introduced other investors to CRC. She introduced Oei to a number of investors who invested in CRC, using information that Oei gave her. She took these investors to meet Oei when they wanted to invest.

Bookkeeping evidence of Canadian Manu

[140] ES testified on behalf of the respondents.

[141] ES commenced working for Canadian Manu in 2011 by assisting with its accounting records and tax returns. She said that she reviewed certain records of the company going back to 2008 in order to complete her work relating to fiscal 2011 and onwards.

[142] ES testified as to certain documents that were tendered by the respondents into evidence; in particular, unaudited ledgers that were maintained on a software package called Quickbooks. ES said that Canadian Manu's bookkeeper posted entries into this software package based upon banking records, cheques or invoices.

[143] ES prepared a number of spreadsheets (tendered into evidence) based upon these records from Quickbooks, which purport to show the amount of money that the respondents spent on Cascade. In those spreadsheets, ES characterized some expenditures as direct payments by the respondents to Cascade, and others as payments made by one or more of the respondents on behalf of Cascade. Where the nature or characterization of a posted entry was not clear, ES testified that she asked Oei as to its proper characterization.

[144] Those spreadsheets can be summarized as follows:

Expense	BCSC included in $6.4 mill	Not included but characterization admitted	Additional	Total
Funds and payments to Cascade	$5,587,200.00[1]	$0.00	$5,111,827.28	$10,699,027.28
Payments on behalf of Cascade	$904,991.18[2]	$0.00	$395,485.74	$1,300,476.92
Investor Repayments	$0.00	$0.00	$3,117,228.59	$3,117,228.59
Interest Payments	$0.00	$252,050.00	$239,478.00	$491,528.00
Commission Payments	$0.00	$841,754.85	$272,914.02	$1,114,668.87
Legal Fees for Cascade	$0.00	$21,731.60	$23,514.77	$45,246.37
Development and Advertising for Cascade	$0.00	$30,152.00	$55,088.00	$85,240.00
Immigration Fees for Cascade Investors	$0.00	$0.00	$85,200.00	$85,200.00
Car Leases	$0.00	$0.00	$50,135.80	$50,135.80
SUBTOTALS	**$6,492,191.18**	**$1,145,688.45**	**$9,350,872.20**	
			GRAND TOTAL	**$16,988,751.83**

[145] The second column in the table above represents the amounts that ES says the executive director alleges were paid directly to Cascade or were payments made by the respondents on behalf of Cascade. The amount of funds paid to Cascade by the respondents in the second column differs slightly (by approximately $24,000) from that alleged by the executive director because of ES converting one US$ figure into CDN$. The total payments made by the respondents on behalf of Cascade in the second column are also different from that found in the spreadsheets prepared by the executive director (by approximately $29,000). ES acknowledged in her testimony that this was an accounting error on her part (although the respondents' submissions were not amended to fix this error). In order to avoid confusion, in the rest of these findings we will refer to the figures in the second column by reference to the amounts alleged by the executive director and not by the amounts used by ES above.

[146] The third column represents the expenditures that ES says the executive director acknowledges as having been made, but are amounts that the executive director disputes were expenditures that were consistent with the representation(s) made to the investors with respect to the use of their funds.

[147] The fourth column represents the amounts that ES determined, from her review of the respondents' records, were also either paid directly to Cascade or were payments made by the respondents on behalf of Cascade.

[1] The executive director submitted that this amount was $5,563,000. The difference, from the respondents' figure (of approximately $24,000), relates to a currency conversion as discussed below.
[2] The executive director submitted that this amount was approximately $876,000. The difference, from the respondents' figure (of approximately $29,000), relates to an arithmetic error made by ES as discussed below.

[148] The figures in the third and fourth columns raise the critical factual and legal issues that we must determine.

[149] As will be discussed below, the third column sets out approximately $1.15 million in expenditures that both the executive director and the respondents agree were made by the respondents but the issue in contention is whether those expenditures were consistent with the manner in which the investors were told their money would be used.

[150] Also as will be discussed below, the fourth column contains amounts with which there were the following factual and legal issues on which the executive director and the respondents disagreed:

- ES' spreadsheets suggest that the respondents paid approximately $5.1 million more to Cascade than alleged by the executive director;
- ES' spreadsheets suggest that the respondents spent an additional (approximately) $4.24 million on expenditures related to Cascade (over and above the $876,000 which was acknowledged by the executive director); and
- the executive director submitted that some portion of this $4.24 million in additional expenditures were not even made, and that, even if made, some of these expenditures had nothing to do with Cascade and that all of these expenditures (even if made and related to Cascade) were not consistent with what investors were told their funds would be used for.

[151] ES was cross-examined extensively on her work. That cross-examination established significant problems with the spreadsheets the respondents tendered into evidence. Broadly, those problems are as follows:

- ES prepared the spreadsheets using figures entered in Quickbooks without, in many cases, independently verifying source documents (eg. bank records) to confirm the accuracy of the entries – when asked, in cross-examination, to examine actual source documentation, ES conceded that a number of source entries in the respondents' Quickbooks records were simply incorrect;
- where ES did review source documents, she testified that a significant number of those source documents gave incomplete information with respect to the transaction (i.e. a copy of an invoice without record of payment, or a record of a payment without other documentation to suggest why that payment was made) – in these cases, ES simply relied upon Oei's instructions that a payment had been made or that it related to Cascade;
- where a Quickbooks entry was unclear as to the nature of a payee or the purpose of a payment, ES simply categorized that amount in her spreadsheets as directed by Oei.

[152] In sum, the spreadsheets amounted to little more than a compilation of numbers categorized in a manner largely directed by Oei himself and without independent verification by ES.

[153] Oei did not testify to support the instructions that he gave to ES as to the characterizations of various amounts for which there was no other evidentiary support. Many of the characterizations simply were not supported by any other evidence and, in many instances, were directly contradicted by other documentary evidence. Oei did not subject himself to cross-examination on this or other points. Those characterizations and instructions to ES as to the nature of or reason for the expenditures were fundamental to the accuracy of ES's spreadsheets. While Oei was under no obligation to testify and subject himself to cross-examination, his failure to testify in support of the rationale for the instructions he gave to ES lead us to place little weight on ES' spreadsheets. Where the information in the spreadsheets was contradicted by any other evidence, we preferred the other evidence.

[154] Notwithstanding this general finding regarding the weight to be given to ES' spreadsheets, it is important for these findings (because it is critical to our findings on liability) to detail the cross-examination of ES on two specific numbers in her spreadsheets:

- the additional $5.1 million in column four that ES says was paid to Cascade by one or more of the respondents; and
- the approximately $3.1 million in column four that ES says represents repayments to Cascade investors by one or more of the respondents.

[155] Counsel for the executive director took ES to the entries in the Quickbooks' records that comprise the $5.1 million that ES included on her spreadsheets as being payments made by the respondents to Cascade. ES' evidence elicited in that cross-examination can be summarized as follows:

- ES did not examine the banking records of Cascade that were entered as exhibits in the proceeding to determine if any of this amount had actually been deposited into a Cascade bank account;
- 16 of the entries (totaling approximately $974,000) corresponded to payments (in the majority of cases from a Canadian Manu bank account) made to a joint bank account of Oei and a third party;
- 13 of the entries (totaling approximately $3,055,000) corresponded to payments (in the majority of cases from a Canadian Manu bank account) to Oei's personal bank accounts;
- seven of the entries (totaling $43,500) corresponded to payments made to a company owned and controlled by Oei; and
- there were substantial issues raised about each of the other 10 entries (either supporting documents were raised to show that the original Quickbooks entry was wrong and/or that there was nothing to connect a payment to Cascade).

[156] Counsel for the executive director took ES to 33 payments totaling approximately $3.1 million that ES says were repayments to Cascade investors. That cross-examination clarified the following:

- six of these payments were made from a Canadian Manu account, five were made from a personal account of Oei and the remaining 22 were made from other accounts (largely from an OEC account);
- the earliest of these payments was made in April 2013 and the majority of the quantum (in dollar amounts) of the payments occurred after January 1, 2014;
- four of the payments from Canadian Manu (totaling $100,000) were made to Investor B between April and July 2013;
- $313,250 was paid to an individual who spoke with Commission investigators and said that he had made a personal loan to Oei and there was further evidence of a promissory note to this effect;
- approximately $288,000 were payments made to various casinos in Las Vegas that Oei instructed ES to characterize as repayments to investors;
- a substantial number of the payments were made to an investor who was both an investor in Cascade and in OEC (the investor provided substantial sums to OEC after the relevant time period in the notice of hearing); and
- approximately $1.531 million of these payments were made in October and November of 2016 in settlement of lawsuits against one or more of the respondents.

III. Positions of the parties

[157] The executive director's position is:

a) that between July 2009 and August 2013, all of the respondents perpetrated a fraudulent scheme on investors contrary to section 57(b) of the Act;

b) that there were two parts to this fraudulent scheme:

   i) Oei, Canadian Manu, 0864 and 0905 were involved in the first part which took investors' money intended for Cascade from July 2009 to November 2012; and
   ii) Oei and OEC were involved in the second part which raised money from some of the same investors for the benefit of OEC from June 2013 to August 2013;

c) that investors gave (some of) the respondents $13.3 million, were told that their funds would be used for Cascade's construction expenses, and that Oei did not provide approximately $6.9 million of these funds to Cascade (or make expenditures with these funds for the benefit of Cascade consistent with such use);

d) that Oei did not disclose to the investors in Cascade that he had not forwarded all of their funds to Cascade and raised an additional $202,000 from some of these investors for the benefit of OEC; and

e) that specific findings of liability against each of the respondents that should be made are as follows:

i) with respect to 0863, 34 contraventions of section 57 totaling $4,145,832;
ii) with respect to 0905, 30 contraventions of section 57 totaling $2,763,888;
iii) with respect to Canadian Manu, 64 contraventions of section 57 totaling $6,909,720;
iv) with respect to OEC, 18 contraventions of section 57 totaling $202,000; and
v) with respect to Oei, 82 contraventions of section 57, totaling $7,111,720.

[158] The allocation by the executive director of the quantum of the fraud allegations as between 0863 and 0905 was done on the basis that the investment documents suggest that investors intended to invest in CRC as to 60% of the total funds raised and in CROF as to 40% of the total funds raised. The executive director acknowledged that due to the co-mingling of all funds from investors in the respondents' bank accounts it was not possible to trace the flow of investor funds more precisely than this.

[159] The respondents submitted that they did not receive $13.3 million from investors as alleged by the executive director. They submitted that the amount received from investors for Cascade securities was approximately $12.2 million.

[160] Further, they submitted that they set up an indirect investment structure to satisfy the wishes of Cascade, that the investors were told about this investment structure and that the investors' funds were dispersed to the respondents in accordance with written authorizations from the investors.

[161] Finally, and most importantly, they say that they did not misappropriate any investor funds as the aggregate of the amount of money that was transferred by the respondents to Cascade and the amounts expended by the respondents on behalf of Cascade was significantly in excess of the alleged amount received from investors of $13.3 million. In the alternative, the respondents submitted that they were reselling their own Cascade securities to the investors and were entitled to keep the difference between what they paid to Cascade and what investors paid the respondents for those securities.

[162] The respondents also submitted that the allocation of the quantum of the fraud allegations as between 0863 and 0905, in the manner suggested by the executive director, was wholly arbitrary and should not be relied upon.

IV. Analysis and Findings

A. Applicable Law

Standard of Proof

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

> 49 In the result, I would reaffirm that in civil cases there is only one standard of proof and that is proof on a balance of probabilities. In all

> civil cases, the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred.

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

[165] 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.

Fraud

[166] Section 57(b) states

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

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

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

B. Analysis

Preliminary issues

[168] There were two issues that were addressed by the executive director in their submissions that they submitted must be determined before we consider the *Theroux* test for fraud. The first issue is whether the respondents issued "securities", as defined under the Act, to the investors in this case. The second issue is whether any of the specific allegations of fraud are statute barred because of the six-year limitation period in section 159 of the Act.

Security

[169] As described above, the investment structure and the documents provided to investors in connection with their investments in Cascade are difficult to discern. More particularly,

there are inconsistent references to “shares” (generally), “common shares” and “preferred shares” and then references to the payment of interest on shares (which is not consistent with share ownership).

[170] Although what, specifically, each investor in Cascade was to receive in connection with their investment is unclear, that they received a “security” (under the Act), is clear.

[171] Generally, there are references in the investment documents to the acquisition of shares (of one type of another). Under the indirect investment structure, investors were to receive shares of either 0863 or 0905, as the case may be, although to what end and for what purpose is not clear. The offering summary also refers to a specified investment amount entitling the investor to a percentage ownership interest in CRC or CROF, as the case may be. This percentage ownership interest would suggest an equity entitlement represented by a shareholding or something similar. A share is one of the enumerated items in the definition of “security” under the Act.

[172] In addition, the definition of “security” includes an “investment contract”. The interpretation of “investment contract” is found in many decisions and is generally an investment of money in a common enterprise with the profits of that enterprise to be derived from the efforts of others (see, for example, *Pacific Coast Coin Exchange v. Ontario Securities Commission*, [1978] 2 S.C.R. 112 (SCC) pp. 127-128).

[173] In this case, whatever was sold to investors was clearly an investment contract. Investors were to invest money with a third party, which funds were then to be used by that third party to generate a return for those investors.

[174] There was less uncertainty with respect to the investments made in OEC. The investors in OEC appear to have received shares in OEC and shares are clearly a “security” under the Act.

Limitation Period

[175] The notice of hearing for this matter was issued on September 16, 2016.

[176] Section 159 of the Act requires that proceedings under the Act must not be commenced more than six years after the date of the events that give rise to the proceedings. Therefore, the presumption is that events that occurred prior to September 16, 2010 cannot be the subject of a notice of hearing.

[177] The relevant period covered by the notice of hearing begins in July 2009 (the date on the first investment documents related to the first of the 64 investments in Cascade) and runs through to August 2013 (the date of the last of the 18 investments in OEC).

[178] The executive director acknowledges that 19 investments (of the 64 covered by the allegations in the notice of hearing) in Cascade were made prior to September 16, 2010 for aggregate proceeds of $3,738,339.

[179] The executive director submitted that none of these investments should be statute barred as the 19 investments (and the misuse of funds therefrom) were part of a series of contraventions in a continuing course of conduct that spanned the relevant period of time covered by the notice of hearing and ending in August 2013 which is within the 6 year limitation period.

[180] The respondents did not take the position that any of the investments or allegations relating thereto were statute barred pursuant to section 159 of the Act.

[181] As the limitation period was not raised by the respondents we think it sufficient for these purposes to note that fraudulent misconduct against an investor can carry on after all of the constitutive elements of fraud are present with the taking of funds from that investor (following the reasoning set out in *Re Williams*, 2016 BCSECCOM 18 (paras. 229-233)). In this case, if, in fact, a fraud was committed against a particular investor in Cascade, we have no difficulty in finding that fraudulent misconduct continued (in the nature of an ongoing misuse or misappropriation of investor funds) against that investor until the raising of funds for Cascade stopped and CRC went into bankruptcy, both of which occurred within the limitation period.

[182] We therefore find that none of the allegations in the notice of hearing is statute barred pursuant to section 159 of the Act.

One fraudulent scheme

[183] As described above, the executive director's theory of this case is that the respondents were engaged in one fraudulent scheme, which had two constituent elements, the Cascade portion and the subsequent OEC portion.

[184] We do agree with the executive director that all of the investments made by the investors with an intent to invest in Cascade should be viewed together and collectively. The respondents set up an indirect investment structure and then chose to co-mingle the investors' funds together and with those of the respondents. Because of the manner in which the respondents used the investors' funds, it is simply not possible to trace a particular investor's funds to a particular expenditure by one or more of the respondents. We agree with the executive director that there was one fund raising effort by the respondents on behalf of Cascade and that we can and should look at sources and uses of the investor funds collectively to determine if there was a misappropriation of investor funds. Finally, the evidence is that CROF did not carry on any active business separate and apart from that of CRC.

[185] However, we do not agree with the executive director that we can view the allegations against OEC as part of the same or "one fraudulent scheme". Firstly, the evidence is clear that there was a separate and distinct capital raising done for OEC with a purportedly different use of the proceeds raised in that fundraising. More importantly, the notice of hearing suggests that the *actus reus* of the fraudulent misconduct with respect to the investments made in OEC was different from the *actus reus* of the fraudulent misconduct related to the investments made in Cascade. We do not see how,

in the circumstances of this case, we can view conduct which is alleged to have a different *actus reus* as being part of one fraudulent scheme.

[186] As a consequence, our analysis of the fraud allegations with respect to the 18 investments in OEC (in respect of which Oei and OEC are the only respondents who are alleged to have carried out the misconduct) will be separate from our analysis of the fraud allegations with respect to the 64 investments in Cascade (in respect of which all of the respondents other than OEC are alleged to have carried out some or all of the misconduct).

Actus Reus/Cascade

A. Prohibited act

[187] In the most general sense, the executive director's allegations of fraud, as they relate to the investors in Cascade, are based on a misappropriation of investor funds. This type of fraud allegation requires an analysis of what representations were made to investors about the use of their funds and then comparing those representations to the actual use of the funds. In other words, the deceit or other fraudulent means element of the *actus reus* alleged in this case is that the investors were told one thing about the use of their invested funds but that a sizeable portion of those funds were used in a very different manner.

[188] Considerable time was spent during the direct examination and cross examination of the investor witnesses on issues of what the respondents told (or did not tell) investors with respect to risk disclosure and what promises or representations were made to investors with respect to the return they would get on their investments. That evidence is not relevant to the allegations of fraud in the notice of hearing. The notice of hearing does not, in any way, suggest that the respondents' misconduct was to deceive investors (either through express representation or through omission) as to the potential risks of investing in Cascade or OEC or about the returns that the investors would or could receive on their investments. We have not considered this evidence or given it any weight in our deliberations.

[189] The respondents submitted, as a complete defence to the allegations of misappropriation, that the respondents purchased Cascade securities at various times and then resold them to the investors with the following purported implications:

- that the respondents may have advanced significant sums of money to Cascade prior to August 2009 (the first date an investor included in the allegations in these proceedings acquired Cascade securities from the respondents) and that, in this way, an investor's funds were really repaying Oei for funds already advanced to Cascade; and
- that the respondents were entitled to resell the Cascade securities for a price greater than the price that the respondents paid and simply keep the profit on the resale.

[190] There was evidence of subscription agreements under which Canadian Manu acquired securities from CRC and CROF. However, the respondents acknowledged that these records were incomplete.

[191] For reasons that will be set out in detail below, we do not agree with these general submissions from the respondents. The indirect investment structure set up by the respondents did, in theory, require that Canadian Manu acquire securities from CRC and CROF, so it is not surprising that Canadian Manu, from time to time, did subscribe for securities of Cascade. However, as discussed below, there was simply no evidence to support (and there was much contradictory evidence) the submission that the respondents advanced significant sums to Cascade prior to the first of the 64 investments covered by the notice of hearing. Also, as will be discussed below, the idea that the respondents were entitled to retain a significant portion of the investors' funds as a profit on the resale of the Cascade securities is contradicted by both the testimony of the investor witnesses as well as the documentation provided to investors by the respondents.

[192] Having dealt with some broad issues and submissions we turn now to the detailed examination of the various fraud allegations.

[193] In reaching our findings with respect to the *actus reus* element of the fraud allegations in this case, we must answer the following questions:

- What was the total amount of funds raised by the respondents during the relevant period with respect to Cascade?
- What representation(s) was made to the investors of these funds with respect to the use of their invested funds?
- Can we infer that the same representation(s) (found in answering the above question) was made to all investors (i.e. we heard testimony from nine investors, there were a significant number of investors for whom the only evidence we have is their investment documents and there were some investors for whom there was not a complete set of investment documents tendered into evidence)?
- What was the actual use of proceeds by the respondents and how does that use of proceeds correspond to the representation(s) to the investors regarding the use of proceeds that we have found?

[194] The last question has a number of different elements or findings that must be made:

- What amount of investor money was forwarded by the respondents to Cascade?
- What expenditures (if any), purportedly made by the respondents on behalf of Cascade, are consistent with the representation(s) made to investors and what expenditures (if any) are not consistent with this representation(s)?
- Within a category of expenditures that we have found is consistent with the representation(s) made to investors with respect to use of proceeds, does the evidence support that a particular payment was actually made or should be properly included within this category of expenditures?

What was the total amount of funds raised by the respondents during the relevant period with respect to Cascade?

[195] The respondents contested the executive director's figure of $13,349,000 as the amount raised by the respondents from investors with respect to Cascade. As set out in paragraph 55, they challenged the inclusion of three amounts in this total.

[196] We agree with the respondents that the inclusion of $86,400 with respect to shares that were issued to a third party in lieu of commission does not make sense in the context of the allegations in this case. As set out above, the *actus reus* of the fraud alleged in this case is essentially one of misappropriation. The $86,400 of consideration that was provided for the securities of Cascade was not provided in the form of cash, but rather in the form of services. This investor did not provide funds that could be misappropriated in the manner alleged by the executive director.

[197] Therefore, we find that this amount should be deducted from the amount that the executive director alleges was raised from investors and that should have been provided to (or for the benefit of) Cascade and that this investor should not be included in the 64 allegations of fraud that relate to the investments in Cascade.

[198] We do not agree with the respondents that the evidence establishes that the other two investors (described in paragraph 55), who provided a total of $1,025,000, invested in OEC rather than in Cascade. These investors made their investments in February 2012 and August 2012, respectively. The documents relating to both of these investments clearly were for investments in Cascade. These investment dates were, with respect to the February 2012 investment, before OEC was even incorporated, and, with respect to the August 2012 investment, long before the spring of 2013 which is when Oei (in his interviews under oath) said he commenced raising capital for OEC. That these investors may have subsequently exchanged their Cascade related securities for securities in OEC, or made a subsequent investment in OEC or had some or all of their investment funds returned by OEC, does not change the nature of their initial investment.

[199] Therefore, we find that our analysis of the allegations should focus on 63 total investments in Cascade, which raised a total of $13,262,600.

What representation(s) was made to the investors of these funds with respect to the use of their invested funds?

[200] The executive director submitted that all of the investors were told, orally or in writing, that their funds would be provided to Cascade. However, the written submissions of the executive director also contained several different statements of what those funds would be used on: "construction costs of Cascade", "Cascade's start-up costs" and "start-up, construction and other business expenses of Cascade".

[201] The respondents had alternative submissions on this point.

[202] Firstly, as noted above, they submitted that all of the investors were told, orally or in writing, that they were investing indirectly in Cascade (i.e. that the investors' funds

would actually be going to the respondents). As a result, they suggested that there did not need to be an exact match (or flow-through) of the amounts invested by investors with the respondents and the amount of money provided by the respondents to Cascade. The respondents were essentially arguing that they were entitled to keep any difference between the funds raised from investors and the amounts provided by the respondents to Cascade as a form of profit on the resale by the respondents of the Cascade securities to investors.

[203] Secondly, and in the alternative, the respondents submitted that investors were told that their funds were to be used on "start-up" costs and that this term encompasses a broad range of business expenditures by the respondents on behalf of Cascade, including, without limitation, interest payments, commissions to finders and investor repayments.

[204] With respect to the respondents' first submission, all nine investor witnesses provided extensive evidence on what they were told about the use of their invested funds. They were all cross-examined extensively on this point. We provided summaries of the evidence of those investors to highlight the consistency of that evidence, in the broad sense, about the representation(s) made to them as to use of investor funds. That testimony also highlighted, in the narrower sense, some of the differences in what they were told (or what they understood) might be a use of their funds.

[205] The evidence is overwhelming that investors were told that their funds were to be provided to or for the benefit of Cascade. Every investor testified to this effect without equivocation.

[206] Further, although the respondents argued that, on the question of the representation(s) as to use of proceeds, we should prefer the written investment documentation to the testimony of the investors, the investment documentation also does not support the respondents' first submission that they were entitled to use the funds raised from investors as they saw fit.

[207] The offering summary is the only document that was provided to investors that describes the intended use of the investors' funds. The offering summary (all versions of the document in evidence) is as equally clear and unequivocal as the investors' testimony that the use of funds of the offering was to provide funds to or for the benefit of Cascade. The offering summary does suggest that there may be fees associated with the offering but it does not, in any more general way, suggest that some portion of the investors' funds was to be retained by the respondents for their use or as a profit arising from a resale.

[208] There is no support in the evidence for the respondents' submissions that they were entitled to keep any difference between the total funds raised from investors and the total funds that the respondents provided to Cascade or expended on behalf of Cascade. The legal effect and intent of the documentation that the respondents point to in support of the indirect investment structure used by the respondents is nearly indecipherable. However, at best, it supports the general idea that legal title to the Cascade securities was to be

maintained by the respondents while the investors acquired beneficial ownership of those same securities.

[209] The documentation does not support the respondents' submissions that the general use of proceeds would be different from that told to the investors directly by Oei and as set out in the offering summary. There is nothing inconsistent with the notion that there was to be an indirect investment structure for the Cascade investors and a representation that the investors' funds were to be used (directly or indirectly) for the benefit of Cascade. The funds would simply have had to flow through the indirect investment structure to Cascade to fulfill the promises made to investors.

[210] Finally, the respondents say that investors signed instructions authorizing PC to release funds from its trust accounts to one or more of the respondents and that this instruction implicitly or explicitly authorized the retention of investor funds by the respondents. Interestingly, the instructions authorizing PC to release funds, for the most part, also authorize PC to release funds directly to either CRC or CROF. This authorization is inconsistent with the respondents' submission that the funds from the investors were theirs to be used in a manner to be determined solely by them.

[211] There are many evidentiary issues with the instructions to PC to pay funds from their trust accounts to one or more of the respondents. There are questions of what version of this instruction was signed by each investor and when such instruction was signed (the evidence was clear that many investors were asked to sign revised instructions well after their initial investment date). There were also questions of whether each investor actually signed an instruction.

[212] We do not need to resolve these problems with the evidence, as we do not find the instructions to be material to the question of what representation(s) was made to investors regarding the use of proceeds. Whether the investor funds were to be released directly by PC to Cascade (as happened in some cases) or were to be released by PC to one or more of the respondents is not determinative of what those funds should ultimately have been used for.

[213] With respect to the respondents' second submission, the testimony of the investor witnesses did differ, to some extent, on what they were told (or what they understood) to be the specific use of funds by (or on behalf of) Cascade. Some investors testified that they were specifically told that their funds were to be used on construction expenses. Investor B had this narrow use of proceeds specifically drafted into his investment documents. However, some of the investors testified that they were told (or understood) that the use of funds by Cascade (or on behalf of Cascade) would be broader than just construction expenses. Several referred to start-up costs and general business expenses. Several investors said they understood that their funds could be used on things like interest expenses (even if the respondents did not specifically tell them this).

[214] The notice of hearing says that the respondents represented to the investors that their funds would be used on Cascade's "start-up" costs. We agree and find that this is an

accurate summation of the vast amount of evidence on this issue. The term "start-up costs" is broader than just construction costs and what can be considered to fit within this term (or not) will be discussed in more detail below.

[215] The evidence does not support a finding that all investors were told specifically that their funds would only be used on construction expenses (although it is clear that at least one investor was told this). The fact that Investor B received a very precise representation as to the use of his funds is not material to the allegations in the notice of hearing. As the respondents co-mingled all of the investor funds, it is simply not possible to trace the use of Investor B's funds and determine the manner in which his funds were spent. This case was presented and argued, by both parties (and appropriately so, in our view), on the collective use of funds by the respondents.

Can we infer that the same representation(s) (found in answering the above question) was made to all investors?

[216] Only nine of the investors provided testimony during the hearing. Not all the investment documents for all of the investors were in evidence. Therefore, we have an incomplete record of direct evidence of what was represented to each investor with respect to the use of their invested funds.

[217] The executive director submitted that we can infer, based upon the totality of the evidence, that the same general representation(s) regarding use of funds was made to all of the investors.

[218] The respondents did not provide us with submissions on this point.

[219] We find that we are able to infer, based upon all of the evidence, that the same general representation(s) was made to all of the investors (either orally or in writing) regarding the use of their invested funds as described above. This inference can logically and reasonably be drawn from the following facts in evidence:

- there was a notable consistency (in the general sense) in the testimony of the nine investors regarding what Oei told them about Cascade and the use of proceeds. In particular, as set out above, they were told that their funds were to go to or be used for the benefit of Cascade for start-up expenses;
- Oei told investigators that all of the investors received a form of the offering summary; and
- the evidence included offering summaries with dates that spanned the relevant period, which are generally consistent on the use of proceeds being the acquisition and construction of a plant.

[220] In addition, the respondents submitted that all the investors received a package of documents in connection with the indirect investment structure that was generally the same. In particular, the respondents submitted that the investment trust agreement was a standard form agreement that was provided to each investor.

What was the actual use of proceeds by the respondents and how does that use of proceeds correspond to the representation(s) to the investors regarding the use of proceeds that we have found?

[221] This was the most contested issue during the hearing.

[222] The executive director alleges that only $5,563,000 was provided by the respondents directly to Cascade and that $876,000 was spent by the respondents on expenses related to Cascade (expenses of a nature that were consistent with the representation(s) made to investors regarding use of proceeds).

[223] The respondents submitted that $5.1 million more than that alleged by the executive director was provided by the respondents directly to Cascade and that a further $5.4 million (over and above the $876,000 acknowledged by the executive director) was spent by the respondents on expenses related to Cascade (that were consistent with the representation(s) made to investors regarding use of proceeds). The respondents say that the combined amount of money that they forwarded to Cascade and spent on behalf of Cascade was approximately $16,935,560.

[224] The executive director acknowledges (implicitly and explicitly as a consequence of the submissions that they made with respect to the $876,000 of expenses) that the investors' funds did not need to be paid directly to Cascade in order for that money to have been used in a manner consistent with the representation(s) regarding the use of investor funds.

[225] As noted above, there are several different elements to this question. We will address each element separately.

i) What amount of investor money was forwarded by the respondents to Cascade?

[226] We find that the respondents provided $5,563,000 to Cascade. As noted above, we are aware that this figure represents a mixture of CDN$ and US$ and that converting amounts into a common currency will be necessary during the sanctions phase of these proceedings. However, the conversion issue is not material at this stage in the proceedings.

[227] As noted above, the respondents submitted that substantial additional funds could have been provided to Cascade by the respondents earlier than the period of the bank account review completed by the Commission investigators. They also relied upon ES' spreadsheets in support of their submissions on this point.

[228] We reject the submissions of the respondents with respect to the additional $5.1 million that they say they provided directly to Cascade. The evidence does not support the submission in any way. This amount is simply a figure taken from the Quickbooks records of the respondents and is not supported by any evidence of actual payments to Cascade or any other evidence. In fact, all of the other evidence in the hearing contradicts that these payments were made to Cascade, including:

- the Commission investigators reviewed all of the Cascade banking records during the relevant period and did not find any evidence of the additional $5.1 million having been paid to Cascade by any of the respondents;
- the $5.563 million figure is generally supported by the evidence of GS who, in an interview under oath, suggested that the respondents paid approximately $5.3 million to Cascade;
- the $5.563 million figure is also supported by the claim of $5.5 million that Canadian Manu itself made in the CRC bankruptcy proceeding as the amount that it said was owed to it by CRC;
- a review of all of the entries in the Quickbooks records (that allegedly support the payment of the additional $5.1 million to Cascade) showed that there were problems with all of the entries and that the vast majority of the entries both in terms of numbers and dollar amounts corresponded to payments made from Canadian Manu to Oei personally or into an account jointly held by Oei and a third party unrelated to this hearing; and
- there was no evidence to show payment of the additional $5.1 million amount from any account of the respondents.

[229] We find that the Quickbooks records of these additional payments to Cascade are contradicted by all of the other evidence in the hearing. We accept the other evidence over that from ES' spreadsheets.

[230] We note that, having made this finding, the *actus reus* of fraud (as will be discussed in more detail below) is proven without consideration of the remaining issues on this question.

[231] Even if we accepted all of the respondents' remaining submissions on the issues relating to the expenditures that they claim to have made on behalf of Cascade, there would still be a significant shortfall between the amount of funds raised from investors and the aggregate of the amount paid to Cascade and the expenditures the respondents allege they made on behalf of Cascade.

[232] In other words, the aggregate of $5.563 million (being the amount we find was paid by the respondents to Cascade) and $6.3 million (being the combined total of the $876,000 in expenses that the executive director concedes was expended by the respondents and the additional $5.4 million in expenditures that the respondents allege they made on Cascade's behalf) is $11.9 million, which is significantly less than the $13,262,600 that we have found was raised from investors.

[233] There was a misappropriation of investor funds even before we consider the issues of the additional expenditures that the respondents' allege that they made on behalf of Cascade.

ii) What expenditures (if any), purportedly made by the respondents on behalf of Cascade, are consistent with the representation(s) made to investors and what expenditures (if any) are not consistent with this representation(s)?

[234] This question requires us to answer what expenditures can be considered to fit within the representation(s) to investors that their funds were to be used on Cascade's "start-up costs".

[235] The executive director submitted that investors were not told that their funds would be used on expenditures such as interest payments, investor repayments, commissions, immigration expenses, legal fees or Oei's car lease payments. The executive director says that we should interpret the concept of "start-up" expenses narrowly and in a manner consistent with this lack of disclosure to investors.

[236] As set out above, although the evidence of the nine investors at the hearing was consistent that they were not told about these things, there were clear differences between investors in their understanding of the concept of "start-up costs" and on what they understood the specific use of their funds might be. Some admitted that they understood that their funds might be used on expenses of the offering like legal fees and interest. Other investors did not.

[237] The respondents submitted that the term "start-up" costs should be construed broadly and they pointed to various definitions of that term in publicly available literature in support of this proposition.

[238] With one notable exception, discussed below, we are in agreement with the respondents' submission on this point. There was no definition of this term anywhere in the investor documents. Given that fraud allegations are founded in deceit (or an equivalent), it must be clear that an expenditure could not be construed as a "start-up" cost for us to say that it was not within the scope of the representation(s) made to investors. Put another way, a fraud allegation should not be made out if reasonable people might disagree over whether an expenditure is truly a "start-up cost".

[239] However, we find that there is one category of expenditures that the respondents allege as being consistent with the representation(s) made to investors that are clearly not "start-up costs" of Cascade – repayments to investors.

[240] The evidence relating to investor repayments was problematic in a number of respects:

- certain of the purported investor repayments were actually payments made to Las Vegas casinos. There was no evidence (other than ES' testimony of what Oei told her about these payments) to suggest that these were investor repayments;
- a number of the payments were made to an investor who was both an investor in Cascade and a substantial investor in OEC (at a time after the period relevant to the notice of hearing). There was no evidence (other than ES' testimony of what Oei told her about these payments) to suggest that such payments were actually repayments of an investment in Cascade;

- the vast majority of these repayments (if they were even made) were made after the date that CRC went into bankruptcy and after Oei said that Cascade ceased to be in business;
- several of the significant payments were made in settlement of lawsuits brought against one or more of the respondents in the years following the relevant period;
- a number of the payments were made from an OEC bank account without any explanation of why these payments should be treated as repayments of investments made in Cascade; and
- one of the payments was made to an individual who entered into a personal loan transaction with Oei.

[241] Over and above the evidentiary issues, it is not reasonable, in the circumstances of this case, to view the repayment of one investor with the funds from another investor as a "start-up cost" of Cascade. This becomes even more evident when the repayments, which are purported to be "start-up costs", are made at a time long after Cascade had stopped being in business at all. Repayments to investors by the respondents may be relevant to issues of sanction and we expect to receive submissions from the parties as to how to deal with these issues at that time.

[242] Therefore, we reject the respondents' submissions that $3,117,228 in alleged repayments to investors were expended in a manner that was consistent with the representation(s) as to use of proceeds to investors.

[243] We agree that offering costs associated with raising money for Cascade could reasonably be viewed as "start-up costs" of Cascade. An issuer would normally bear the costs of finders who raise money for them. These costs could include: commissions, legal fees (related to the offering) and out of pocket costs of the finders.

[244] The $85,200 in expenses that the respondents submitted were related to immigration services are perhaps the most difficult to characterize in the unique circumstances of this case. In most circumstances, it would not be reasonable to view costs for immigration services provided to investors as "start-up" costs of a business. However, several investors testified that the possibility of using an investment in Cascade as support for an application to immigrate to Canada was one of the inducements offered by the respondents in connection with the investment opportunity. Those investors testified that those services would be "free" to them or were not told that the costs for such services would come out of the proceeds of their investment. However, in this case, it is clear that the possibility of immigration was an inducement and one that could conceivably be viewed as costs of the Cascade offering. We find that they could reasonably be considered "start-up" costs in the circumstances of this case.

[245] The evidence was also clear that certain investors in Cascade were to receive a "return" on their securities during the construction phase of the Cascade project(s) in the form of interest. Again, interest payments to investors, in these circumstances, could reasonably be viewed as "start-up costs" of Cascade.

Within a category of expenditures that we have found is consistent with the representation(s) made to investors with respect to use of proceeds, does the evidence support that a particular payment was actually made or should be properly included within this category of expenditures?

[246] The executive director acknowledged, in the notice of hearing, that the respondents spent $876,000 on behalf of Cascade. The discussion below relates to expenditures, alleged by the respondents to have been spent by them on behalf of Cascade, over and above this amount.

[247] We will deal with each category of expenditure separately.

i) Interest payments

[248] We have found that interest payments to Cascade investors were an expenditure that was consistent with the representation(s) to investors regarding the use of their funds.

[249] The executive director acknowledged that $252,050 in interest payments were made by one or more of the respondents. The respondents should be credited with this amount.

[250] In addition to the $252,050 in interest payments acknowledged by the executive director, the respondents allege that a further $239,478 in interest payments was made to the investors.

[251] The executive director submitted that there was no evidence that a portion of these additional interest payments were even made (i.e. that they were simply entries in Quickbooks without any supporting evidence). However, the Commission investigator acknowledged that her review of the banking records of the respondents did not attempt to identify all the payment information (i.e. source back up documentation from the bank) related to payments below $1,000. Many of the payments that the respondents say were interest payments were in amounts under $1,000. Therefore, it is at least theoretically possible that interest payments in the amount alleged by the respondents were made.

[252] However, we find that two large payments (included in what the respondents allege were $239,478 of interest payments), on the balance of probabilities, were not interest payments related to Cascade.

[253] Both of these payments were made to the investor who was an investor in both Cascade and in OEC. That investor invested in OEC twice, once in February 2014 and once in September 2015. One of the interest payments, purported to be a Cascade "start-up cost", of $100,000 was made in March 2014 and the other interest payment, purported to be a Cascade "start-up cost", of $65,000 was made in October 2016. The payment in March 2014 was made from an OEC bank account and at a time after CRC had gone bankrupt and after Cascade had ceased to carry on business. The second payment in October 2016 was made over three years after CRC went bankrupt and Cascade went out of business. All of the investor witnesses who testified that they were receiving interest payments on their Cascade investments testified that these interest payments stopped about the time

that CRC went into bankruptcy. It is not credible that either payment was an interest payment related to Cascade.

[254] Therefore, we find that a further $74,478 in interest payments (over and above the $252,050 acknowledged by the executive director to be interest payments) to Cascade investors was made by the respondents. We find the total amount of interest payments made by the respondents and related to Cascade was $326,528.

ii) Commission payments and immigration fees

[255] We have found that commissions paid to finders associated with raising funds for Cascade was an expenditure that was consistent with the representation(s) to investors regarding the use of their funds.

[256] Several of the investors who testified at the hearing received commissions from the respondents for introducing other investors to Oei.

[257] The executive director acknowledged that $841,755 in commission payments were made by one or more of the respondents. Included in this amount is the US$466,200 that Investor B received as a reimbursement of his expenses incurred in foreign exchange transactions in connection with his investment (on behalf of himself and his group of investors). A reimbursement of these fees can, in the circumstances of this case, represent costs of the offering.

[258] In addition to the $841,755 in commission payments acknowledged by the executive director, the respondents allege that a further $272,914 in commission payments was made by the respondents.

[259] Again, the executive director challenged whether all of these payments were actually made. Further, the executive director alleges that some of these payments may have been commission payments to employees of the respondents who worked in other business lines (i.e. Oei had employees who received commissions for selling insurance products). Again, the evidentiary onus favours the respondents with respect to this sum. Other than as set out below, there was insufficient evidence for us to determine, on a balance of probabilities, that either any of this amount was not actually paid or that it was paid in connection with services unrelated to Cascade.

[260] There were five payments (totaling $108,159) that the respondents alleged were commission payments related to Cascade investments that we do not find were commission payments related to Cascade:

- one payment in the amount of $21,000 was paid to an individual that Oei, in his interview with Commission staff, said did not relate to Cascade and the funds came from a bank account unrelated to any of the parties in the proceedings before us;
- one payment in the amount of $43,159 was made from an OEC bank account in March 2014;

- two other payments (in the amounts of $21,000 and $12,000 respectively) were made in 2014 long after Cascade ceased to be in business and after Oei said that he had ceased raising funds for Cascade; and
- one payment of $11,000 ES acknowledged in her cross-examination represented a double-counting of the same payment.

[261] Therefore, we find that the total amount of commissions paid by the respondents and related to Cascade was $1,006,510 (being the $841,755 acknowledged by the executive director and $164,755 of the $272,914 in additional commissions alleged by the respondents to be commission payments).

[262] As noted above, we have also found that the immigration fees can be considered, in this case, to be expenditures consistent with the representation(s) made to the Cascade investors. That amount is $85,200.

iii) Legal fees

[263] We have found that legal fees paid by the respondents, relating to costs of the offering, were an expenditure that was consistent with the representation(s) to investors regarding the use of their funds.

[264] The executive director acknowledged that $21,732 in legal fees was paid to PC by one or more of the respondents. Invoices or other documentation for these fees support that these fees related to advice related to setting up the indirect investment structure and/or advice relating to the offering of the Cascade securities. The respondents should be credited with this amount.

[265] In addition to the $21,732 in legal fees acknowledged by the executive director, the respondents allege that a further $23,515 in legal fees that were paid to PC by one or more of the respondents were related to Cascade.

[266] The documents in support of the further $23,515 in legal fees from PC indicate that 6 invoices totaling $11,985 (dated March 14, 2013, June 20, 2013, June 20, 2013, July 29, 2013, November 25, 2013 and November 25, 2013) relate to legal advice in respect of disputes and settlements of disputes between Cascade investors and one or more of the respondents. These matters cannot reasonably be viewed as expenses of the offering (or, in any other manner, “start-up costs” of Cascade).

[267] The invoices from PC in support of the remaining further legal fees advanced by the respondents as “start-up costs” of Cascade (other than as described in paragraph 266) suggest that the services related, or could have related, to the offering of securities of Cascade. Therefore, we find that the respondents spent a further $11,530 on legal fees related to the offering of securities in Cascade. We find that the total amount that the respondents spent on legal fees that can be construed as “start-up costs” of Cascade was $33,262.

iv) Car lease payments

[268] The respondents submitted that $50,136 in lease payments made by the respondents on Oei's Bentley should be considered an expenditure consistent with the representation(s) made to investors with respect to use of proceeds.

[269] This amount represents 40% of the total lease payments made by the respondents during the relevant period with respect to the vehicle. They used the 40% figure as that was the percentage of time Oei told ES that he used the vehicle on business pertaining to Cascade and raising funds for Cascade.

[270] The executive director submitted that this expenditure cannot reasonably be viewed as a "start-up cost" of Cascade and that the amount of the claimed payments was exorbitant relevant to the maximum amount that Oei could claim for vehicle use as a business expense in his tax filings.

[271] The majority of investors who testified said that Oei drove them to see the site leased by CRC for its facility and several of the investors testified that Oei drove them to see a facility on Whidbey Island which used the technology that CRC was going to employ in its facility. Therefore, we have evidence of usage of this vehicle directly in connection with the raising of funds from investors on behalf of Cascade. We find this is an expenditure that was consistent with the representation(s) made to the investors regarding the use of their funds.

[272] We have no evidence to guide us as to whether the 40% figure is appropriate or not and we are not qualified to assess the exorbitance, or not, of the lease payments. Therefore, we accept the expenditure as a legitimate expense in connection with raising funds for Cascade. We find that the respondents spent $50,136 on car lease payments.

v) Development/advertising/other

[273] The executive director acknowledges that the respondents made payments totaling $30,152 where the payees' names suggest that the expenditures were on a variety of promotional and charitable events and advertising. The executive director submitted that there was no evidence that these expenditures were related to Cascade.

[274] The respondents submitted that two further amounts ($55,088 and $395,486) should be considered as expenditures made by the respondents on behalf of Cascade. Within these amounts are invoices from or payments to payees where the names of the payees suggest that a variety of goods and services were purchased with those funds. Included in this are invoices from or payments to engineering firms, landscapers, contractors and equipment rental firms. There are also invoices from or payments to payees where the names of the payees suggest that the expenditures were political or charitable donations, sponsoring a beauty pageant, newspaper and magazine advertisements, and "fees for Cascade investment recruiter".

[275] Most of the expenditures in the $30,152 that the executive director acknowledges the respondents made, appear to be or could have directly related to Cascade. We have no evidence to suggest that these were anything other than legitimate expenses paid on behalf of Cascade and that they might reasonably be viewed as "start-up costs" of Cascade. We find that the respondents should get credit for this $30,152 amount.

[276] With respect to the $55,088 and $395,486 amounts, we have little evidence to support either the payment or the reasons for the payment of the amounts that the respondents submitted as additional expenses in this category on behalf of Cascade.

[277] However, in his interview under oath with Commission investigators Oei, without referencing a particular payment, indicated that all payments to certain payees would relate to his insurance business and not to Cascade. There were five payments ($5,051, $1,549.60, $5,250, $110,000, and $40,000) to these payees within the amounts submitted by the respondents in this category.

[278] We find that these five payments (described in paragraph 277) totaling $161,850 did not relate to Cascade.

[279] We have substantial doubts that all of the remaining payments related to Cascade or could reasonably be considered "start-up costs" of Cascade. However, the executive director has the onus of proving that these amounts were not expended on behalf of Cascade (and/or were not "start-up costs") and we do not have the evidence, on a balance of probabilities, to determine that these payments were not made or not made on behalf of Cascade. We find that an additional $288,724 was expended by the respondents on behalf of Cascade and in a manner consistent with the representation(s) made to investors.

[280] We find that the respondents spent a total of $318,876 on additional expenses on behalf of Cascade that were (or could be) consistent with the representation(s) made to investors with respect to use of proceeds.

vi) Summary of expenditures

[281] We have found the following expenditures of the respondents were made on behalf of Cascade and in a manner consistent with the representation(s) made to investors regarding the use of their funds:

- amount acknowledged by the executive director as being expended by the respondents: $876,000
- interest payments: $326,528
- commission payments: $1,006,510
- immigration fees: $85,200
- legal fees: $33,262
- car lease payments: $50,136
- development/advertising/other: $318,876

[282] The total of all of these expenditures is $2,696,512.

[283] The total of the amounts advanced by the respondents to Cascade ($5,563,000) and the total of all expenditures made by the respondents on behalf of Cascade (that were consistent with the representation(s) made to the investors regarding use of proceeds) is $8,259,512.

[284] The difference between the total amount raised by the respondents from investors in connection with Cascade ($13,262,600) from paragraph 199 and the total from paragraph 283 is $5,003,088.

vii) Summary of findings on the prohibited act

[285] We find that the executive director has proven, on a balance of probabilities, that the prohibited act of deceit or other fraudulent conduct was carried out with respect to 63 investments in Cascade. Investors were told one thing about the use of funds and the respondents did something very different with $5,003,088 of those funds. The respondents misappropriated these funds and used them for their own purposes and not as the investors were told they would be used.

[286] The evidence is clear that Oei and Canadian Manu were involved in the prohibited conduct with respect to all 63 of these investments. Oei met with all of the investors and made representations (orally or in writing) to those investors with respect to the intended use of their invested funds. Oei was also the person who controlled all of the flow of the investors' funds. Canadian Manu was involved, through the indirect investment structure, with all 63 of the investments and was the primary conduit of most of the investors' funds. 0863 and 0905 were involved in the prohibited conduct with respect to 33 and 30 of these investments, respectively, in that they were involved in the indirect investment structure for that number of investments. Oei was the person who controlled each of Canadian Manu, 0863 and 0905.

B. Deprivation

[287] The respondents suggest that there is insufficient evidence for us to find that the investors in Cascade were deprived because of the respondents' prohibited acts. They say that the investors' funds were not required to be forwarded to Cascade and that, in any event, the investors' funds were lost because of the mismanagement of the investors' funds by management of CRC and the bankruptcy of CRC.

[288] We do not agree with these submissions.

[289] As set out in *Theroux*, deprivation may arise as a result of actual loss or the placing of the victim's pecuniary interests at risk. In this case, there was both the placing of the investors' pecuniary interests at risk and actual loss.

[290] In *R. v. Abramson* [1983] B.C.J. No. 1305, the British Columbia Court of Appeal confirmed that the payment of money as part of an investment founded on deceit was sufficient to establish deprivation (as a result of putting the victim's pecuniary interests at

risk), regardless of any subsequent repayment. We have found that the investors in Cascade advanced their funds based upon a deceit about use of proceeds. Their pecuniary interests were at risk from the moment of investment. In addition, their pecuniary interests were certainly put at risk, and lost, when their invested funds were misappropriated.

[291] It is not reasonable to blame management of CRC and CROF and/or CRC's subsequent bankruptcy for the loss of investor funds that were never provided to Cascade or were never expended on behalf of Cascade and were simply spent on other things by the respondents.

[292] We find that the executive director has proven, on a balance of probabilities, deprivation caused by the prohibited act of deceit or other fraudulent conduct with respect to the 63 investments in Cascade.

Actus reus/OEC

[293] The *actus reus* of the fraud allegations with respect to the 18 investments in securities of OEC is different from that in respect of the investments in Cascade.

[294] The notice of hearing alleges that the deceit or other fraudulent conduct in connection with these investments was the failure by Oei and OEC to tell the investors that not all of the funds previously invested by these investors had been invested in Cascade.

[295] The dishonesty element required in the *actus reus* of fraud can include the non-disclosure of important facts.

[296] A failure to disclose to the investors that there was fraudulent misconduct in connection with their previous investment in Cascade is deceitful with respect to their investment in OEC. Investors were not told the true state of affairs with respect to their Cascade investments and could not make an informed decision about investing an additional amount in OEC without this critical information. The investors' funds were obtained through this deceit.

[297] However, we do not see how this deceit caused deprivation. There was no evidence of actual loss to investors caused by this omission. Further, there was no evidence of risk of loss to investors caused by this omission. It is entirely possible, if not a certainty, that the investors in OEC would not have made a further investment had they known about the use of proceeds of their investment in Cascade. However, that is different from that omission putting the investors' money at risk in connection with investing in OEC. At best, the risk of loss might be that, having engaged in fraudulent misconduct with respect to their previous investment, Oei and OEC may do so again. That is speculative. We do not have evidence to support deprivation with respect to these 18 allegations of fraud against Oei and OEC.

[298] We find that the executive director has not made out the *actus reus* of fraud with respect to the 18 investments in securities of OEC.

Mens rea/Cascade

[299] The respondents cited the Commission's decision in *Re Savage*, 2007 BCSECCOM 737, as a case in which that panel found that the *mens rea* element was not proven because the evidence was not clear that the respondent appreciated the consequences of his actions or that there was insufficient evidence to determine that the respondent knew the full implications of what he was doing. They submitted that that was the case as a result of the indirect investment structure.

[300] The respondents further submitted that there was no evidence to show that Oei had any knowledge or foresight regarding CRC's bankruptcy or CRC management's misuse of investor funds.

[301] Lastly, the respondents submitted that Oei believed strongly in the Cascade project(s) and that he, personally, lost money because of the CRC bankruptcy.

[302] The executive director submitted that Oei was the (sole) mind and management of Canadian Manu and both the numbered companies. Oei was also solely in control of the Canadian Manu bank accounts.

[303] The executive director also submitted that it was Oei who directed PC to distribute investor funds in the manner that they did.

[304] The executive director submitted that Oei was the one who made the oral representation(s) to investors regarding the use of their funds. Oei was also the conduit through which all information about Cascade passed to the investors, including the offering summaries. He was the one who instructed PC to prepare the agreements that gave effect to the indirect investment structure. Oei was the one person who decided to co-mingle investor funds with his personal funds and funds from his other business interests.

[305] We agree with the submissions of the executive director. We find that the evidence establishes the *mens rea* of fraud in connection with the 63 investments in the securities of Cascade. We find that Oei had subjective knowledge of both the prohibited act and subjective knowledge of the deprivation arising therefrom. As Oei was the sole mind and management of Canadian Manu, 0863 and 0905, we also find that his subjective knowledge may be imparted to those corporate entities.

[306] The evidence establishes that it was Oei who controlled the flow of investor funds. He directed payment of those funds to Cascade and expenditures on its behalf. However, he also directed payments of investor funds from the account of Canadian Manu to his personal account and to an account held jointly by Oei and a third party and to various other expenditures. We do not accept that Oei did not know that he was misappropriating investor funds for his own personal use or that, in so doing, he was putting the investors' pecuniary interests at risk. The sheer volume and dollar amount of transfers of investor funds into his personal accounts also supports our conclusion that Oei knew he was

taking investor funds, intended for use by or on behalf of Cascade, and using them for his own benefit.

[307] Therefore, we find that the allegations of fraud with respect to the 63 investments in Cascade securities, on a balance of probabilities, have been made out.

[308] The quantum of the fraudulent misconduct in this case is $5,003,088. Oei and Canadian Manu should be liable for this full amount.

[309] We agree with the submissions of the executive director that, as between 0863 and 0905, an appropriate analytical framework is to apportion this amount between them in the relative proportions of the gross amount that investors intended to invest in CRC and CROF (i.e. 60%/40%). Therefore, we find the quantum of the liability of the fraudulent misconduct of 0863 to be $3,001,853 and of 0905 to be $2,001,235.

V. Conclusion

[310] We find that each of Oei, Canadian Manu, 0863 and 0905 contravened section 57(b) of the Act in the following manner:

a) Oei committed 63 contraventions of section 57(b) of the Act in the aggregate amount of $5,003,088;
b) Canadian Manu committed 63 contraventions of section 57(b) of the Act in the aggregate amount of $5,003,088;
c) 0863 committed 33 contraventions of section 57(b) of the Act in the aggregate amount of $3,001,853;
d) 0905 committed 30 contraventions of section 57(b) of the Act in the aggregate amount of $2,001,235;

[311] We dismiss all of the allegations of fraud against OEC.

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

By January 19, 2018	The executive director delivers submissions to the respondents and to the secretary to the Commission.
By February 2, 2018	The respondents delivers their response submissions to the executive director and to the secretary to the Commission. Any party seeking an oral hearing on the issue of sanctions so advises the secretary to the Commission. The secretary to the Commission will contact the parties to schedule the hearing as soon as practicable after the executive director delivers reply submissions (if any).

By February 9, 2018	The executive director delivers reply submissions (if any) to the respondents and to the secretary to the Commission.

December 12, 2017

For the Commission

Nigel P. Cave
Vice Chair

Audrey T. Ho
Commissioner

Suzanne K. Wiltshire
Commissioner