BRITISH COLUMBIA SECURITIES COMMISSION

Securities Act, RSBC 1996, c. 418

Citation: Re DFRF Enterprises and others, 2022 BCSECCOM 405 Date: October 4, 2022

DFRF Enterprises LLC (DFRF Massachusetts),
DFRF Enterprises, LLC (DFRF Florida),
Daniel Fernandes Rojo Filho, Heriberto C. Perez Valdes,
Sabrina Ling Huei Wei, Justin Colin Villarin
and James Bernard Law

Panel	Gordon Johnson	Vice Chair
	Audrey T. Ho	Commissioner
	James Kershaw	Commissioner
Hearing Dates	April 19, 20, 26, 27, 28, 2021 May 7, 10, 11 12, 13, 2021 June 14, 15, 16, 17, 18, 2021 July 12, 13, 14, 15, 16, 2021	
Submissions Completed	December 30, 2021	
Findings Date	October 4, 2022	
Appearing Paul Smith	For the Executive Director	
Sabrina Ling Huei Wei	For Herself	
Justin Colin Villarin	For Himself	
James Bernard Law	For Himself	

Findings

I. Introduction

[1] This is the liability portion of a proceeding under sections 161(1) and 161(6)(b) of the *Securities Act*, 1996, c. 418 (Act). This proceeding was initiated by a Notice of Hearing (NOH) issued on May 25, 2020 (2020 BCSECCOM 167).

[2] The NOH divides the allegations of misconduct into three main groups. The first group of allegations relate to the respondents DFRF Enterprises LLC (DFRF Massachusetts), DFRF Enterprises, LLC (DFRF Florida), Daniel Fernandes Rojo Filho (Filho) and

Heriberto C. Perez Valdes (Valdes), collectively defined as the US Respondents. In particular, the NOH alleges that orders under section 161(6)(b) of the Act are warranted against the US Respondents, as the US District Court of Massachusetts in the United States (US Court) has found that they committed securities fraud in that jurisdiction. The second group of allegations are allegations that the respondents Sabrina Ling Huei Wei (Wei), Justin Colin Villarin (Villarin) and James Bernard Law (Law), collectively defined as the BC Respondents, participated in the fraud of the US Respondents and by doing so, breached section 57(b) of the Act. Alternatively, the NOH alleges they made misrepresentations contrary to section 50(1)(d) of the Act. The third group consists of a fraud allegation against only Wei, contrary to section 57(b).

[3] The evidence does not suggest that the respondents made any material distinction between the two corporate respondents, DFRF Florida and DFRF Massachusetts. To the extent that those entities were referenced in exhibits or testimony, it is difficult to tell which entity was being referred to. For the purposes of this decision, we have kept in mind that there are two distinct DFRF entities. However, there is no issue which turns on which one is being referenced at any particular stage. We will only make a distinction between DFRF Florida and DFRF Massachusetts if we find that it is material. We generally refer to them together, or interchangeably, as DFRF.

[4] The essence of the fraud allegation against the US Respondents is that they operated a Ponzi and pyramid scheme through DFRF, supported by various false claims about the nature of DFRF's business and the investment returns available. It is alleged that these allegations are proven by evidence led in this proceeding. It is also alleged that the findings by the US Court and the public interest in British Columbia justify our making orders under section 161(6)(b) of the Act.

[5] The misrepresentation allegations against the BC Respondents relate to repeating certain specific claims of the US Respondents when the BC Respondents knew, or should have known, that those claims were false. These misrepresentation allegations are expressed in the alternative to the primary allegations against the BC Respondents.

[6] The primary allegations against the BC Respondents are that they repeated false claims about DFRF made by the US Respondents and took various other steps, such as organizing events and encouraging others to solicit investors, thereby participating in the fraud of the US Respondents. It is alleged that the BC Respondents repeated these claims and took these steps at a time when they knew, or should have known, that the US Respondents were committing a fraud.

[7] The executive director submits that a total of 137 investors who were residents of British Columbia or had connections to British Columbia, and who had invested the equivalent of C$1,466,615 in DFRF, were defrauded.

[8] The fraud allegation which is made solely against Wei is that she diverted $90,000 in funds paid by investors for DFRF investments to her own benefit.

[9] The NOH initially named five BC respondents. By the time of the hearing, two of those respondents, Monita Hung Mui Chan (Chan) and Marie Joy Vincent (Vincent), had negotiated settlement agreements with the executive director and this proceeding had been discontinued against those two respondents. The three remaining BC Respondents, Wei, Villarin and Law, fully participated in the hearing, although only Wei testified. None of the US Respondents participated in the hearing or in this proceeding.

[10] A substantial volume of written documentation and video recordings was admitted into the record. We heard testimony from a Commission investigator and from four individuals who invested in DFRF. We also heard testimony from an accountant called by Wei and, as noted above, Wei testified on her own behalf.

II. Procedural Issues Regarding Adjournments and the Admissibility of Certain Exhibits

[11] We heard two applications to adjourn the hearing. The first application, seeking an adjournment of several months, was made by Wei on March 29, 2021 and resulted in an adjournment of the commencement of the hearing from April 6 to April 19. The second, made by Villarin, was made on the first day of the hearing and was dismissed. In each case, the panel indicated to the parties that the reasons for dismissing the adjournment application, or for allowing the adjournment only in part, would be provided in this decision.

[12] We also heard several objections by the BC Respondents regarding certain evidence sought to be introduced on behalf of the executive director. We ruled on those objections as they were made and explained our decisions as the hearing unfolded. However, there was one type of objection which the BC Respondents made repeatedly. We have further explained in this decision how we addressed such objections during the hearing and in the course of reaching this decision.

A. First Adjournment Application

[13] Wei was initially represented by counsel. Wei collaborated with her former counsel in reviewing the voluminous disclosure made by the executive director. We infer that the collaboration included many hours of work by Wei reviewing documents and writing notes which would put the documents into context. Wei's counsel withdrew from the record many weeks before the hearing and provided Wei with access to a file containing the relevant documents and Wei's notes. However, as the hearing date drew closer and Wei sought to access the relevant file she found she had permanently lost access to her considerable work. Apparently, the difficulty related to a change in the software used by Wei's former counsel. Wei applied for an adjournment of several months so she could repeat her work. Her application was supported by the other BC Respondents.

[14] Counsel for the executive director opposed any lengthy adjournment. The executive director argued that since Wei had already reviewed the relevant materials in detail the effort needed to review them a second time would be much reduced compared to the effort needed the first time. The executive director asserted that a significant proportion of the documentation had been sent to or created by Wei in the course of the conduct

which was the basis for the allegations against her. The executive director noted that by the date of the adjournment application, less than 10 days before the scheduled start of the hearing, Wei should have anticipated that her time would be fully occupied by preparation for the hearing, so at that point Wei would be in a position to dedicate herself full time to repeating her document review. The executive director referred to the public interest in having scheduled hearings proceed efficiently and on time.

[15] We granted a 13 day adjournment of the start of the hearing. We did so on the basis that, from our decision date on March 31, 2021, an adjournment to April 19 would be sufficient to allow Wei to complete the work which she said was essential. We were also influenced by the indication from counsel for the executive director that his first witness, a Commission investigator, would be giving direct evidence which would continue beyond the first day of the hearing. This would allow Wei more time beyond April 19 to prepare her initial cross examination questions.

B. Second Adjournment Application

[16] Villarin's adjournment application was made orally at the opening of the hearing. The basis for Villarin's application was that he wished to retain legal counsel. Villarin provided no evidence or submission regarding whether he had searched for legal representation prior to the first day of the hearing, how long he expected it would take him to find legal representation or why he had not raised the issue at a prior time.

[17] Villarin's adjournment application was dismissed. The Commission strives to provide respondents with an opportunity to obtain legal representation. However, it is up to a respondent to take advantage of that opportunity. No respondent should expect that a hearing will be adjourned if the respondent waits approximately 11 months between the issuance of a notice of hearing to the commencement of a hearing to assert an intention to obtain legal representation.

C. Admissibility And Weight Of Certain Types of Evidence

[18] The BC Respondents objected repeatedly to the admission of evidence in a form which offered no opportunity for them to cross examine a witness or otherwise test the evidence. For example, there were objections to evidence from government records in Montana regarding reported activities at a mine in that state, there were objections to the introduction of transcripts of interviews with investors who did not testify at the hearing and there were objections to the introduction of notes made by investigators while interviewing investors who did not testify at the hearing. In general, we admitted the evidence in question despite the objections and we gave our reasons at the time of our rulings. In the course of some of our rulings, we made reference to the need to evaluate the weight we would need to attach to certain evidence. We take this opportunity to expand on that reference.

[19] The Commission's Hearing Policy (Policy 15-601) contains multiple references to evidence adduced during a hearing. In particular:

> **s. 3.6(c) [Disclosure, Timing]**
> **…** The Commission considers all relevant evidence from a party in an enforcement hearing, unless some other reason precludes the evidence from being entered as an exhibit. Therefore, if the evidence is relevant, it will permit a party to introduce it.
>
> **s. 4.1 [Evidence (a) Admission of evidence] –** In enforcement hearings, the primary test for the admission of evidence is its relevance to the allegations in the notice of hearing.
>
> The Commission will receive all relevant evidence from a party, unless some other reason precludes the evidence from being entered as an exhibit, such as being privileged. The Commission is not bound by the formal rules of evidence that apply in the courts. ***Generally, evidence should be the best evidence.*** The Commission expects that the party entering any evidence as an exhibit will properly describe it in a list of documents, and make submissions on its relevance during the hearing. A party may dispute the admission of any evidence before or during a hearing. (Emphasis added).

[20] In the law of evidence, "best evidence" means the original or primary evidence. Examples include the original document (like a will or a contract with wet signatures), a photograph taken by a known photographer, or the direct oral evidence of a witness given at trial. This is in contrast to "secondary" evidence, such as a photocopy of a contract, or a scan of a photograph, or a previous statement of a witness read into evidence.

[21] The issue of what is "best evidence" frequently comes before Commission panels in the context of witness statements. A useful discussion of this can be found in *Re Barker*, 2005 BCSECCOM 146, where the panel ranked the types of testimonial evidence available, and how it would treat the different categories:

> 98 The best evidence from these sources is that of Scalzo, Harris and Smit. This was testimony in the hearing, which provided us with the opportunity to hear their stories directly, observe their demeanour, and to ask them questions ourselves.
>
> 99 The next best evidence is the transcript of Barker's interview. Although unable to observe his demeanour or ask questions, we were able to assess his evidence with the confidence that comes from sworn testimony with counsel for the witness present.
>
> 100 Third best is evidence consisting of a Commission staff investigator's notes of telephone interviews with other shareholders. The statements of the shareholders are not sworn, nor is there a transcript of their conversation with staff, so we do not have the context of the questions that Commission staff put to them, or their *verbatim* answers. Nor is the evidence, for the most part, corroborated by other, more reliable evidence. We therefore gave this evidence no weight when considering the allegations of misrepresentation and fraud.

> 101 Finally, the evidence includes questionnaires completed by investors who were not interviewed by Commission staff. Investor questionnaires are undoubtedly a useful tool to help staff determine which investors may have relevant evidence in an investigation. However, on their own these questionnaires have little probative value and we gave them no weight when considering the allegations of misrepresentation and fraud.

[22] In *Re Hu*, 2011 BCSECCOM 355, the panel admitted the relevant evidence of a witness (Tian) and a statement discovered in her purse as they were relevant to the central issue of whether the respondent knew the password to the witness' account. The panel admitted them, but gave them no weight, as the respondent would be unable to cross-examine the witness. The panel further admitted, but gave no weight to translated tapes without any evidence relating to the speakers or the accuracy of the translations (see paras. 152-159).

[23] In *Re Corporate Express*, 2004 BCSECCOM 680, the panel deliberated about the admissibility (but not the weight) to be given to transcripts of interviews of potential witnesses. The panel found in multiple circumstances that:

> 28 For the reasons cited by the Executive Director, we agree that these documents are relevant. We therefore admit them as evidence. However, the best evidence in this area would include *viva voce* evidence from [the witness]. The Executive Director should call him as a witness. If it turns out that [the witness] is unable to testify, the parties can address in argument the weight we ought to attach to these documents in those circumstances.

[24] How much weight should be given to any particular piece of evidence is something this panel has carefully considered on a case by case basis. In each instance, we have considered factors such as whether the evidence in question is uncontradicted and whether the evidence is generally consistent with other, well supported evidence. This latter factor sometimes applies, for example, in the case of notes taken by Commission investigators of statements made by investors regarding what representations they heard before deciding to invest or reinvest in DFRF. Unlike the panel in *Barker*, we have not reached the conclusion that investor questionnaire responses or any other category of evidence should, as an entire category, be given "no weight" in all circumstances. We have given weight to evidence about investors collected from sources such as investigators' interview notes, emails and investor questionnaire responses, when that evidence is consistent with other well supported evidence such as video recordings and documents, or when it is uncontradicted by any respondent.

[25] The bulk of the evidence from investors is largely uncontested and consistent with a significant volume of evidence we observed in video recordings, in documents which are clearly authentic and in other sources that we might, in isolation, give less weight to. To be specific, given the existence of a significant body of highly reliable evidence about the nature of the message delivered to investors by the BC Respondents generally, it is appropriate to give some weight to similar evidence about the nature of the message received by individual investors even where such evidence was collected from investors

who did not testify at the hearing and be available for cross examination. This is particularly true where the evidence was not contradicted by any respondent.

III. Factual Background

A. US Respondents and Overview of the DFRF Scheme

[26] In January, 2010, Filho was named as a target in a US federal civil forfeiture proceeding in Florida arising from allegations about drug trafficking, money laundering and a Ponzi scheme (Earlier Florida Proceeding). In August, 2010, a default judgment was entered against Filho in the Earlier Florida Proceeding. In August, 2013, Filho consented to a civil forfeiture to the US government of more than $25,000,000 held in bank accounts in the names of his minor children and two businesses that he controlled.

[27] The paragraphs which follow summarize some of the events related to the promotion of DFRF. Not every promotional event is mentioned. Including all details would be overly repetitive and would not add to the understanding of events in a material way.

[28] DFRF Florida and DFRF Massachusetts were formed in April, 2014 and July 2014, respectively. On October 9, 2014, Filho signed documents on behalf of DFRF to open an account at Citibank (Citibank Account).

[29] According to a business model document and various presentations generated by DFRF, key elements of the DFRF investment opportunity offered to the public included:

(a) Investors would subscribe for membership interests in DFRF, with a minimum purchase price of US$1000 per membership interest

(b) The maximum investment cap available for the public to invest was US$3.5 billion

(c) Members would:

(i) receive a monthly return of up to 15% on their membership interest

(ii) receive a 10% commission on the membership interests purchased by others, if they referred those investors to DFRF

(iii) have their membership interest 100% insured by Accedium, an insurance company based in London and Barbados

(iv) have their earnings deposited in their names in the Platinum Swiss Trust Bank in Switzerland

(v) receive a VISA debit card from the bank in Switzerland to access their earnings

(d) DFRF's main business was a gold mining operation in Mali, Africa

(e) DFRF's entire business was backed up by a physical gold reserve with certified documentation that was audited by a renowned Canadian geologist company

(f) Global Note: there was a note with a certified value of USD$3.5 billion which "monetizes" in a Swiss bank (meaning that as funds were deposited by investors, funds from the note would be released to DFRF).

[30] By October 12, 2014, a video was uploaded on the internet showing Filho speaking in a conference room. In the course of the video, Filho invites people to "participate as members" in DFRF. Filho tells his audience that participants receive an offshore bank account in Switzerland. He asks "do you know how hard it is for an American citizen to open an account in Switzerland?" In the video, Filho describes how DFRF makes money, emphasizing that DFRF has an existing gold mine in Mali, Africa, and saying "Our production is not small. We get 10 tons of gold, 420 million dollars worth." Filho says that the minimum investment needed to enter the business is $1,000, and he emphasizes that "everything is insured, you will receive 15%."

[31] During his presentation of October 12, Filho introduces Valdes. Valdes represented himself to be the president of Platinum Swiss Trust Bank, purportedly a bank of Switzerland where DFRF deposited monthly returns from the investments. Valdes explains how investors can access funds in the Swiss bank account through "a PIN to withdraw money from the ATM". Valdes states "you will have no restrictions for its personal use".

[32] On October 20, 2014, another video was uploaded to the internet showing presentations that Filho and others made to potential DFRF investors on a boat in Boston, Massachusetts. Filho asserts that the gold produced in Africa is of an inferior grade of purity, but after shipment to the US and processing it will have a $20,000 per kilogram cost but can be sold at market prices for $40,000. Regarding the return for investors, Filho says "we cannot state that we are paying a fixed rate of 15%. We have to say we will pay up to 15% ... if the mine is not producing how much money will you get? 15%. If the machine breaks, you get 15% because the money is already there …".

[33] By late October, 2014, investor funds were being deposited into the Citibank Account.

[34] As the weeks passed, numerous other video presentations were uploaded to the internet promoting investments in DFRF. Most of the materials consisted of presentations by Filho, although other individuals were often featured in the promotional materials.

[35] Around the time the BC Respondents were first hearing about DFRF, someone uploaded to the internet a presentation dated December 8, 2014, involving several people connected to DFRF, including Filho and Valdes. During that presentation, an individual named Jeff Feldman was introduced as "the person responsible for the insurance company." Feldman spoke and told viewers that an entity called Accedium Insurance Company Limited was a multi-line insurance company that underwrites risk all over the

world. According to Feldman, Accedium provided a guarantee to DFRF members "of the principal that's invested."

[36] Filho spoke extensively in a presentation dated January 14, 2015, entitled "DFRF Enterprises LLC-Business Presentation in English" which was eventually posted by DFRF on its own website. During that presentation, Filho stated that DFRF has 54 mining operations. Filho said: "Our main reserves are located in Brazil, which we utilize to obtain a credit line. However, the mining activities are being conducted in the country of Mali and in three other countries in the African continent." Filho also said:

> We use our mineral rights, which we potentialize [sic] with [an] insurance policy, in order to issue a global note and obtain a credit line that is already placed in a bank account in Europe. It's enough money for us to process the gold and to conduct all operations we need, without [the] necessity to go into [the] market to raise funds from any third party. However, we extend this opportunity to you as a member for one reason only. We cannot leverage the credit line we already have. We need to use this particular money to support the operations and the projects. But with your money, we can block, we can leverage, and then we can process the gold. That's why you can participate.
>
> We are offering up to 15% a month.
>
> Basically, in the leverage, the company will benefit because three times the value of your dollar or your currency, plus that we have $16,000 per kilogram production and we bring here $20,000, which means we are doubling the funds - double of the triple, we can make up to 600% ... That's the reality. That's the truth.
>
> We are not taking the risk. We are selling the risk for [sic] an insurance company. So 100% of your principal, when you become a member, is insured by a third party insurance company, which we do have a relationship [with], but we do not own that company. We are actually selling the risk.
>
> You join and you know that you are not going to lose. In my opinion, when you do not lose, when you are 100% safe and secure, it's already a good deal. It's already a good opportunity. Whatever you can make on top of that, perfect.
>
> Your money is 100% secure, and is very flexible, because [by] becoming a member, you will have online access and also a debit card that you can manage your funds. You can transfer anywhere in the world. You can use this card to withdraw or to pay your bills and do whatever you want with your money.

[37] Filho also spoke in a video presentation dated February 2, 2015, that was posted on the internet by DFRF with the title "DFRF Enterprises—Part in Assets Part in Money, How it Works". During the presentation, Filho described DFRF's new policy of accepting investments in the form of real estate and tangible assets such as vehicles and yachts along with equivalent amounts in cash.

[38] According to witnesses, investors in DFRF were able to access a web site which appeared to display the investor's number of units and accumulated dividends, compounding as time passed. However, investors found that they could not access their cash and began asking questions about that. Filho spoke in a video presentation dated March 11, 2015 with the title "New Debit Cards- CEO Daniel Filho". That presentation was posted on the internet by DFRF. The English subtitles for his presentation include:

> The debit card you presently have only allows a maximum daily withdraw [sic] of $400 or an equivalent currency. It allows a maximum purchase amounting to $2,500, up to $2,500 or equivalent currency, and it also allows you to transfer from your DFRF platform account to your debit card $10,000 daily max.
>
> We made an agreement with a new reloadable card operator, were approved, signed the contract, and we are about to issue the new cards. What are the advantages you'll have from now on? With the new debit card, you'll be able to withdraw up to a daily amount of $2,000 or equivalent currency at the ATM ... The limit on purchases goes from $2,500 up to $10,000, that's four times higher, and also a daily limit to transfer from your account with us to your debit card of $45,000.
>
> These measures are already in place ... We'll soon be printing out and shipping all the debit cards to you, wherever you are.

[39] On February 24, 2015, newspaper articles were published providing details of a lawsuit filed in Framingham, Massachusetts describing DFRF as an illegal pyramid scheme. Within days of the appearance of the article, DFRF published a video on its website showing Filho attempting to explain away the Framingham lawsuit in what can fairly be described as an emotional presentation. Filho said he did not know the claimants, the claim was false, and DFRF had over 36,000 members and was helping over 100,000 children in Africa. The Framingham law suit was subsequently withdrawn.

[40] On March 19, 2015, Filho announced that DFRF would go public.

[41] Filho spoke on a video recorded presentation dated May 1, 2015, entitled "DFRF Enterprises - Business Presentation Orlando with CEO Daniel Filho 30/04/15". That presentation was posted on the internet by DFRF. The video shows an individual named Cunha and Filho addressing an audience in a conference room. Cunha stated that he first met Filho in the summer of 2014, when he was a consultant performing due diligence about DFRF for a client, and that he was so impressed that he became a member himself by investing $20,000. Filho also spoke and his statements include:

> We are ready to launch. We are holding this because we have large investors that are begging us to wait a little longer ... That's why we are under pressure to wait before we launch, because more people want to bring heavy money, large deposits now ...
>
> When I say we are ready to launch the public company, it's because we have every single step taken care of already ... We are ready right now to launch. We

> have May 5th as the official date. It might change. I hope not, because I am so excited and anxious to go ahead, to open all the books.
>
> The results from the IPO of the company came out pretty good, so the value of the stock on the first day in the market will be $15.06. We are starting big. The company has close to $30 billion in cash out already ... The specialists, they are predicting that before the end of the first month, based on the performance and the reserves, based on the structure we have, we are predicting that after 30 days the value of the stock might go up to $50.
>
> As a member you have preferred stock. We will secure the same way ·you have your principal guaranteed today, without the risk, by an insurance company.
>
> We will pay 15% dividends, not interest, but dividends, so you'll make 15%.
>
> Close to 200,000 children we are helping already. 75,000 families we are feeding ... Remember, we dedicate at least 25% of our earnings for social and humanitarian purposes. So if you don't join or you leave, who else will be hurt? Thousands and thousands and thousands of people that depend on us today to eat, to learn. So we are taking care of hundreds of thousands of people.

[42] By early May, 2015, there were growing signs of trouble about the substance of DFRF's claims. The lawsuit commenced in Massachusetts, in February, 2015, claimed DFRF was a pyramid scheme. This Commission had issued an Investor Alert about DFRF in May, 2015. Investors continued to be unable to access their promised 15% monthly return. With that background, Filho spoke during a video presentation dated May 10, 2015. entitled "DFRF Enterprises - Stock Market Registration and Card with CEO Daniel Filho." That presentation was posted on the internet by DFRF. The video shows Filho answering questions about DFRF's purported conversion to a publicly-traded company. His statements include:

> Yesterday was the day where we officially launched the company. We already start[ed] the process today of conversion for the members.
>
> Starting today we are sending ... an authorization form where we are liquidating the balance on the account with DFRF in the membership program and converting into option [sic]. And during the process we are estimating to finish this month, and that's why we already choose [sic] the date on June 3rd, is the time frame for us to finalize the entire conversion.
>
> The preferred shares will have the same benefits, [it] doesn't change anything. You'll be insured only for members, because members are the only ones that will access the preferred shares ... You will get dividends as a member, and the dividends won't be different of what they're getting today.
>
> The price that we fix is $15.06. That is the ideal valuation that we got in the first place. The current value of the stock is already over $18. However, we fix it at $15. So all the members that already join expecting the results that might go up to $50 during the first month, they can take this advantage and join today,

> tomorrow, or next week, before June the third. They will have the same benefit of the value of $15 per share.
>
> We search in the market for over 100 credit card processors [but] we couldn't find one that is designed [sic] to our program. So finally we choose to purchase one. So now we have our own processing card company so we can establish the limits.
>
> As a member, you get the preferred shares, you get the insurance to guarantee to secure your principal and all the money that you earn and you leave in the platform converted into stock, and you have the debit card also to access unlimited your funds that you have available in your account.
>
> Yesterday we submit [sic] the first request for thousands of cards as [sic] already being printed as we speak now.
>
> We are holding this information [trading symbol and exchange] until June the third in order to protect the value and also the entire project ... We cannot reveal the institution for security reasons, but eventually we will share that information. Everything is run and operating here in U.S. territory so regulated by the U.S. Securities [sic], so we have nothing to be concerned about, but for internal decisions we prefer not to share what financial institution is behind the credit cards ...

[43] Filho also spoke during a video presentation dated June 3, 2015, entitled "Stock Market, Operational System and Debit Card." That presentation was posted on the internet by DFRF. Filho's statements during the presentation include:

> We are being attacked for hundreds of thousands of times, basically every single day, people trying to slow us down, to compromise our operation, to make sure that we won't be able technically speaking to launch or to release anything.
>
> I'm feeling very happy. I know we are causing a lot of noise in the market. I know that we are not making everybody happy. The only people that are happy are the good people, the right people, the decent ones, the ones that want to help others, the ones that want to be part of this family with intention to earn it, to make money, in order to help others. If you are like this, you belong to our family.
>
> What we are doing is, is extending the date until this coming Friday [June 5]. If you already join, if you already increase your contribution, if you are in process to become [a] member, you have until this coming Friday utilizing the same price ... We are holding the price of $15.06, but only until this coming Friday. So you have two more days.
>
> For the next week and the following week, we are increasing this amount; we are increasing the value for [to] $35.
>
> After that, after two weeks, then will be [sic] the price of the share for the day in the market.

> Probably you already saw that we have a new system. It's been very difficult for us to manipulate it, to manage from one side to another one, because of the attacks. And the process of registration, especially for the conversion, has been slowing down. That's why we made the decision to postpone a few more days. I repeat, $15.06 until Friday, $35 for the next two weeks, then daily market.
>
> We predicted, we estimated, that today June the 3rd we could get close to $50 per option. But here is the news. We are not close to 50, but we already passed the 50, passed 51, 52, 53. We already passed.
>
> Since we start this deal until today, people are raising false testimonials attacking us, creating biogs, going in official channels, provoke the authorities worldwide. They are trying to do everything they can to stop and even to knock us down. But what is happening is incredible, is phenomenal, is quite the opposite. The more they attack, the more strong [sic] we become. This is because of you. This is because of our family.
>
> So you can now see the new tool we have, where you can upload credit in your debit card, you can request outgoing wire transfer, you can transfer between members, you can buy and sell your options - very simple tool, very easy to use, very efficient, and very safe. It's already available ... So you can use your tool to benefit and to better manage your contribution and your future assets.
>
> We have a large number of cards that we are shipping today, and for the next week, until the end of the next week, we should have all international cards, the one that comes with the microchip you can use in Europe and anywhere in the world. It goes directly to you. You're gonna have full support, directly from the processing company. Much more flexible, more than what we announced before.
>
> Right now, we are already supporting over 75,000 families worldwide and close to 200,000 children already, and we are increasing this number.

[44] Filho also spoke during a video presentation dated June 17, 2015, entitled "Stock Market, Operational System and Debit Card." That presentation was posted on the internet by DFRF. Filho's statements during the presentation include:

> We announce[d] a few weeks ago that, according to the evaluation, according to the performance, everybody was expecting $50 on June 22 as the value of one share. So today, the value of one option is not $50, but $64.17 and we [are] still growing. So the company's performance is doing so well, we are increasing assets, we are increasing production, we are increasing more deals inside of our program in the company ... So I repeat, we hold the price at $15.06, and today we already hit $64.17 and we are not yet on June 22. So more things can happen in a few more days.
>
> It's mandatory. So you click, you release the amount you have working right now in the platform, so the amount will become available. You will see as [sic] available balance and with the available balance you can convert into options right away. You already sign the letter authorizing the conversion, but this is the

step, this is the logistics. You go to the page right now. Actually you have 72 hours, you have three days to perform this. Go to your page. Release the contributions you have blocked working right now, and this amount will show as available balance so you can convert in options. 72 hours, three days. I'll repeat the number. Remember, we had lock [sic] of $15.06, and today the value is already $64.17.

And the last news is for you that are [an] American citizen, resident, or have a link with the United States of America ... You already signed a letter authorizing us to do the conversion. However, the conversion process for those that have any direct link with the United States, we need to follow rules, regulations, and protocols. So we are terminating the membership agreement Everybody will have a dissolution agreement. So we will terminate it. We will cut the check with the full amount you have, including the contribution that is still working, the amount you have as available balance. You will receive one check, the satisfaction dissolution agreement. You will get the check in your address. And after you receive the check, then you can cash it and you can rejoin as a member, investing on the stocks of the company ... And you have the same benefit - $15.06.

You have thirty days starting today for the entire process. So, no rush. Don't be desperate trying to collect it in two, three days, immediately. So, as soon as you can do it, better, but we have to follow protocols, rules, and regulations ... The conversion process means terminate the contract, get the check, pay off any member in the U.S. or directly connected with United States.

So, [it] will be a huge step for us, executing this last and final procedure for the membership. The termination, the payoff, and then you can rejoin under rules and regulation by the Security [sic] Exchange Commission.

We already receive a substantial number of cards and we already ship the cards. Many people are right now using the cards. There are more cards coming now for the U.S. members, and starting on Friday, we will print the cards for everybody else, all the members around the world, international card that comes with the microchip. It's all listed, all approved, and we have the first wave of cards being printed on Friday. So again, congratulations. You have patience to wait, and now you get the best.

We already identify [sic] over 100 members inside of this family, people that came and join us with a different purpose. They came to cause, intentionally, problems. How? People that belongs [sic] to other mentality, they don't have the same vision, they don't have the same heart. Maybe because they don't feel, they don't understand, they don't see how big it is our vision.

But we have several professionals, hackers that penetrated our company to create the problem so they can deliver to the authorities, complaining to the authorities, showing that we have this problem and that problem. So the federal agencies have no other choice than [sic] check it out, investigate it, to see if [it] is right or wrong. So we already identify all those people, all those problems. We are taking very serious matters to protect your interest, my interest, the company's interest. We are here to cooperate with the authorities.

> We don't have [the] intention to defraud anybody, but if there is any technical violation, we should fix it, we must fix it. We show our face, we bring professionals, and we make it happen, so we can help millions and millions of people every single day.

[45] The promotional efforts of the US Respondents resulted in significant funds being transferred by investors from various jurisdictions, including British Columbia, mostly into the Citibank Account.

[46] DFRF investors were promised access to their accumulated investment returns using a DFRF branded VISA debit card. There is no evidence that any investors connected to British Columbia were able to access their invested capital, accumulated promised investment returns or referral commissions through the use of any such card, and except in limited circumstances, no return of funds invested or return on invested capital was received. Subject only to a very limited exception, the evidence before us establishes that, for all intents and purposes, investors connected to British Columbia were deprived of all money or other property delivered to DFRF at the moment of delivery.

[47] The United States Securities and Exchange Commission (SEC) commenced an enforcement action against nine defendants related to DFRF, including Filho, Valdes and both DFRF entities. The evidence adduced in those proceedings was also introduced as evidence in this proceeding.

[48] The evidence from the proceedings in the United States was tendered in these proceedings. That evidence demonstrates that:

(a) DFRF received more than US$15 million from many investors in various jurisdictions including British Columbia;

(b) none of the funds transferred to DFRF were used by DFRF to conduct gold mining in Brazil and Mali, and DFRF received no proceeds from gold mining operations;

(c) DFRF's bank records are inconsistent with any suggestion that DFRF had legitimate business activities, whether related to gold or otherwise;

(d) DFRF had no independent source of revenue except the money received from investors;

(e) DFRF did not spend any money on charitable activities;

(f) Filho took more than US$6 million of investors' money, in cash withdrawals or in payment for personal expenses and luxury cars;

(g) Valdes made materially false and misleading statements about DFRF in public meetings and videos posted on the internet; and

(h) DFRF paid Valdes approximately US$521,000.

[49] Subsequently, in a series of judgments, the US Court entered default and final judgments against Filho, Valdes and DFRF. The US Court held that the facts in the complaint must be taken as true and, as such, Filho, Valdes and both DFRF entities violated Section 10(b) of the *Exchange Act* and Rule 10b-5 thereunder, and Section 17(a) of the United States *Securities Act* of 1933.

[50] In the final judgments, the US Court permanently enjoined Filho, Valdes and both DFRF entities from violating the registration and antifraud provisions of Sections 5 and 17(a) of the *Securities Act* and Section 10(b) of the *Exchange Act* and Rule 10b-5 thereunder. It further ordered the following payments in US dollars:

(a) Filho to pay disgorgement and prejudgment interest of $10,269,827 and a $1 million civil penalty.

(b) Valdes to pay $657,840 in disgorgement and prejudgment interest and a $551,403 civil penalty.

(c) The DFRF entities to pay, on a joint and several basis, $17,840,352 in disgorgement and prejudgment interest, and for each to pay a $775,000 civil penalty.

B. DFRF Scheme in BC and the role of BC Respondents

[51] One of the first British Columbia residents to come into contact with DFRF was Chan. Chan owned a beauty salon in Burnaby and also belonged to various networks of people who promoted and participated in a number of direct sales, multi-level marketing and other small scale business opportunities. Wei, Law, Villarin and Chan all knew each other through their various levels of participation in some of the same small scale business opportunities.

[52] Wei is an accountant by training who articled with a major accounting firm and worked as an auditor. At the time of the DFRF promotions in British Columbia, Wei lived in British Columbia, was involved in a number of smaller business ventures and was working as a consultant for a business which was seeking to develop a mine in Montana called Pony Mountain.

[53] Law is a businessman who, at the time of the DFRF promotion, lived in British Columbia and was involved in a number of smaller ventures, including at least one multi-level marketing business. Law claimed to have experience regarding gold production in Africa. Law attended DFRF meetings and events with Wei.

[54] Villarin is a businessman who, at the time of the DFRF promotion in British Columbia, lived in British Columbia and had previously been registered to sell insurance and mutual

fund products. Villarin had a close relationship with Chan and participated in some of the same ventures that Chan was involved in.

[55] On December 5, 2014, Chan sent an email regarding DFRF to a distribution list. The identity of everyone included on the distribution list is not known, but Villarin was specifically a recipient of the email. Chan's email forwarded a copy of a prior email inviting her and her "people" to meet Filho, who was identified as the chair of DFRF. Chan's email went on to report that:

> Marie said this project is real, I talk with the CEO who said their company just like the regular investment projects for people to investment WE are just the members company share their dividend with their members is legal their project meet all the legal rules we won't have any problems. Join Mon 8am Vancouver time live conference meetwithmarie.info.

[56] On December 11, 2014, a representative of DFRF sent Chan an email attaching what was described as DFRF's English and Spanish presentation. The attachment to that email was a 14 page presentation deck drafted in English. The content of the presentation deck included the following:

(a) a general overview page which included the question "why buy *Membership* from DFRF" (Italics in original);

(b) a quote from Filho indicating that DFRF's core business is gold mining and purchasing reserves and mines, and that "we currently bring into the US market nearly 10 tons of gold on a monthly basis, extracted from the mines in Mali, Africa";

(c) a page indicating that what could be purchased was a membership interest in DFRF and that:

> It is important to highlight that the principal initial contribution made by the Member will result in steadily monthly earnings (Return) that may reach as high as 15%. Such earnings will then be deposited, under the Member's name, in the Platinum Swiss Trust bank (PST), in Switzerland. All DFRF Members should then receive a Company-branded debit card to access their earnings and use the money as they choose to, anywhere in the world.

(d) a page describing the operational structure for DFRF which referenced 10 tons of gold produced monthly by DFRF "in Mali," other reserves, particularly in Brazil and a well-known geological consulting company GEOSOL issued the evaluation report on DFRF's reserves;

(e) some data about a particular gold resource in Brazil called Camarinhas;

(f) a chart showing the growth of an initial $10,000 investment compounding at 15% monthly to $53,502.50 in one year;

(g) a page describing the risks associated with the investment which states that the total initial investment is insured and that reinvested returns could also be insured. The investment was described as a "100% HASSLE-FREE and SAFE Haven for YOU and your CAPITAL" with "an almost zero risk assessment"; and

(h) various other content which might appear to make an investment appear attractive.

[57] Wei's introduction to DFRF by Chan occurred in or about December, 2014. In her direct evidence, Wei described her introduction to DFRF, and the context for that introduction, as follows:

> "Regarding DFRF, Monita Chan contacted me beginning of December. It was the first week of December 2014. And that's when she shared with me that she knew of a company that was actively looking for gold producing, gold-producing properties and, and projects and proven reserves.
>
> So she was actually on her way to the company, to DFRF, down in Florida. She was supposed to be there, and I believe she was there, like, December 7th, 8th, somewhere in that range. And so prior to her leaving Vancouver, that is when she contacted me to say, "I'm going down to check out this company. When I come back, I'll share with you what I found out," and that was the first time that I had heard about DFRF. My role with the Pony Mountain project was that of CFO, and my role was to move the whole project forward."

[58] Wei was working, at the time, with an owner of the Pony Mountain project (Pony Mountain Owner). Pony Mountain was a mining project in Montana that was looking for funding. Wei testified that the Pony Mountain Owner:

> "was interested to see if I could be able to assist him to locate some private financing or put together a joint venture where we could have a long-term joint venture partner."

[59] And, Wei testified:

> "So once Monita Chan came back after her trip to Florida, she shared with me a video, and I believe everybody here has seen the video during the presentation ..."

[60] Wei asked various questions of DFRF representatives and, as is discussed below, made some inquiries on her own. She then became involved in two processes in relation to DFRF. One process was directed towards obtaining financing from DFRF for the Pony Mountain project. The other process was directed towards presenting the "opportunity" to invest in DFRF to British Columbia residents.

[61] By the time Wei became involved in presentations to current and potential new investors in British Columbia, Villarin had already been involved in that effort for a period of at least several days. Villarin had what he characterized as a close relationship with Chan. Villarin was deferential to Chan, a conclusion which is supported by the following extracts from the transcript of Villarin's interview with Commission investigators:

> A I see. Okay. Moving on to DFRF –
>
> A Okay.
>
> Q -- how did you first hear about it?
>
> A I first heard about it from Monita. Monita worked with me for a while. She helped me build a big team at Seacret. That's how I met her, from Seacret. And then she -- we just became good friends. She's kind of like an aunty now or so. And she ended up signing with me as well when I started selling SOZO coffee.
>
> And then she got introduced to some investment company from Asia or something and then shared it with one of her friends in France, and her friend in France goes, hey, there's this new company. And then they decided to learn a little bit more about it.
>
> Monita shared it with me. I just thought it was a scam. I kept thinking it was a scam and all that stuff. And then she actually went down to Florida -- to fly and meet the owners like Daniel. And apparently there was FBI agents there, and the mayor of the city was there, and they were all, you know, investing in the company, so she came back.
>
> I still didn't believe in it, so I always asked friends. I asked my friend [name redacted] who is still in the industry as well to go around and ask other people in the industry about Daniel. And a lot of like well-established people vouched and said he's a good person and this is a real company.
>
> So then I gave Monita the benefit of the doubt I always liked to help her because she doesn't really speak English too well, so she always wants me to help present things that she's trying to present to other people. So that's how I got started and learning about DFRF.

[62] Villarin admitted that his instincts alerted him early on as to the likelihood that DFRF was, in his own words, a scam. Despite this, one of the first steps taken by Villarin was to assist a DFRF representative to attract investor interest in a presentation regarding DFRF, including by preparing a promotional document to be circulated to potential attendees. Villarin helped prepare and circulate a one page flyer in advance of a December 19, 2014 meeting with potential DFRF investors. The flyer included the words "learn how to receive 15% monthly returns with a 100% guarantee on capital, covered by insurance," and "Limited seating, please book in advance." The meeting was scheduled to take place in an office at 383 West Hastings Street in Vancouver in a building commonly known as Jameson House. That office belonged to the Pony Mountain Owner.

[63] Through her relationship with the Pony Mountain Owner, Wei had access to the Jameson House office, a location which she in turn made available for a number of DFRF presentations to potential investors, including the December 19, 2014 meeting promoted by the flyer which Villarin prepared and circulated. Some investor witnesses would later comment that the building and office space was impressive and contributed to their comfort with the underlying credibility of the investment and the parties involved.

[64] Before December, 2014 ended, some British Columbia residents had made investments in DFRF and more were considering making such investments.

[65] On January 3, 2015, two emails were sent to a number of people setting out the schedule for a number of presentations to be made the following week, including presentations to be made by Wei, Law and Villarin.

[66] A further email regarding the scheduling of presentations was sent by Wei to Chan, Filho, Villarin and others on January 16, 2015. The body of that email is reproduced in full below:

> Dear Monita,
>
> Let's finalize a schedule for Vancouver meetings both English and Chinese for this upcoming week starting tomorrow. We can also schedule video conference meetings for your prospects in Asia and other places.
>
> I believe it is very important now to target and close the large prospects who were waiting to see DFRF commitment to Montana Pony project. I will personally assist you in confirming this as I am told the contract will be signed today and funds forwarded.
>
> We will schedule meetings at your office, then for the big money people bring them to Downtown office. I will also make [the Pony Mountain Owner] available to come in to say hello.
>
> We need to build the foundation so that when Heriberto is back before the end of the month that we can put key people in front of him.
>
> Both James and myself are dedicated to work with you on building the DFRF membership worldwide!
>
> Thank you!
>
> Sabrina

[67] Later in January, 2015, Villarin was emailing to existing and potential investors links to presentations regarding the benefits of investing in DFRF. During that time period, Wei and Law attended a dinner which had been promoted as an event at which information about DFRF would be shared. Villarin circulated emails promoting the dinner. Wei sent

an email confirming that she and Law would be attending and speaking at the dinner and she clarified how she and Law should be identified when introduced to potential investors. Wei asked to be described as "an investment banker and consultant to companies in the fields of real estate and mining." She referenced her accounting career as a senior auditor with a major firm and a portfolio manager of a real estate fund, and how she was "instrumental in assisting DFRF in acquiring its first producing gold mine in the USA." She asked that Law be described as a "Gold Exporter and DFRF VIP Member."

[68] Late in January, 2015, a new form of promotional slide deck regarding DFRF began circulating (Canadian Presentation). The Canadian Presentation was virtually identical to the version delivered to Chan on December 11, 2014, but also had some notable new content, including:

(a) photos under the heading "Corporate Offices" of two large, impressive buildings, one described as "US Headquarters" and the other described as "Canadian Headquarters." The building shown as the Canadian headquarters was the Jameson House building in which Wei had arranged to borrow space from the Pony Mountain Owner;

(b) added emphasis on DFRF's charitable work, indicating that DFRF donates 25% of its profits to such work;

(c) listed DFRF gold mines and reserves in several jurisdictions, including the Pony Mountain project in the United States;

(d) a simplified pro-forma of the compounded value of $10,000 over one year at a rate of return of 15% per month;

(e) in relation to what was described as DFRF's gold mines and reserves in Mali, a photo of Law crouched beside a basket of gold; and

(f) the concluding statement "DFRF Enterprises, we put your money to work for you."

[69] On January 29, 2015, Wei sent an email to an assistant working for Chan which included the following language:

> "DFRF is giving a special bonus to our members who contribute USO (sic) $10,00+ before January 31, 2015.
>
> "All contributions above USO (sic) 1OK will receive an immediate BONUS of 10% of their own contribution credited to their Platinum Swiss Trust (PST) account immediately on deposit!
>
> "This is an incredible gift from DFRF!

"Please pass on the news…"

[70] On February 3, 2015 and again on February 8, 2015, emails were sent from the DFRF Enterprises Canada email address to a distribution list attaching schedules of conference calls which investors could dial into to receive information from presenters for DFRF. On February 10, 2015, Wei followed up with an investor with an email that reads:

> This email was sent out on Sunday with the new conference call schedule. You said you did not receive it.
>
> Can you please check again to make sure you did not get it. I want to make sure all the other Members received it.

[71] On February 12, 2015, Vincent circulated an email attaching a 2010 newspaper article regarding Ponzi schemes in Florida at the time of the article. The text of Vincent's email was "for your eyes only, Jen found it. Please see hereto attached article. Any comment." The article mentions Filho in connection with the Earlier Florida Proceeding and says Filho participated in a Ponzi scheme which victimized thousands of people across the globe.

[72] One of the addresses to which the February 12 email was sent was the DFRF Enterprises Canada address. Later the same day, Wei replied to the group from the same email address, stating, in part "hi all, will discuss with you in person."

[73] Shortly after February 24, 2015, the date when the Framingham litigation mentioned above was publicized and around the time (March 3, 2015) when Filho made an emotional response which was posted to the internet, Wei says that she made some inquiries regarding the Framingham litigation, including by searching the court file on line and speaking to one of Filho's lawyers.

[74] On March 19, 2015, Villarin sent emails to a circulation list with a link to Filho's audio announcement that DFRF would go public. Filho stated in that recording:

> DFRF Enterprises is now incorporate our public company here in United States … And also we already report, and it's already audit, over $30 billion liquid and we can trade because we are registered with the New York Stock Exchange and we have a licence with the Securities Exchange Commission.

[75] In late March and early April, 2015, on Wei's direction, several investors wired funds aggregating more than $480,000 to an account in Vancouver belonging to a company connected to the Pony Mountain Owner and over which Wei had signing authority. These funds represented the senders' purchases of DFRF memberships and were credited by DFRF as such. Eventually, some of these funds were used to pay accounts for the benefit of Wei. Wei's explanations for these transactions are discussed below in further detail.

[76] In late April, 2015, Filho had a conversation with several British Columbia residents, including Villarin. The conversation was recorded. Some of Filho's claims made during

the conversation were that DFRF was receiving $4 billion in investments that week, that he was releasing $400 million to himself and his family, that DFRF stocks would launch at $15 per share and go up to $50 per share within a month and that he was personally taking control of two African countries and writing their laws.

[77] On April 24, 2015, an email was sent from the DFRF Canada Enterprises email address attaching a link to a presentation from Filho and telling investors how to convert their DFRF memberships into shares as part of the process of going public.

[78] On May 1, 2015, DFRF hosted a promotional event at the Fairmont Pacific Rim Hotel in Vancouver. Wei made many of the arrangements to have the room available. Villarin helped with technical arrangements for audio and visual systems at the venue. Law spoke, along with Wei. Unknown to the BC Respondents, investigators from the Commission were present at the presentation.

[79] The May 1 presentation was attended by current and potential DFRF investors and was video recorded. The recording was put into evidence at the hearing. Some of the notable events at the presentation were the following:

(a) Wei spoke and explained that she was an accountant with a background in financial services, in real estate development and in mining development. She described DFRF as an opportunity for the average person to amass great wealth. She showed photographs of what she described as DFRF's US headquarters in Florida (an impressive office tower) and DFRF's Canadian headquarters (the Jameson House building, which Wei noted is in the financial district of Vancouver);

(b) Wei explained to the audience who Filho was, describing him in glowing terms regarding his financial successes and his humanitarian commitment;

(c) Wei described a resource project DFRF had in Brazil, then Wei turned to what she described as DFRF's producing gold mines. Wei referenced these mines as the source from which DFRF was able to pay such significant returns and, referencing a particular slide, she said "this particular slide talks about our largest producing gold mine, which is based out of Mali." Immediately after referencing Mali, Wei noted, in a reference that she later made clear was discussing Law, that "we have another special guest that has actually had a foot in Mali, sharing with you live experiences;"

(d) Wei added that "it's very important for each and every one of you to understand the business of DFRF and how it makes its money." Wei went on to describe how DFRF brought gold from Mali to the United States with a tremendous profit margin;

(e) Wei noted how the operating gold mine of Pony Mountain was now a part of a joint venture with DFRF;

(f) Wei added other comments which are important enough to quote rather than summarize:

> Now the benefits of being a member is this is an exclusive membership. And once you become a member, you can be able to share it with others around the world. The minimum contribution to get involved with DFRF is 1,000 dollars. However, that's only until next week. Because Daniel is going to make a very special announcement today and so after next week, the minimum will no longer be 1,000 dollars. And he'll explain that to you. The member benefits that the company offers is up to 15% per month. So what that means is, for example, let's say you contributed 10,000 dollars. Well, 15% of 10,000 dollars is 1,500 dollars. So that means that the company would then pay you up to 1,500 dollars on a monthly basis. What would that do to your lifestyle, an extra 1,500 dollars per month? Pretty nice, huh. So since my participation with the company, I actually joined as a member, because as I got to know Daniel and got to know DFRF, I thought 'wow this is an incredible program' so I decided to get involved. And each and every month when it's my anniversary date of my contribution, ***I'm always very excited to go to my computer, check my account balance, and sure enough, on the day exactly, my 15% contribution benefit appears in my account. And so historically since the company started, it has been 15% each and every month.*** Now the timing was going to be until the end of this year, but again, there's going to be a special announcement so you'll find out more about that. We spoke about the deposits of your monthly deposits will be placed in Platinum Swiss Trust. And you may say "well, it's way out in Switzerland how am I going to access those funds?". Each and every member will receive a Visa debit card. It's an incredible card because you can be able to use it for purchases around the world. You can also be able to withdraw monies at an ATM or go to your bank and receive a cash advance. Again, all contributions are fully insured.
>
> This is just to share with you that, for your monthly benefits, if you wish to recontribute them, what that could do. What a compounding effect can do. So let's say you started off with that 10,000 dollars that we talked about. If you recontributed the monthly benefits of up to 15% each and every month, at the end of one full year, that will amount to over 50,000 dollars. In fact, that's 53,500 dollars.
>
> (Emphasis added).

(g) Wei then explained some of the logistics related to investing and she introduced Law, describing him as someone who had experience in Mali.

(h) Law then gave a presentation which, again, is important enough to quote in detail:

> "Okay that is ... that was the very first tranche of gold that I ever took out of Mali. 75 kilos of gold. Now, if you can imagine that, that is 23.64 carat purity okay, that's ... ah, that was from a single village and the story

> I really want to be able to tell you is about how, the, how much gold there is in Africa and why, because there's that much gold are we actually able to do what we do.
>
> Now these are what are called kola nuts. Ok. Kola nuts are something that people in Africa eat amongst each other and grow trust and so what I actually had to do was I went out to a village and while I was at that village, I brought a 50 pound bag of sugar and I put it down on the table and I started talking to the various different elders that were there. And as I was talking to them if they thought that I was an honest person what they would do was reach into a bowl of kola nuts and they would eat these things. Now, they are bitter, horrible, they are they taste like .. it'd be like chewing on a stick, but essentially what happens is once the elders all eat the kola nut with you, they are saying that they are willing to do business with you and they trust you.
>
> Now, for that very first time that I went out there, I also brought with myself, a bag of candy. Have you ever, anyone here ever had a mango gummy, put up your hand if you've had a mango gummy? Okay well, I brought out a bag of mango gummies and just to give you an idea of how much gold is out there and how little the people there actually do value it. Okay, we value it a lot, but to them it's not worth a lot. That single, what I would do is ... I was told take out of your mango gummies and little kids would come up to you and they would buy the mango gummies off of you, and I said "With what?" and they said, "With gold."
>
> So what I did was put out my hand and little kids would come up to me and they would put gold in my hand. Gold dust. That one bag of gold, that one bag of mango gummies returned this. Can everyone see this? This is 28 grams of gold. At today's value that's worth over one thousand US dollars just this one little thing. I had it smelted down. This is a bag of Mango Gummies. Okay, possibly the most valuable bag of gummies I ever didn't eat and afterwards, I said to myself "If only I hadn't had those two in the beginning I'd have a little bit more". But that, I share with you that story because I want you to know that there's a lot of gold in Africa."

(i) Filho then joined the presentation at the Fairmont by video link. Filho spoke about many subjects, including DFRF's charitable work (educational programs for almost 200,000 children, feeding 75,000 families, and using at least 35% of earnings for social and humanitarian programs), that DFRF did not need more money but was sharing an opportunity for members and that DFRF was going public within a few days at $15.06 and would within 30 days be worth $50.

[80] All of the investor presentations made in British Columbia, which we saw or which we heard described by witnesses, generally followed the Canadian Presentation. In addition, Wei testified that "in my presentations I simply relayed the information that was provided by DFRF" and that "when giving the presentation I gave the same PowerPoint presentation that you saw in the recorded video of the meeting at the Fairmont Pacific

Rim. I would say that the slide presentation portion of it would be representative of the presentation that I had given."

[81] On May 6, 2015, Wei joined Filho in Florida in a video presentation posted by DFRF to its website. Wei hosted the video, asking Filho a series of questions that drew out the usual promotional claims about DFRF and the expected financial returns investors could achieve by sending money to DFRF, if they acted quickly. In the course of the interview, Wei asked Filho to explain the going public share structure opportunity that was exclusively being made available to DFRF members. Filho announced that DFRF had gone public, and the share price had already started increasing. He explained that the membership interests in DFRF would be converted into preferred shares in the new public company rather than common shares. He asserted this as an advantage for DFRF members as they would then be entitled to a fixed return paid in preference to common shares.

[82] On May 6, 2015, the Commission issued an Investor Alert referencing some of Filho's claims and stating that several of those claims were "characteristic of investment fraud".

[83] On May 8, 2015, Wei sent an email from the DFRF Canada Enterprises email address to a group who were involved in recruiting investors in British Columbia, a group she addressed with the salutation "Dear Leaders." Wei minimized the alert and said, among other things "Here is some insight regarding the investor alert" and "this is an investor alert and stating that the claims are characteristic of investor fraud, however it does not say that it is fraud or that there has been any complaints."

[84] Also on May 8, 2015, in the same manner and approach as had been done by Wei, Villarin sent an email to people on his circulation list first referencing "unreliable sources" and then referencing credible sources, after which he linked to articles praising DFRF as an investment. It is a fair inference that Villarin was referring to the Commission's staff as the unreliable sources and the much less specific news articles as reliable sources. When faced with a choice, Villarin, consistent with the acts of Wei, chose to downplay and limit the impact of the alert to his contacts.

[85] In the weeks following May 8, 2015, there were a series of announcements from DFRF of postponements to the date on which DFRF would announce it had gone public, postponements to the date on which the trading symbol for DFRF would be shared, and encouragements for investors to add investment funds before it was too late. These efforts by DFRF and others to collect funds from investors continued after June 30, 2015, when the SEC filed a claim against Filho, the other US Respondents and others alleging that DFRF was a fraudulent Ponzi scheme.

C. Evidence of the Investor Witnesses

(a) Investor M

[86] Investor M is an insurance agent who lives in Vancouver. She testified at the hearing that she had known Chan for at least a decade through her insurance business, and that over

the years Chan had introduced clients to her. She met Villarin at a meeting involving skin care products that M described as "networking" similar to Amway.

[87] M was introduced to DFRF through an email sent to her from Chan in December 2014. The email invited her to attend a meeting at a lawyer's office, which she attended with her husband. At the meeting, she was greeted by Villarin at the door, and he took her and her husband to the room where the presentation was taking place. M described the meeting as having five or six guests and involving a very professional presentation; she said Valdes was the main presenter. M was impressed that the meeting was at a lawyer's office. She was told that her investment would be "100 percent insured" and provide a 15% return. M and her husband rushed to invest $5,000 US in DFRF because they were told that the insurance premium otherwise payable would be waived if they invest by December 31.

[88] Subsequent to her investment in DFRF, M testified that she attended two or three "Happy Express" meetings. These meetings initially encouraged those in attendance to pool money through "gifts" of $5,000 to one individual, who would receive a larger sum. Some time in the future, it would be the gift-giver's turn to receive the larger sum. M testified that, over time, the Happy Express meetings merged with DFRF meetings, and the person who was gifted the pooled amount would then be encouraged to invest it into DFRF. M testified that these meetings were organized by Chan and Vincent, with Villarin and Law usually in attendance, while Wei made the presentations.

[89] After the Happy Express meetings, M attended a specific DFRF meeting where Law presented to the group. Law said he used to live in Africa and was in the gold mining business. M testified that she was told that DFRF had a gold mine in Africa and this was why it could provide a 15% return, because they were supported by "lots of gold reserves in Africa."

[90] M testified that she was asked by Chan to invest more into DFRF, but she did not. Further, she was unable to get her investment back.

(b) Investor T

[91] Investor T was a 41 year old landscaper and father of two. He has been in Canada for twenty-eight years, and served in the Canadian Armed Forces.

[92] T was introduced to DFRF through Chan, who he knew through a Vietnamese magazine business. Chan had purchased ad space in a magazine, and T had monthly communications with her. Chan had previously approached T about a multi-level marketing skin care product business.

[93] Prior to investing in DFRF, T also knew Villarin, Wei and Law, but he testified that he really got to know them after he attended a meeting about DFRF at Chan's salon. T stated that he was invited to attend the meeting by Chan, and at the meeting Wei was presenting, along with Law. Villarin attended the meeting, but T did not recall him saying much.

[94] A week after the meeting at Chan's salon, T attended another in an office downtown, where T described the presentations as "very much the same" as the previous one: Wei was talking about the investments, and there was also another man who identified himself as the president of the "Platinum Swiss Bank." At this meeting, T remembered Law attending and describing his experience in gold mining in Mali, where there was so much gold Law described children trading it for candies. T understood from the presentation done by Wei that an investment in DFRF would generate a 15% return, he would receive a 5% referral fee if he referred anyone to invest, and that investments were guaranteed by an insurance company. Both Wei and Law challenged T's testimony that they presented at this meeting.

[95] T invested in DFRF multiple times, in his name, his company's name, and in his wife's name, in a combined amount of over US$50,000. Some of T's investments included money he had received from his uncle. T also referred his brother to DFRF, who invested US$15,000.

[96] Ultimately, T's brother lost his $15,000 and his uncle lost approximately $10,000. T testified he lost approximately $60,000. T testified that the fallout from these investments has impacted him not only financially, but personally, as it has had a significant and permanent detrimental effect on his relationships with his family.

(c) Investor G

[97] Investor G is a 38 year old university student in Vancouver, having immigrated to Canada in 2012. She works hard at her studies and supports her mother in Jordan.

[98] G first met Chan through her partner, who had been introduced to Chan through an informal networking circle that fostered business relationships and opportunities. G's partner knew Chan for over twenty years prior to G becoming involved in DFRF. The first time G heard of DFRF was from Chan, who G explained was very excited about this investment opportunity. Chan described DFRF to G as an opportunity to change lives.

[99] G testified that she met Law, Villarin and Wei at the third presentation involving DFRF that she attended, which was conducted by Wei. At the time, G was impressed by Wei, who came across as professional and a believer in DFRF. G recalled being told by Wei that the investment opportunity was a membership with an asset management company. G understood that DFRF made profits through gold production. Further, members got a 10% commission referral fee for referring other investors, and DFRF would pay 15% interest compounded monthly on investments. Investments were supposedly insured through an insurance company in the United Kingdom.

[100] G's partner invested $15,000 into DFRF. G also referred friends to DFRF, who also subsequently lost their money. G described her experience with DFRF as financially devastating and emotional torture.

(d) Investor F

[101] Investor F is a married mother of four, who lives in Richmond. She immigrated to Canada in 1997. She was introduced to DFRF by a third party, and was told that Vincent was in Richmond with an investment opportunity. F testified that she "didn't want to miss out" on investing that day, so she arranged for Vincent to attend her home. At that meeting, Vincent gave F a presentation on DFRF, including details about referral commissions and a 15% return. F invested $1,100 that day.

[102] After her initial investment, F was invited by Vincent to attend a larger presentation about DFRF downtown, given by Wei. Wei told F that she had personally invested $90,000. F subsequently attended two more, in her words, formal presentations about DFRF. She recalls one at a hotel downtown where Wei gave a powerpoint presentation and F thought she was very impressive. She also recalled Villarin attending, and Law sharing his experiences in gold mining.

[103] F referred her husband and a number of family friends to DFRF. She described her experience with DFRF as "devastating," not only because she lost her savings, but her friends, all of whom no longer trust her.

D. The Investors' Lists

[104] The executive director entered into evidence a series of spreadsheets prepared by Commission staff. These spreadsheets (Investors' Lists) listed the British Columbia investors, with particulars on their DFRF investments. The executive director also described in these lists how each investor was allegedly connected to one or more of the BC Respondents, Chan and Vincent. In some instances, the executive director alleges direct or indirect communications between an investor and a BC Respondent. In other instances, the executive director submits that the connection was from acts of the BC Respondents such as accepting cash from an investor or assisting an investor in the DFRF subscription process.

IV. Legal context

A. Burden of Proof

[105] The standard of proof is proof on a balance of probabilities. In *F.H. v. McDougall*, 2008 SCC 53 (CanLII), the Supreme Court of Canada held, at paragraph 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.

[106] The Court also held that the evidence "must always be clear, convincing and cogent" to satisfy the balance of probabilities test. The executive director does not have to prove each evidentiary element on a balance of probabilities. The totality of the evidence must establish that the events at issue are more likely than not to have occurred in order to satisfy the balance of probabilities test.

B. Orders relying on the findings of other bodies under section 161(6)(b)

[107] Section 161(6) of the Act states:

> The commission or the executive director may, after providing an opportunity to be heard, make an order under subsection (1) in respect of a person if the person
>
> […]
>
> (b) has been found by a court in Canada or elsewhere to have contravened the laws of the jurisdiction respecting trading in securities or derivatives

[108] Section 161(6) of the Act facilitates the cooperation between the Commission and other securities regulatory authorities, self-regulatory bodies, exchanges and the courts. It is a precondition to making an order under this section that a respondent be given the opportunity to be heard.

C. Fraud under section 57(b)

[109] Section 57(b) of the Act was in force at all relevant times. It states:

> **57** A person must not, directly or indirectly, engage in or participate in conduct relating to securities or exchange contracts if the person knows, or reasonably should know, that the conduct
>
> […]
>
> (b) perpetrates a fraud on any person.

[110] The leading case in Canada regarding the elements of fraud is *R. v. Théroux*, 1993 CanLII 134 (SCC). In that case the accused was the directing mind of a corporation which was building residential properties. The corporation, through and on the direction of the accused, made statements to a number of buyers that deposits paid by the buyers were insured. Many buyers paid deposits and entered into contracts on the basis of those statements. The statements were false in that the deposits were not insured. When the project failed many buyers were left with no property and no ability to recover their deposits. The accused was later charged with fraud. His defense was that he honestly believed that the project would be completed and no buyer would suffer a loss as a result of his conduct.

[111] The accused was convicted at trial and the conviction was upheld. The Supreme Court of Canada unanimously held that the *actus reus* of what was at the time section 338(1) of the Criminal Code had been proven. The Supreme Court of Canada was divided regarding the element of *mens rea*. McLachlin, J (as she then was), for the majority, made some general comments about *mens rea*, including the following at paragraph 18 regarding the nature of the appropriate inquiry into the accused's state of mind:

> A person is not saved from conviction because he or she believes there is nothing wrong with what he or she is doing. The question is whether the accused

> subjectively appreciated that certain consequences would follow from his or her acts, not whether the accused believed the acts or their consequences to be moral.

[112] McLachlin J. also stated that:

> … the crown need not, in every case, show precisely what thought was in the accused's mind at the time of the criminal act. In certain cases, subjective awareness of the consequences can be inferred from the act itself, barring some explanation casting doubt on such inference.

[113] Turning specifically to the *mens rea* required in relation to a charge under section 338(1) of the Criminal Code, McLachlin J. stated:

> Having ventured these general comments on *mens rea*, I return to the offence of fraud. The prohibited act is deceit, falsehood, or some other dishonest act. The prohibited consequence is depriving another of what is or should be his, which may, as we have seen, consist in merely placing another's property at risk. The *mens rea* would then consist in the subjective awareness that one was undertaking a prohibited act (the deceit, falsehood or other dishonest act) which could cause deprivation in the sense of depriving another of property or putting that property at risk. If this is shown, the crime is complete. The fact that the accused may have hoped the deprivation would not take place, or may have felt there was nothing wrong with what he or she was doing, provides no defence.

[114] McLachlin J. went on to summarize her conclusions as follows:

> These doctrinal observations suggest that 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).

[115] The nature of the *mens rea* that must be proven to establish fraud under the Act was discussed in *Anderson v. British Columbia Securities Commission,* 2004 BCCA 7. In *Anderson*, the appellants appealed a decision of the Commission concluding that the appellants had engaged in fraud. The Commission's panel made a finding of fraud based on conclusions that the appellants had failed to disclose what they ought to have known about the material risk. It had been argued in support of the Commission's panel's

approach that section 57(b) of the Act, which created a prohibition against assisting in a fraud even for respondents who did not participate in the fraud, indicated that a new, broader definition of fraud was applicable under the Act. The Court of Appeal rejected that view. It concluded that the elements of fraud under the Act were those identified in *Théroux* and that section 57(b) of the Act could only apply if someone committed a fraud. The Court states at paragraph 24:

> [S. 57] creates a statutory prohibition which may extend to persons who ought to be aware of the fraud even though they may not be participants in it, but it does not dispense with the requirement that there must be a fraud involved in the transaction, which requires a guilty state of mind as well as an act.

[116] In *Anderson* it was only the appellants who were alleged to have committed fraud, there was no suggestion that the appellants were participating in the fraud of others. Without evidence of a guilty state of mind by someone involved in the underlying fraud, the finding of fraud was set aside.

[117] As outlined above, the analysis of the Court of Appeal in *Anderson* includes reference to the phrase "reasonably should know" in section 57(b). The court reiterates the proposition in paragraph 24 that section 57 extends to persons who ought to be aware of a fraud even though they may not be participants in it, when it states in para. 26:

> While not endorsing the reasons in *White*, I find that it is clear that s. 57(b) does not dispense with proof of fraud, including proof of a guilty mind. *Derry v. Peek* (1889), 14 A.C. 337 (H.L.) confirmed that a dishonest intent is required for fraud. Section 57(b) simply widens the prohibition against participation in transactions to include participants who know or ought to know that a fraud is being perpetrated by others, as well as those who participate in perpetrating the fraud. It does not eliminate proof of fraud, including proof of subjective knowledge of the facts constituting the dishonest act, by someone involved in the transactions.
>
> [emphasis in original]

[118] The Court of Appeal in *Anderson* did not define the *mens rea* requirement regarding a respondent under section 57(b) of the Act who is alleged to have assisted another person in perpetrating a fraud. The proper interpretation of section 57(b) in that circumstance does not appear to have been squarely raised before this Commission until this proceeding. There are some prior rulings which address related issues, but no decisions from this tribunal have been put before us that directly address the issue of whether a finding that the respondents "should have known" of a fraud perpetrated by others is sufficient to find a breach of section 57(b).

[119] *Manna Trading Corp Ltd.,* 2009 BCSECCOM 426, is a case which arose from a Ponzi scheme in which most respondents were found to have knowingly participated. Liability was not found with respect to one of the respondents, Perkinson, about whom the panel said (emphasis added):

> 349 *Anderson* requires evidence of fraud that is clear and convincing proof of the elements of fraud, including the mental element.

> 350 The executive director says that Perkinson committed a prohibited act by disbursing investors' funds to pay returns to existing investors, to fund Tropical Poker, to fund Costa Rica real estate projects, to pay debit card providers, and to pay himself as reimbursement for Tropical Poker expenses. ***The executive director says that Perkinson had subjective knowledge of these acts and that they could result in the deprivation of others***.
>
> 351 ***Opening bank accounts, acting as signing authority on those accounts, and disbursing funds out of the accounts, are not inherently fraudulent. They are not "prohibited acts" unless other factors are present. The executive director has not alleged misrepresentation by Perkinson - the executive director's submission is that in disbursing investor funds as he did, he acted wrongfully, and he knew it.***
>
> 352 ***In Perkinson's case, the fraud allegation hinges entirely on his knowledge: his conduct in disbursing funds would be wrongful only if he knew that it was inconsistent with what investors were then being told, and if he knew that investors could be deprived as a consequence of his conduct.***
>
> 353 Although we find Perkinson's evidence in several respects confusing and unconvincing, the onus is on the executive director to provide "clear and convincing proof" that Perkinson had that knowledge. In our opinion the evidence does not do so.
>
> 354 Perkinson understood when he invested in October 2005 that Manna's business was foreign currency trading, but the evidence does not establish that he had any knowledge of what the other respondents were telling investors at the time he was disbursing investor funds. The evidence does not establish that Perkinson was acting as a de facto director or officer of Manna, or that he was even privy to Manna's affairs and operations. ***There is no evidence that Perkinson knew that Manna was not engaged in foreign currency trading, and so had no profits to pay investors the promised returns, or that he knew anything else about Manna's true financial situation. Absent that evidence, we cannot conclude that he knew his conduct was wrongful, or that investors' pecuniary interests were being put at risk.***

[120] The distinction between *Manna* and the matter before us, is that it does not appear that the panel in *Manna* was asked to decide if Perkinson reasonably should have known that the conduct of others was perpetrating a fraud, in the manner specifically contemplated by the Court of Appeal in *Anderson*. Instead, the panel considered Perkinson's direct participation in components of the underlying fraud, and found that his subjective knowledge was insufficient to find that he knew his conduct was wrongful.

[121] Another relevant case is *Re SPYru Inc*., 2015 BCSECCOM 277. In that decision, the panel considered a situation where a group of BC residents raised money in this province for the production of a sports drink. Amongst the allegations in that proceeding was a breach of section 57(b) of the Act by two BC residents, who the executive director alleged took money from investors purportedly for producing the sports drink, without

disclosing their suspicion that the Turks and Caicos person that they were sending the money to was not using it for the intended purposes, and sending investors' money to that person after forming their suspicion. While these fraud allegations were dismissed by the panel on the basis of insufficient evidence of deceit or prohibited act committed by the BC residents, it is important to note that, similar to *Manna*, this was not a case where it was alleged the conduct occurred in circumstances where the BC respondents "reasonably should know" that they were participating in fraudulent conduct perpetrated by others. In fact, there was no evidence put before the panel that the Turks and Caicos person had actually misappropriated investors' money.

[122] The executive director submits that guidance can be found in the Ontario Securities Commission (OSC) decision *Natural Bee Works Apiaries Inc. (Re)*, 2019 ONSEC 23. He submits that this decision involved a similar fact pattern to the one before us. In that decision, the OSC considered the fraud allegation made against a respondent who accepted extravagant and flamboyant statements at face value, repeating them to investors without making further investigation into them. OSC staff alleged that the respondent ought to have known the statements were false and as a result participated in the fraudulent scheme.

[123] The relevant legislative provision in Ontario, substantially the same as that in British Columbia, was section 126.1(1)(b) of the Ontario *Securities Act*, RSO 1990, c.S.5:

> A person or company shall not, directly or indirectly, engage or participate in any act, practice or course of conduct relating to securities … that the person or company knows or reasonably ought to know,
>
> […]
>
> (b) perpetrates a fraud on any person or company

[124] In *Natural Bee Works*, the OSC reviewed the legal test for *mens rea* of fraud, where one respondent knowingly orchestrated the fraudulent scheme, and the other respondent did not have subjective knowledge of the underlying fraud. The panel found the following:

> 134 The Act's legal test for fraud also widens the effect of the fraud provision such that another participant in the scheme may be found to have committed fraud if they ought to have known that a fraud was being perpetrated by another person involved in the scheme. Mr. Landucci knew about the fraudulent misconduct. He was the mind and management of NBW and created all the facts that were fed to Ms. Chickalo to put into the Marketing Materials for the sole purpose of soliciting funds from investors. He was the architect of the scheme and NBW was his company. As stated above at paragraph [115], Ms. Chickalo followed along in this scheme, never asking questions and turning a blind eye to the consequences of passing on the false information she was given by Mr. Landucci and her other actions in furtherance of the scheme. Considering the information being provided to her by Mr. Landucci, she reasonably ought to have known that Mr. Landucci's statements were highly questionable and as a director and one-time president of NBW she ought to have taken steps to understand what

was actually going on at NBW. Her recklessness in her sales efforts demonstrates that she reasonably ought to have known that a fraud was being perpetrated. As a result, investors were harmed and deprived.

[125] Drawing together all of the above analysis, we conclude that a plain reading of section 57(b) of the Act, as well as the specific guidance from the Court of Appeal in *Anderson*, make it clear that a person can be in breach of that section by contributing to another person's fraud. We concur with the analysis of the OSC in *Natural Bee Works.* In this context, when alleging that a person acted contrary to section 57(b) by participating in a fraudulent scheme perpetrated by others, the executive director must prove that:

(a) there was a fraud or an attempted fraud by someone relating to a security, including satisfying both the tests for the *actus reus* and *mens rea* as outlined in *Théroux* and consistently applied by this Commission and others; and

(b) the respondent must have participated in the conduct of the person engaging in the fraud, at a time when the respondent knew or reasonably should know that that person was perpetrating the fraud.

D. Misrepresentations under section 50(1)(d)

[126] Given that misrepresentation is alleged in the alternative to the primary allegations against the BC Respondents, and given our findings related to those primary allegations, we do not need to provide our analysis of section 50(1)(d) of the Act.

E. Definition of "Security"

[127] Section 1(1) of the Act defines "security" to include:

(d) a ... share, stock, unit, unit certificate, participation certificate, certificate of share or interest ...

or

(l) an investment contract.

[128] Although not defined in the Act, the Supreme Court of Canada defined an "investment contract" in *Pacific Coast Coin Exchange v. Ontario Securities Commission*, [1978] 2 SCR 112 (SCC), as an investment in a common enterprise from which an investor expected to profit from the efforts of others.

V. Positions of the Parties Regarding the BC Respondents

A. Positions of the Parties Regarding Wei

[129] The executive director argues that Wei participated in the DFRF fraudulent scheme which was led by Filho. The executive director supports these arguments first by pointing to certain specific conduct by Wei which advanced the DFRF fraudulent scheme in British Columbia and secondly by pointing to what he refers to as red flags which did or should have alerted Wei to the fraudulent nature of the DFRF scheme. Most of the facts related to the alleged red flags are common to all of the BC Respondents and, to minimize duplication, those are addressed in a global way below.

[130] Regarding Wei's participation, the executive director places particular emphasis on the following:

(a) Wei scheduled and presented at many of the investor opportunity meetings that British Columbia investors attended. Starting in December, 2014, in presentations and in direct communications, Wei spoke on behalf of and as a representative for DFRF and in so doing deceived investors by telling them that:

- DFRF was in the business of producing gold;
- DFRF paid a return of 15% per month;
- The money people invested in DFRF was insured;
- DFRF was producing 10 tons of gold per month in Mali and selling that gold for twice as much as it cost to produce;
- DFRF had gold reserves in Brazil that were independently verified and valued at USD $3.5 billion.

(b) Starting in March, 2015, Wei began telling people that DFRF:

- Was about to go public;
- Was trading publicly;
- Was trading publicly but still could be purchased in a private transaction at a special price that could be converted into the public share price that was 300% higher.

(c) Wei's presentations typically included Law. She introduced him as an experienced gold miner who had experience on the ground in Mali.

(d) The information Wei gave potential investors was essentially the same information that was contained in the DFRF Power Point Presentation that was in use at the time. Her presentations were typically in the same form as her presentation at the Fairmont Pacific Rim in Vancouver on May 1, 2015, a video recording of which is in evidence.

(e) Wei sent out notices and gathered personal information from members under the signature "DFRF Canada." Her connection to the Pony Mountain Owner is the reason DFRF opportunity meetings were held at the Jameson House office and how it came to be listed and known, as she in her own presentation referred to it, as "our Canadian Headquarters" in presentations to investors.

(f) Wei travelled to Florida and appeared with Filho in the May 6, 2015 interview styled presentation that drew out the usual promotional claims about DFRF.

(g) Wei counseled other BC participants on how to deal with challenges they incurred from selling the DFRF investments and counselled the others to downplay the importance of the Commission's Investor Alert.

(h) Wei directly or indirectly participated in the fraud against the investors listed under her name on the Wei Investor List.

[131] The executive director argues that all of the emails sent from the DFRF Enterprises Canada address were emails authored and sent by Wei. Some of those emails were signed by Wei, other emails were not signed by a specific individual.

[132] The executive director asks the panel to find that each investor on the Wei Investor List (a subset of the names on the Investors' Lists) is connected to Wei.

[133] The executive director also argues that Wei diverted funds from investors in DFRF to her own use. In support of that, the executive director points to admissions from Wei during her cross examination that there were funds totaling $481,428 sent by investors to the account of another company for investments in DFRF at Wei's direction. The executive director also points to evidence, which the executive director characterizes as uncontradicted by Wei, that some of those funds, approximately $90,000, were further transferred and used for the personal benefit of Wei.

[134] Wei's position includes some general themes and some specific facts and arguments.

[135] First, Wei argues that the investigation and the executive director's presentation at this proceeding were biased and improperly conducted. Wei alleges that the investigators failed to interview important witnesses, rejected opportunities to interview her, led a one sided version of the evidence and alleged many facts which the executive director failed to prove.

[136] Further, Wei submits that throughout the relevant time period she was not promoting investments in DFRF, she was advancing the business of Pony Mountain. Wei asserts that Pony Mountain was a legitimate business venture, that it was her legitimate role to raise funds for Pony Mountain, and that her connections with DFRF were developed for the legitimate purpose of raising funds for Pony Mountain.

[137] Wei's third argument is that she carried out extensive and appropriate due diligence regarding Filho and DFRF. Wei asserted in her evidence and in her arguments that she was convinced about the legitimacy of DFRF because of the extensive efforts made by Filho and DFRF to hide their dishonesty and to wrap their claims in a cloak of legitimacy. Wei notes, for example, that her due diligence included:

(a) traveling to DFRF's Florida offices at her own expense where she saw various assets of DFRF, including a gold plated Lamborghini and a gold plated Mercedes bus;

(b) inquiring into the legitimacy of the guarantee of principal provided by Accedium;

(c) speaking with two lawyers in Florida who were associated with DFRF and who were members in good standing of the Florida bar;

(d) investigating DFRF's claims that it owns a resource in Brazil and has a technical report related to that resource; and

(e) asking many questions about DFRF and receiving convincing answers from Filho and other DFRF representatives.

[138] Wei notes that although she had access to the email address DFRF Enterprises Canada and she sometimes used that address to send and receive messages, she was not the only person to use that address. Wei denies sending many of the emails which were sent from that email address.

[139] With respect to the Wei Investor List, Wei points out in her testimony, in argument, and in her cross examination of the Commission investigator who testified, that she did not have direct communications with many investors on the list, that some investors on the list made their investments before meeting her, and that the list contains other errors as well as unsupported assumptions that she wrote all emails sent from the DFRF Enterprises Canada email address. Wei also disputes the assertion (reflected in the list) that if Wei sent information to one investor who passed it on to other investors, that was sufficient to attribute all of the investments made by that group to Wei. Wei submits that the Wei Investor List is not reliable in general and does not establish a connection between her and the named investors.

[140] Wei testified that although she became aware of the Framingham lawsuit around the time it was publicized and she saw the email circulating information about the Earlier Florida Proceeding around the time of that email (February 12, 2015), she was not overly concerned by those events because, as she put it:

> This is an article that was written by someone. We all know the media likes to be able to, like hype things up. That's their job. The thing is, if it was really found to be so, why were they not charged? And that is important because Filho was never criminally charged.

[141] Wei argues that she had no idea that DFRF was fraudulent, and she was duped like the investors. In support of that, Wei points to her continuing efforts to remain in contact with DFRF representatives and to seek repayment for investors during the period extending for months after the SEC proceeding began.

[142] Wei asserts that the evidence that she should have known of DFRF's fraud is weak evidence, insufficient to meet the onus which is on the executive director to prove every element of the NOH and every element of the alleged breaches of the Act. Wei agrees that she made some mistakes by making presentations which gave the appearance that she spoke for DFRF, but she was never a DFRF representative.

[143] Wei also says that she was careful not to represent that DFRF would always pay a 15% return, she says that she was careful to assert only that returns would be "up to" 15%.

[144] Wei denies that she acted fraudulently by diverting funds from DFRF. Wei says she was authorized by Filho and DFRF to pay the investor funds to the other company by depositing the money into that other company's account, and the DFRF investors who sent those funds received the DFRF membership interests they purchased with those funds. She further says that she had authorization from the owner of that other company to transfer out the $90,000 for her personal use.

B. Positions of the Parties Regarding Law

[145] The executive director's main submissions regarding Law's participation are:

(a) Law's participation was different than Wei's but he also deceived investors.

(b) Law did not repeat Filho's claims verbatim like Wei and Villarin did. Instead he supported and defended Filho's claims by speaking about his own experiences "on the ground in Mali." Law's presentations revolved around fanciful stories that encouraged investors to believe there was a particular abundance of gold in Mali and that DFRF was "able to do what we do" because there was "that much gold."

(c) Law further defended Filho's claims by saying he drilled Valdes with questions about gold mining in Mali and that Valdes had all the right answers to his questions.

(d) Law's presentations were generally similar in form and content to the presentation he made to investors and potential investors at the Fairmont Pacific Rim in Vancouver on May 1, 2015, a video recording of which is in evidence.

(e) Law performed administrative and organizational tasks necessary to help investors purchase the DFRF investments. He also accepted cash from investors as payment for the investments.

[146] Law submits that his role in the activities of DFRF was very limited. Law notes that of all of the thousands of pages of documents in the record of this proceeding only a small number show his involvement in any way. Law emphasizes that the number of times he spoke was very limited and that he received no monies related to DFRF activities. Law argues that although there are some records indicating he handled funds, he was doing so only as a conduit for the benefit of others. He suggests there is no evidence to contradict his arguments.

[147] Law, in his written submissions, reviews the list of DFRF investors alleged by the executive director to have invested based on the actions of Law. In each case, Law makes

submissions about why his involvement with those investors was either non-existent or is over-stated by the executive director.

[148] Law addresses his involvement at the Fairmont Pacific Rim presentation by arguing that he was helping his friends and he merely reported his own experience. He disagrees with the executive director's description of his anecdote about trading mango gummies for large quantities of gold as "fanciful." Law argues, as did Wei, that the executive director was selective and unfair in his investigation, including in his choice of what parts of the Fairmont Pacific Rim presentation to place into evidence.

C. Positions of the Parties Regarding Villarin

[149] The executive director argues that Villarin's participation in the fraud is established by Villarin's conduct, especially the following:

(a) Villarin prepared the December 19, 2014 one page flyer described above which referenced 15% monthly returns with a 100% guarantee on capital;

(b) Villarin received a considerable volume of other promotional materials from DFRF and forwarded those materials to existing and potential investors, along with encouragement for existing and potential investors to forward the materials on to others;

(c) Villarin spoke to many existing and potential investors and answered their concerns about DFRF by reiterating information provided by DFRF;

(d) Villarin provided technical support at many presentations, including the set up for video presentations;

(e) Villarin brought in a number of DFRF investors and earned commissions for doing so (although he was not paid the commissions);

(f) Villarin attempted to minimize the impact of the Commission's Investor Alert by telling existing and potential DFRF investors attending a meeting that the Commission had acknowledged it had received a tip from an unreliable source;

(g) Villarin allowed a DFRF investment to be made by an investor through Villarin's personal bank account after the Commission's Investor Alert, and Villarin kept those funds for his own use.

[150] Villarin, in turn, emphasizes that his assistance was in many ways clerical and was provided under the direction of others.

[151] With respect to his state of knowledge, Villarin points to evidence from his interview transcript to argue that although Villarin initially had significant concerns about whether DFRF was a scam he looked further into DFRF and concluded that DFRF was legitimate.

[152] Villarin described the various materials he saw in the course of his dealings with DFRF, written and in video form. Villarin notes that those materials were all calculated to answer concerns by investors and Villarin says he believed what DFRF said. Villarin says he went further than relying on materials which were generally available. He spoke directly to many of the people involved and relied on their assurances that Filho and DFRF were legitimate. Villarin notes that he did some background checks on the people he spoke to and they appeared to be what they claimed to be, whether that was a lawyer, a representative of an insurance company or a former FBI agent. Villarin suggests that the information provided by DFRF are all calculated to create an impression which he accepted.

[153] Villarin notes that although he was licensed for a brief period in 2006 to 2010 to sell life insurance and mutual funds, Villarin has worked primarily in the field of multi-level marketing. Villarin notes that many of the people he promoted DFRF to were friends and family members. Villarin submits that he was fooled in the same way they were fooled. Villarin insists that he was naïve and not dishonest.

VI. Analysis – US Principals

A. Findings regarding the scheme

[154] Membership units in DFRF are an example of what this Commission have consistently held to be investment contracts. DFRF investors were investing in a common enterprise with other investors, where their funds were purportedly managed and used by DFRF. There was no expectation that investors would participate in the business of DFRF, except to provide investment capital and wait to receive their returns. On that basis, we conclude that DFRF investments meet the definition of a security under the Act.

[155] The proceeding against the US Respondents resulted in findings against them and in final judgments against them which included various penalties, disgorgement orders and orders that they be permanently enjoined from future violations.

[156] The NOH in this hearing alleges that Filho committed fraud. In order to find that in this context we must find that all of the elements identified in *Théroux* have been proven, including that Filho committed acts of deceit or falsehood or which were otherwise fraudulent and knew that his actions could put the investors' pecuniary interests at risk. The evidence to support such findings is overwhelming. To summarize briefly, we find:

(a) Filho held himself out to be the managing member of DFRF;

(b) Filho lied about DFRF having gold mines and other assets;

(c) Filho lied about DFRF having any legitimate business activity;

(d) Filho lied about DFRF paying profits to support charities;

(e) Filho lied about investors being paid returns of 15% a month, or any other amount;

(f) Filho lied about investors' capital and accumulated returns and referral commissions being insured and guaranteed;

(g) Filho lied about steady monthly earnings being deposited in Platinum Swiss Trust Bank;

(h) Filho lied about investors receiving debit or credit cards connected to an account in investors names which could be used to withdraw investment returns at any time;

(i) Filho lied to rebut lawsuits and regulatory and related proceedings against him, DFRF and his associates in the United States;

(j) Filho lied about DFRF going public;

(k) Filho lied about the reasons underlying the false sense of urgency for making investments and additional investments in DFRF; and

(l) Filho lied about the risks of investing in DFRF.

[157] The truth behind the DFRF was far more sinister. Contrary to what was told to investors, there were no mining operations, insured deposits, regular monthly returns or debit card program. Instead, it was an elaborate scheme created to attract unwitting investors through deceitful acts and statements and dupe them out of their money.

[158] Taken individually, each one of Filho's lies constitutes a prohibited act under the test for fraud. Collectively, they demonstrate that Filho orchestrated a scheme to commit fraud by deceiving investors into paying funds into the Citibank Account, where he subsequently diverted them for other purposes. His actions caused actual deprivation to investors. The *actus reus* of Filho's fraudulent conduct is well established.

[159] As the creator and directing mind of DFRF, the *mens rea* component of Filho's fraud is equally apparent. There is uncontradicted evidence that DFRF had no business operations at all. The only activities that are reflected in the Citibank Account and other DFRF bank accounts relate to raising funds from investors and using those funds for purposes which were not related to mining in Mali or anywhere else for that matter. Filho opened the Citibank Account and had signing authority over it. He would have subjectively known that virtually every claim he made about the activities of DFRF, and the potential for returns by investors, was completely false.

[160] We conclude that all of the elements of fraud, under section 57(b) of the Act, have been proven against Filho. We reach this conclusion based on the evidence before us, including the evidence which supported the findings made in the US proceeding. We saw all of the evidence needed to reach those conclusions, including the videos and written evidence showing Filho making the false claims alleged in this proceeding.

[161] We should be explicit about our finding about the scope of the fraud connected to British Columbia. Every British Columbia investor who purchased a membership unit in DFRF or who made a payment for that purpose was defrauded, including those investors whose funds were not deposited into DFRF's Citibank Account. In terms of British Columbia investors, the NOH alleges that the number of investors was 137 and that those investors lost approximately US$1,152,000 and Cdn$2,000. We are satisfied that the amounts from British Columbia investors shown to have been deposited into the Citibank Account or paid to British Columbia participants including the BC Respondents in return for DFRF memberships totaled approximately US$1,152,000.

B. Application of section 161(6)(b) and 161(1)

[162] In addition to alleging that Filho engaged in fraudulent conduct, the NOH seeks relief under section 161(6)(b) of the Act based on the findings in the US proceeding.

[163] Section 161(6) facilitates cooperation between the Commission and other securities regulatory authorities, self-regulatory bodies, exchanges and the courts. Section 161(6)(b) in particular allows the Commission to rely on findings of courts in other jurisdictions made against persons who have contravened the laws of that jurisdiction respecting the trade of securities or derivatives. Where the requirements of the section are met and it is in the public interest, the Commission may issue orders without the need for inefficient parallel and duplicative proceedings in British Columbia (*McLean v. British Columbia (Securities Commission)* [2013] 3 S.C.R. 895 at para. 54) or before the Commission.

[164] The evidence before us establishes that each of the US Respondents has been found by a court in the United States to have contravened US laws respecting trading in securities. It is clear from the facts and findings against Filho in the US proceeding that Filho, using the two DFRF entities, orchestrated a sophisticated securities fraud of over US$15 million that harmed investors in British Columbia, and Valdes aided him in carrying out the fraud. The purpose of section 161(6) is to ensure that those who take advantage of the investing public in other jurisdictions are prevented from doing so in this one. It is clear from the evidence presented in this proceeding that the US Respondents are unfit to participate in the capital markets of British Columbia. This panel will consider appropriate orders against them under section 161 of the Act after the parties make submissions at the sanctions phase of these proceedings.

VII. Analysis - BC Respondents - Red Flags

[165] The executive director alleges that there were various "red flags" which should have been apparent to the BC Respondents, and pointed out specific red flags. The executive director submits that we can infer from the evidence that the BC Respondents actually knew DFRF was a fraud, but at the very least, we should find that they reasonably should have known, before December 18, 2014, that Filho was perpetrating a fraud on people.

[166] The BC Respondents have not responded directly to the specific red flags pointed to by the executive director. The response of the BC Respondents has been directed towards explaining what they thought during the relevant period and what steps they personally took to confirm that DFRF was a real business paying real returns.

[167] It is important for our purposes to consider both the existence and clarity of any "red flags" and also to consider the timing of when any particular red flag would have been apparent to the BC Respondents.

[168] What follows is a chart setting out what we consider, after evaluation of all of the evidence, to have been the most important red flags which are relevant to the BC Respondents:

Circumstances Which Amounted to a Red Flag	**Date When These Circumstances would have been Apparent**
(a) The return offered by DFRF was unreasonably high. The BC Respondents participated in presentations which included reference to the 15% monthly compounding chart mentioned above. That chart describes the return expected on a $10,000 investment earning interest compounding at 15% per month. According to that chart, a $10,000 investment would increase by 530% to $53,502.50 in a year. It is not explicitly stated in the chart, but the math included in the chart indicates that in the second year the initial $10,000 invested would increase by a further 530% to $283,556 by the end of that year and by a further 530% to $1,502,871 at the end of year 3. That type of return is at least unreasonable and, more correctly, absurd on its face. Although Wei claimed that she always described the return was "up to 15%," there was at least one statement from her, and many from Filho and others, indicating that a 15% return should be expected.	January 1, 2015
(b) It is a fundamental tenent of investing that a relationship exists between expected risk and expected return. Put more directly, the less expected risk associated with holding an investment, the less one would expect in return for making such investment. On the other hand, the more expected risk associated with holding an investment, the more one would expect in return. That is why securities distributed by issuers having high credit ratings in stable industries invariably provide investors with lower rates of return. Liquid investments generally offer lower rates of return. Here, we have an otherwise unknown gold producer – an industry that would, in the normal course, attract a higher risk outlook from investors – promising investors a guarantee of their invested capital together with liquidity and exceptionally high possible returns available on a compounded basis. This is at the very least a red flag.	January 1, 2015

(c) The minimum investment was US$1,000 and, notwithstanding the scale of the purported enterprise, capital raising activity was targeted at small investors.	January 1, 2015
(d) The possibility that a legitimate business would be able to pay the size of return advertised is even more absurd given the business was paying a 10% bonus finder's fee for all investments made provided investments were made quickly	January 1, 2015
(e) The details related to DFRF shifted in material ways from presentation to presentation. For example Filho's statements were not consistent regarding whether DFRF paid 25% or 35% of its earnings to charity, or whether DFRF's gold mining revenue came from Mali or from other countries.	By May of 2015
(f) DFRF never provided information which would normally be provided for a business of its magnitude. DFRF described itself as a major company with revenues from mining operations, with massive philanthropic operations and immediate, then implemented plans to go public. It is contrary to regular business practices for legitimate enterprises of this magnitude to conceal information such as financial statements, the names and locations of its mines and the details of its philanthropy. Such information was never forthcoming from DFRF.	January 1, 2015, or at the latest whenever any of the BC Respondents conducted his or her own inquiries
(g) Investors could never access funds which were supposed to be immediately available. Several times during the first six months of 2015, in response to complaints by investors that they could not access funds as promised by DFRF, Filho would make a new statement setting out a new reason why investor access to funds was delayed due to events beyond the control of DFRF.	Throughout, and increasing month by month as the pattern continued
(h) The reason that investor funds were being solicited by DFRF was never explained in a coherent way. At times, Filho explained that DFRF had no need for funds, but DFRF was allowing select people to join what was essentially a club. This explanation is not consistent with the reality that DFRF membership was not restricted to some form of selection process other than a willingness to invest money. The explanation is also inconsistent with Filho's other explanation that investors' funds were sought because DFRF's own funds were held with DFRF's bonding company and new investments allowed those funds to be released.	January 1, 2015
(i) The information that DFRF's preferred shares were trading at higher and higher prices (but investors could still buy in at the lower price) coupled with the suggestion that DFRF could not reveal the trading symbol of these shares was non-sensical. It was never made clear in any evidence or submissions presented to this panel how a preferred share with a fixed return could reasonably be expected to increase in value from $15.06 at the time of	From late May of 2015

	investment to over $50 within a 30 day period following conversion.	
(j)	The information about the Earlier Florida Proceeding became known to at least Wei and Villarin.	February 12, 2015
(k)	The information about the Framingham lawsuit against DFRF and Filho which included allegations of a pyramid scheme became known to the BC Respondents, if not before at least by the time Filho released a video explaining the lawsuit in terms of people "not liking what DFRF was doing because it was making more millionaires in history than anyone else…"	March 5, 2015
(l)	This Commission issues an Investor Alert warning against investments in DFRF.	May 6, 2015

[169] The identification of red flags is useful but it is only a part of the necessary analysis. Ultimately, we must decide whether the BC Respondents knew or should have known that they were assisting Filho in fraudulent conduct. In some proceedings, the element of subjective knowledge might be admitted by some respondents. More commonly, the subjective knowledge of a respondent must be inferred, or not, based on all of the circumstances. Certainly findings about what a respondent should have known will often turn on the circumstances. A respondent's awareness of a red flag will be one of the circumstances to consider. But that circumstance must not be considered in a vacuum. Other factors will also be relevant, including the sophistication of the respondent, the attention that the respondent paid to the fundraising activities in question and any other information known to the respondent which would make any particular red flag, or combination of red flags, salient.

[170] We provide our analysis and conclusions below regarding what each individual BC Respondent knew or should have known, and when.

VIII. Analysis – Application of section 57(b) to Wei

A. Nature and degree of Wei's conduct

[171] As we have already noted, we conclude that investors entered into an investment contract which was a security under the Act.

[172] We conclude that the evidence establishes Wei participated in the conduct of Filho related to securities that perpetrated a fraud. Some of Wei's conduct which leads us to our conclusion is the following:

(a) Wei arranged to have the Jameson House office made available so that she and others could make presentations to prospective investors in DFRF. In addition Wei at least acquiesced in allowing a photograph of the relevant building used in DFRF marketing materials;

(b) Wei applied her organizational skills to DFRF's efforts to solicit investments in the Vancouver region. Her contributions included scheduling presentations made by herself and others to potential investors, arranging venues such as a ball room

at the Fairmont Pacific Rim, acting as a conduit for information between DFRF representatives and what became a British Columbia based team of recruiters for DFRF and helping to craft messages to British Columbia investors regarding DFRF;

(c) Wei made many presentations to existing and potential investors extolling the benefits of investing in DFRF;

(d) Wei allowed herself to be portrayed as a representative of DFRF, both in terms of the presentations she made to the public and in her management of the other BC Respondents. For example, Wei acted as a spokesperson for DFRF including during the meeting at the Fairmont Pacific Rim and in her videotaped interview with Filho on May 6, 2015. In addition, even considering only the emails signed by Wei, she was consistently giving direction to Villarin, Chan and others regarding what messages to convey to investors regarding investments and regarding disturbing circumstances such as the issuance of the Commission's Investor Alert.

[173] Wei placed her personal credibility behind DFRF. For example, when she spoke at the Fairmont Pacific Rim presentation in May 2015, she began speaking by mentioning several reasons why she had particular experience and knowledge that was relevant to investors considering an investment in DFRF. Earlier in 2015, Wei had confirmed that both she and Law would be attending and speaking at a prospective investor dinner and expressly clarified by email how she and Law should be identified. We conclude that this was done to reinforce their professional stature and experience when introduced to potential investors. This evidence suggests, and we find, based on such evidence, that Wei intended that such references have the effect of enhancing their respective credibility and expertise and improving the likelihood that potential investors could rely on their views and representations when considering the material delivered in the DFRF investment presentations.

[174] In reaching our conclusion that Wei participated in the fraud perpetrated by Filho we do not find it necessary to resolve the issue of whether Wei authored and sent every email sent from the DFRF Canada Enterprises email address. There are sufficient emails which, as confirmed by Wei's testimony or signature, did come from her, as well as other evidence of involvement, that proved her willing participation as outlined above.

[175] Wei's participation in Filho's fraud consisted of a combination of direct sales presentations to existing and potential investors and the described organizational and managerial functions.

[176] In reaching our conclusion that Wei participated in the fraud perpetrated by Filho, we do not find it necessary to make findings on her connection to the individual investors, nor when or if she made a presentation to any specific investor. The promotion of DFRF in British Columbia was carried out through mass distributions of promotional materials (on the internet, by email and in person presentations) and by word of mouth, designed to

reach an audience of potential investors beyond those who attended any given presentation or received any specific email. The process was organized and given overall direction. Wei (and Law and Villarin) played a key role from the beginning in building the success of the promotion in British Columbia. Wei (and Law) added credibility to the DFRF scheme, Wei gave direction on organizing investors' presentations, and direction to DFRF recruiters on how to address challenging news.

[177] Filho created and orchestrated the fraud. The level of culpability of Wei for the fraud is lower than Filho's culpability. However, Wei participated in Filho's fraud in the various ways that we have identified. Her participation facilitated the fraud in a material way.

[178] We should express our conclusions regarding Wei's argument that she was only working on the Pony Mountain project and she was not participating in Filho's efforts to obtain funds from investors. Wei led significant evidence to establish that Pony Mountain was a real, operating mine and Wei strongly contradicted evidence led by the executive director suggesting that Pony Mountain was a dormant business with no real prospects. We conclude that neither the executive director nor Wei fully established what each asserted.

[179] We do not find on a balance of probabilities that Pony Mountain existed only in name. It may well be that the owners of Pony Mountain believed they had a real business and they had contracted with Wei to obtain financing for the business.

[180] At the same time, we reject Wei's suggestion that the existence of an intention to bring Pony Mountain into full production establishes that she was not participating in Filho's fraudulent scheme. The fact that Pony Mountain may have been Wei's prime motivation for promoting DFRF is not relevant. As we have described above, Wei took many steps to advance the efforts of DFRF to raise funds from residents of British Columbia. That reality existed even if Wei was motivated to do so in part for the benefit of Pony Mountain.

[181] We refer back to Wei's own words in her January 16. 2015 email, quoted more completely above:

> Both James and myself are dedicated to work with you building the DFRF membership worldwide!

[182] Those were the words which Wei used at the time and, based on all of the other evidence we heard, we conclude that Wei meant those words at the time and acted on them. The evidence supports a conclusion and we find that Wei was a leader of the mass solicitation effort of DFRF in British Columbia starting by January 1, 2015.

B. Wei's Knowledge, Conclusions about Liability

[183] Wei denies that she knew about Filho's fraud and she denies that she should have known Filho and DFRF were acting fraudulently. Any finding otherwise will have to be based on conclusions that Wei should have known or that Wei knew but is not admitting what

she knew. Objective factors must be considered, including for the purpose of reaching a conclusion about what Wei subjectively knew.

[184] Wei is an intelligent woman. She represented to investors that she had experience in the financial services field and in mining development. It would be expected that she would be less naïve than most others. We find that her ongoing presence and stature within DFRF influenced the perceptions of both DFRF investors and prospective investors whether or not she introduced them directly to DFRF. Wei chose to present the DFRF investment proposition while using the possessive pronoun "our" when speaking of DFRF's gold operations. Those hearing such statements from her would reasonably form the impression that she was a qualified spokesperson for and on behalf of DFRF.

[185] Wei was exposed to all of the red flags which warned of concerns about the legitimacy of the DFRF scheme. The unreasonable characteristics of the investment, the absurd statements relating to DFRF going public, the concerns about Filho being involved in a prior pyramid scheme, the concerns about the Framingham litigation, the Commission's Investor Alert and all other concerns were brought directly to Wei's attention.

[186] Wei points to the due diligence steps which she undertook in an effort to show that it was reasonable for her to believe the claims which DFRF was making. With respect, most of the steps Wei points to consisted of asking insiders of DFRF to confirm DFRF's good intentions, even after she learned of the news articles and class action lawsuits in February-March 2015. Wei's other steps, such as confirming that certain DFRF related parties who were providing her with information were members of the bar in good standing, are useful steps but far from adequate in light of the overwhelming circumstances which were announcing to Wei that DFRF was fraudulent.

[187] The inadequacy of Wei's inquiries is especially evident when one considers Wei's training and professional experience as an accountant. Wei would have known that an operating business would have financial statements and a business going public would necessarily have audited financial statements. Wei did not ask for such financial statements from DFRF, or at least she did not indicate to us that she made such a request. Wei overlooked a fast and easy way to confirm or disprove the claims Filho was making. Wei had previously worked as an articled student auditor with a major accounting firm. Auditors are professionally trained to detect fraud. As was quite evident in the evidence adduced in this case, Wei strategically referred to her training as an accountant when presenting in front of potential DFRF investors and when such reference worked to her advantage. It is reasonable to infer that she did so to build credibility with audiences and investors notwithstanding that she was uniquely positioned, because of such training, to detect and ultimately recognize fraud in these circumstances when and as the indicia of such fraud emerged. As a case in point, we need only examine the role Wei played as host of the meeting delivered via video from Florida in which Filho provides details of the purported public listing of DFRF "shares." The video shows Wei praising Filho effusively while setting the stage, topic by topic, for Filho to run through his talking points. There was nothing in the video, and no evidence was led by Wei, that suggests she in any way challenged or questioned the underlying nonsensical premise of the

apparent good news surrounding the public listing. Rather, she chose to further enable Filho's deceitful acts by enthusiastically promoting it.

[188] These circumstances prove to a degree which exceeds the balance of probabilities standard that Wei should have known that Filho and his accomplices were perpetrating a fraud. Although the number and significance of the red flags increased over time, we find that Wei should have known, as soon as she had time to consider the initial information presented to her, that Filho was perpetrating a fraud. We conclude that by January 1, 2015, Wei reasonably should have known that Filho was perpetrating a fraud.

[189] We turn to the question as to whether Wei had actual knowledge that Filho was perpetrating a fraud.

[190] All of the evidence which supports our conclusion that Wei should have known Filho was perpetrating a fraud also provides support for an inference that she actually knew a fraud was being perpetrated by Filho. We choose not to repeat all of the evidence set out above, but we are keeping it in mind as we consider the question of whether the evidence proves Wei actually knew that Filho was perpetrating a fraud.

[191] The evidence which causes us the greatest concern about Wei's degree of subjective knowledge is found in her response to the information which Wei received in February and March of 2015, which suggested both that Filho had previously participated in a Ponzi scheme involving gold and that accusations were currently being made that DFRF was an illegal pyramid scheme. It is important to look at the detail of the information then made available to Wei, and to Wei's reaction to the information.

[192] The newspaper article describing the Earlier Florida Proceeding was sent to a group, including Wei, by email on February 12, 2015. The article is scathing and, although elements of the article refer collectively to Ponzi schemes in Florida at the time, some references are quite specific to Filho. The article states that US officials were investigating Filho and an associate in Florida for a Ponzi scheme and had seized significant assets.

[193] Recipients of the email and the newspaper article would be expected to be quite alarmed. A reasonable reaction from anyone promoting DFRF would be to consider whether they should do more vigorous due diligence, stop promoting investment in DFRF and share the article with existing and potential investors. Wei's responding email read "hi all, will discuss with you in person." Wei's response is revealing of both the leadership role Wei had assumed with this group and Wei's intention to tell the group how they should respond to the alarming news they had just received. We have no evidence of what she said to the group but the outcome was that the Earlier Florida Proceeding was not brought to the attention of existing and potential investors. Wei's explanation for her conduct, as explained during her cross examination was, to summarize, that Filho was not criminally charged, the implication being that this information was not at a level which should lead her to stop the promotion of DFRF nor bring that information to the attention of the investors to whom Wei was promoting DFRF. Wei's explanation is not believable – it is

not what a reasonable person would do, let alone someone with her training and experience. It is also not consistent with Wei's portrayal of herself as a prudent business person who had carefully conducted due diligence about DFRF and concluded it was a real business.

[194] The significance of the Earlier Florida Proceeding must have been even more apparent to Wei when word reached her of the Framingham law suit alleging that DFRF was an illegal pyramid scheme. The Framingham law suit was explained by Filho in a video which was not convincing. In his video, Filho criticizes the claimants in the Framingham law suit as people he did not know and he speaks angrily about people not wanting DFRF to succeed. Filho went on to speak about DFRF's massive size and its significant charitable activities. The presentation was incoherent and vague - a conclusion which would be shared by anyone with any modest level of sophistication. Wei had a reasonably advanced level of professional experience and sophistication. Wei explained away the Framingham law suit on the basis that it was discontinued and Filho's lawyer said there was no evidence to support the claim. Wei's explanation is not believable. If Wei had truly wanted to be satisfied that the plaintiffs in that law suit had no evidence, she could have contacted the plaintiffs' lawyers, not just Filho's lawyers. Further, and more importantly, the allegations of dishonesty in the Framingham law suit echoed the concerns which Wei and all of the BC Respondents argue they conducted due diligence about. Simply asking questions of Filho's lawyer is a woefully inadequate and odd reaction for someone with Wei's background and sophistication.

[195] When the factors which led us to find that Wei should have known the DFRF promotion was a device being used by Filho to perpetrate a fraud are coupled with the information delivered to Wei about the Earlier Florida Proceeding and the Framingham litigation, Filho's response to that Framingham litigation, and her responses to these developments, it is appropriate to draw the inference that Wei, with her level of professional experience and sophistication, knew that DFRF was a fraud at that point and chose to continue with promoting DFRF. By March 19, 2015, when DFRF announced it was going public, Wei had been aware of the Framingham law suit and the Earlier Florida Proceeding for several weeks and had time to reflect on each. But Wei continued her support of DFRF. We find that from March 19, 2015, Wei's acts of participation in the fraudulent conduct perpetrated by Filho was accompanied by actual knowledge of the underlying fraud.

[196] Wei's activities were a significant part of the foundation upon which all investments in DFRF from British Columbia were based. We find that Wei breached section 57(b) of the Act through her significant participation in the fraud perpetrated by Filho.

[197] For the purposes of sanction, if the parties consider it relevant to provide submissions regarding which specific investors' investment decisions were directly or indirectly influenced by Wei's conduct, we invite them to do so.

IX. Analysis – Application of section 57(b) to Law

A. Nature and degree of Law's conduct

[198] It is clear that the extent of Law's activities related to DFRF was more limited than Wei's.

[199] The only video evidence we have showing Law as a speaker at investor events is from the Fairmont Pacific Rim Hotel presentation. The words Law used during that presentation are presented in reasonable detail above. Law argues that his words were presented out of context and that part of the presentation was left out. However, Law's bare assertion regarding that point is not convincing. We do not have any evidence or argument of what part of the presentation was left out or how such further content would have significantly modified the impressions created by the part of Law's presentation which we saw. On the contrary, some investor witnesses described Law's presentations at other events in a way that was consistent with what we saw in the video.

[200] What we know of the context is that the event was promoted to investors and potential investors in DFRF. It is reasonable to infer that the attendees would have been considering whether to make an initial investment, whether to add to an existing investment, whether to take monthly returns of up to 15% and withdraw those returns or let them compound, and whether to ask for a return of invested capital. In addition, each investor and each prospective investor would have been considering the implicit question related to DFRF at all times, namely "is this for real, or is it too good to be true that one company makes so much money from gold mines in Mali and is willing to let us invest on these terms?" In that context, Law presented himself as a knowledgeable insider of DFRF and contributed his personal credibility to the DFRF opportunity.

[201] Law's presentation followed a speech by Wei which can only be described as a calculated effort to add credibility to DFRF and to present Law as an authority on gold mining in Mali based on his personal experience. Specifically, we find that Law represented, when called upon to do so, that he held substantive knowledge and experience with respect to gold extraction and mining operations in Africa. We also find that he chose to leverage such represented position with intent to influence the views of current and prospective investors in British Columbia on the prospects and ongoing credibility of the DFRF investment.

[202] Law's presentation was followed by a presentation by Filho during which he presented many false claims designed to encourage further investment.

[203] Having viewed Law's presentation carefully, we conclude that it was an important element in DFRF's efforts at the time to maximize investment contributions from British Columbia residents. In doing so, Law contributed to the fraud that Filho was perpetrating.

[204] We note that the Fairmont Pacific Rim presentation was not the first time that Law used his apparent familiarity with gold to suggest that the DFRF claims were credible. As is described above, at the time the generic DFRF presentation slides were updated to include a Canadian connection, a photo was added showing Law crouching beside an

impressive volume of gold. By participating in the DFRF promotion in that manner, Law further participated in the fraud being perpetrated by Filho in British Columbia.

[205] We find that Law also contributed to the fraud which Filho was perpetrating by attending some of the presentations given by Wei and others as described by several of the investor witnesses as summarized above. We find that Law made a presentation at more than one investor presentation, as implied by the schedules we have seen showing Law being assigned to presentation sessions and as described by Investor M in her evidence. We recognize that Investor M's evidence was challenged and that some aspects of what Investor M described, such as the dates of meetings, was uncertain. Law similarly challenged Investor T's testimony on whether Law had presented at a certain meeting with investors. However, it was made abundantly clear before this panel that, notwithstanding any challenges any particular witness may have had recalling specific dates and meetings, the details of and intended conclusions to be drawn from Law's presentations were remembered clearly and consistently by investor witnesses and, because of this, the sustained impact of his role cannot be understated. Investor M and others recalled with clarity Law telling them his mango gummy anecdote at an individual presentation. We accept that evidence as convincing. The panel saw and heard the same anecdote in the video of the Fairmont presentation.

B. Law's Knowledge, Conclusions about Liability

[206] Law did not have Wei's professional background as an accountant. There is no evidence that Law had a level of financial knowledge which approached the level Wei had.

[207] Law suggested in his written submissions that he had "drilled Valdez" about DFRF, but Law did not enter any evidence on such efforts. Even if he had, his efforts focused on asking questions of DFRF representatives and were inadequate in light of the red flags about DFRF and the DFRF investment scheme.

[208] Law demonstrated himself to be an intelligent, alert individual. He was present alongside Wei at key events. He was copied on many key emails. He was involved, although not extensively, in facilitating payments of funds by some investors. He represented that he had specific knowledge about mining and about gold in Africa. Law had the level of sophistication needed to understand the red flags which surrounded DFRF, including those red flags which were inherent in the structure of DFRF and in the returns offered. Despite the presence of such red flags at the outset, and the emergence of further red flags over time, Law chose to remain associated with DFRF long after the cumulative tally of red flags would have been impossible to ignore for a person with his purported experience.

[209] We conclude that Law reasonably should have known that Filho was perpetrating a fraud on investors in DFRF. His level of involvement and knowledge throughout and his sophistication made the red flags so prominent that he should not have missed them. Similar to Wei, Law should reasonably have known of the fraud by January 1, 2015.

[210] On the question of whether Law had actual knowledge of Filho's fraud, there was an accumulation of red flags which was present in this case and, as time passed, these red flags would have made it more and more clear to Law that Filho was perpetrating a fraud. However, it appears from the evidence that Law did not receive all of the information that Wei and Villarin received. Although Law and Wei were in constant contact and appeared together at DFRF events, and Wei or other DFRF organizers may have told him about the Earlier Florida Proceeding and Framingham lawsuit, there is insufficient evidence before us to conclude that Law was indeed aware of them at the relevant time. We have concluded that knowledge of the Framingham lawsuit and the Earlier Florida Proceeding, coupled with the various red flags in the DFRF promotion apparent by March 19, 2015, would have led Wei to realize that Filho was perpetrating a fraud through DFRF. Since there is insufficient evidence that Law was aware of the Earlier Florida Proceeding and Framingham lawsuit at the relevant time, we are unable to find that Law had actual knowledge of Filho's fraud.

[211] Like Wei, we find that Law's activities were a significant part of the foundation upon which all investments in DFRF from British Columbia were based. We find that Law breached section 57(b) of the Act by participating in the fraud perpetrated by Filho.

[212] As was the case with Wei, if the parties consider it relevant in the sanctions hearing to make further submissions regarding which specific investors' investment decisions were directly or indirectly influenced by Law's conduct, we invite them to do so.

X. Analysis – Application of section 57(b) to Villarin

A. Nature and degree of Villarin's conduct

[213] Villarin's alleged participation in conduct which perpetrated a fraud can be divided into two distinct categories. The first category is that of general support to the promotional efforts of others. The second category is direct promotion to specific investors.

[214] In terms of the first category, an example can be found in how Villarin supported the Fairmont Presentation. Both Wei and Law spoke in person at the Fairmont Presentation and Filho spoke by video link. Villarin was busy in the background operating the electronic equipment. If Villarin's conduct had been limited to performing such mechanical, support functions our conclusions regarding the allegations against Villarin might be different. However, Villarin also played a very significant role in communicating with investors and in making statements to investors, both in the form of passing on statements of others and making his own statements, and that conduct represented a material level of participation in the fraud perpetrated by Filho.

[215] Villarin's passing on of communications authored by others took many forms. Villarin had mailing lists to whom he passed on promotional brochures, emails from DFRF and Wei and others and links to videos of presentations by Filho and others. Villarin's more specific communications took the form of convincing investors to invest, a step which Villarin took with some success, and requesting payment of what was effectively a commission for doing so.

[216] Some of the most significant conduct of Villarin related to his efforts to reduce suspicion among investors and potential investors. A notable example was Villarin's email to a distribution list of investors and potential investors regarding the Commission's Investor Alert. Villarin suggested that the alert could be disregarded because the Commission acknowledged that it received a tip from an unreliable source. That statement was false. Villarin supplemented his statement by circulating promotional articles about Filho which Villarin suggested were more reliable than the Investor Alert.

[217] The conduct of Villarin is sufficient in scope and sufficiently connected to the fraud to conclude that Villarin participated in the fraud perpetrated by Filho.

B. Villarin's Knowledge, Conclusions about Liability

[218] As is noted above, Villarin admitted in his interview with Commission investigators that when he heard about DFRF from Chan he "just thought it was a scam." Villarin says that he asked some questions of friends who indicated that DFRF was a real company and so he gave Chan "the benefit of the doubt."

[219] In contrast to what we observed in the evidence and in the hearing from Wei and from Law, Villarin's various statements presented to us do not, in and of themselves, demonstrate a high degree of sophistication regarding finance and investments. Despite this, this panel notes that Villarin had previously been registered to sell insurance products and mutual funds. In order to satisfy the minimum competency standard for such registration, Villarin would necessarily have been educated about the relationship between risk and return as well as the gatekeeper role that anyone recommending investments to the public should play. Villarin would have been trained to be skeptical of investments, to enquire about the essential features and risks associated with a particular investment product, such as DFRF, and, in so doing, to look out for the best interests of his clients. By his own admission, we know that his senses and instincts were alive to these issues early on yet he chose to ignore both his concerns and the concerns raised by others.

[220] Villarin made limited inquiries to address some of his own concerns, but, unfortunately, elected to direct those other inquiries to representatives of DFRF. His efforts were inadequate in light of the red flags that existed.

[221] We conclude that the same analysis which applies to Wei and to Law regarding why they should reasonably have known Filho was perpetrating a fraud applies equally to Villarin. All of the red flags would have been apparent to Villarin from the first moment he was told all of the features of DFRF and had an opportunity to consider those features. As a result, and considering the training that was required for someone to become registered to sell insurance products and mutual funds, we conclude that by January 1, 2015, Villarin reasonably should have known that Filho was perpetrating a fraud.

[222] Villarin had a very high level of knowledge of all events related to DFRF. The evidentiary record confirms that almost all material information which reached British Columbia investors from DFRF or Wei was copied to Villarin. As noted, the evidentiary

record is littered with examples of Villarin passing on to investors links to presentations by Filho, updates regarding plans of DFRF to go public and other DFRF updates. The evidentiary record is littered with emails to and from Villarin showing him receiving the same information as others in the leadership group promoting investment in DFRF. The transcript of Villarin's interview by Commission investigators shows that Villarin had a high level of knowledge about events related to DFRF as those events unfolded. Villarin was aware of the Earlier Florida Proceeding and the Framingham law suit. As is the case with Wei, we conclude that knowledge of the Framingham lawsuit and the Earlier Florida Proceeding, coupled with the various red flags in the DFRF promotion apparent by March 19, 2015, would have led Villarin to conclude that Filho was perpetrating a fraud through DFRF. We find that Villarin had actual knowledge that Filho was perpetrating a fraud by March 19, 2015.

[223] We have considered Villarin's argument that many of "his" investors in DFRF were close friends and relatives. Villarin submits that he would not cause harm to those he cares about, and this supports his position that although he might have been naïve, he did not realize there was a fraud occurring. We do not find his explanation persuasive in light of the overwhelming red flags that were apparent by March 19, 2015, and Villarin's experience and training as a registrant selling insurance products and mutual funds.

[224] To summarize our conclusions with respect to Villarin, although in many respects the form of his participation in the fraud perpetrated by Filho was distinct from that of Wei and Law, he played an important role from the beginning in building the success of the DFRF promotions in British Columbia. We find that Villarin also breached section 57(b) of the Act by participating in the fraud perpetrated by Filho. Villarin participated in that fraud from January 1, 2015, when he should have known that Filho was perpetrating the fraud. Villarin also participated in the fraud from March 19, 2015, when he had actual knowledge that Filho was perpetrating the fraud.

[225] Again, if the parties in the sanctions hearing consider it relevant to make submissions regarding which specific investors' investment decisions were directly or indirectly influenced by Villarin's conduct, we invite them to make them.

XI. Analysis – Alternative allegation of misrepresentation

[226] The misrepresentation allegations are alternative allegations. Given our conclusions on the primary allegations we will not address the alternative allegations.

XII. Analysis – Second fraud allegation against Ms. Wei

[227] We have, above, summarized Wei's submissions relating to this allegation. We agree with her that this allegation has not been proven.

[228] According to the evidence, including both documentary evidence and the oral evidence of Wei, Filho and DFRF authorized Wei to redirect the investor funds as she did. The executive director argues that we should disbelieve that evidence because Wei is not credible. We are not prepared to do so. In addition to documentary evidence from Wei to support her testimony, the executive director's own witness, the staff investigator,

confirmed that the investors in question did receive the DFRF membership interests to be purchased with the "diverted" funds. Since the investors received exactly what they expected to get with those funds, and there is documentary evidence to support Wei's testimony that the fund transfers were authorized, we accept Wei's testimony on this matter.

XIII. Conclusions, schedule for sanctions arguments

[229] We have concluded that each of Wei, Law and Villarin breached section 57(b) of the Act.

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

By October 25, 2022	The executive director delivers submissions to the respondents and to the Commission Hearing Office.
By November 15, 2022	The respondents deliver response submissions to the executive director, the other respondents and the Commission Hearing Office. Any party seeking an oral hearing on the issue of sanctions so advises the Commission Hearing Office. The hearing officer will contact the parties to schedule the hearing as soon as practicable after the executive director delivers reply submissions (if any).
By November 22, 2022	The executive director delivers reply submissions (if any) to the respondents and to the Commission Hearing Office.

October 4, 2022

For the Commission

Gordon Johnson
Vice Chair

James Kershaw
Commissioner

Audrey T. Ho
Commissioner