Ontario Securities Commission | Commission des valeurs mobilières de l'Ontario | P.O. Box 55, 19th Floor 20 Queen Street West Toronto ON M5H 3S8 | CP 55, 19e étage 20, rue queen ouest Toronto ON M5H 3S8

IN THE MATTER OF THE *SECURITIES ACT*,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
PETER SABOURIN, W. JEFFREY HAVER, GREG IRWIN,
PATRICK KEAVENEY, SHANE SMITH, ANDREW LLOYD, SANDRA DELAHAYE,
SABOURIN AND SUN INC., SABOURIN AND SUN (BVI) INC.,
SABOURIN AND SUN GROUP OF COMPANIES INC.,
CAMDETON TRADING LTD. AND CAMDETON TRADING S.A.

REASONS AND DECISION

Hearing: April 7, 8, 9, 10, 11, 14, 16, 17, 18, 21, 22, 23 and 25, 2008

Decision: March 20, 2009

Panel:

James E. A. Turner	- Vice-Chair and Chair of the Panel
David L. Knight, FCA	- Commissioner
Carol S. Perry	- Commissioner

Appearances:

Yvonne Chisholm Cullen Price	- For the Ontario Securities Commission
James Camp	- For W. Jeffrey Haver (April 7, 2008 only)
Alistair Crawley	- For Shane Smith, Andrew Lloyd and Sandra Delahaye
William Thompson	- For Greg Irwin (April 7, 10, 21, 22, 2008 only)
Patrick Keaveney	- For himself

No one appeared for Peter Sabourin, Camdeton Trading Ltd., Sabourin and Sun Inc., Sabourin and Sun (BVI) Inc. or Sabourin and Sun Group of Companies.

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REASONS AND DECISION

I. INTRODUCTION

A. Background

[1] This was a hearing before the Ontario Securities Commission (the "Commission") pursuant to section 127 of the Securities Act, R.S.O. 1990, c. S.5, as amended (the "Act"), to consider whether Peter Sabourin ("Sabourin"), W. Jeffrey Haver ("Haver"), Greg Irwin ("Irwin"), Patrick Keaveney ("Keaveney"), Shane Smith ("Smith"), Andrew Lloyd ("Lloyd"), and Sandra Delahaye ("Delahaye"), together with Sabourin and Sun Inc., Sabourin and Sun (BVI) Inc., Sabourin and Sun Group of Companies Inc., Camdeton Trading Ltd. and Camdeton Trading S.A. (collectively, the "Corporate Respondents"), breached sections 25 and 53 of the Act and acted contrary to the public interest. Sabourin, Haver, Irwin, Keaveney, Smith, Lloyd, Delahaye and the Corporate Respondents are referred to collectively as the "Respondents".

[2] This proceeding was commenced by a Statement of Allegations and Notice of Hearing dated December 7, 2006.

[3] This case involves allegations by Staff of the Commission ("Staff") that the offer and sale of investment schemes by the Respondents, between August 2001 and December 2006 (the "Relevant Period"), constituted trades in securities without registration, and distributions of securities without the filing of a prospectus, in contravention of sections 25 and 53 of the Act, and constituted trading that was contrary to the public interest.

[4] For the following reasons, we conclude that Sabourin and the Corporate Respondents, and Irwin, Haver, Smith, Lloyd and Delahaye breached sections 25 and 53 of the Act and acted contrary to the public interest, but we find there is insufficient evidence to conclude that Keaveney did so.

B. The Respondents

[5] None of the Corporate Respondents is a reporting issuer or registrant in Ontario.

[6] Sabourin and Sun Inc. was incorporated in Ontario in September 2004 as a numbered company, 2053978 Ontario Inc., and changed its name to Sabourin and Sun Inc. in December 2004.

[7] Sabourin and Sun Canada Inc. is not a respondent in this matter, but is connected to the trading activity at issue. It was federally incorporated in December 1998 and was dissolved in November 2005.

[8] Sabourin and Sun (BVI) Inc. and Sabourin and Sun Group of Companies Inc. were incorporated in the British Virgin Islands in November 1997. Sabourin and Sun Group of Companies Inc. was incorporated as Chain Mail Investments Ltd. and changed its name to the current name in January 2000. Sabourin and Sun (BVI) Inc. is the sole director of Sabourin and Sun Group of Companies Inc.

[9] The Sabourin and Sun corporate entities referred to in paras. 6, 7 and 8 were all involved in or connected to the investment schemes at issue in this proceeding, and will be collectively referred to as "Sabourin and Sun", except where otherwise indicated.

[10] Camdeton Trading Ltd. was incorporated in Ontario in January 2005. Camdeton Trading S.A. purports to have an office in Brussels, Belgium but there is some indication that the company was never incorporated. There appears to be no clear distinction between the two companies. Together, they will be referred to as "Camdeton", except where otherwise indicated.

[11] Sabourin was a director of Sabourin and Sun (BVI) Inc. but is not otherwise a director or officer of the Corporate Respondents. He has never been registered with the Commission in any capacity.

[12] Irwin and Keaveney were employed by Sabourin throughout the Relevant Period and worked directly for Sabourin out of the Sabourin and Sun office in Toronto. Keaveney was a director of Sabourin and Sun (BVI) Inc. and the sole director of Sabourin and Sun Inc. and Camdeton Trading Ltd. Irwin and Keaveney were directors of Sabourin and Sun Canada Inc. Neither Irwin nor Keaveney has ever been registered in any capacity with the Commission.

[13] Haver had a contractual arrangement with Sabourin and Sun from 2003 onwards to refer clients to Sabourin and Sun and Camdeton. He was registered with the Commission at various times between April 2000 and June 2004 as a salesperson of a mutual fund dealer and a limited market dealer. He is not currently a registrant.

[14] The other three individual respondents, Smith, Lloyd and Delahaye, had contractual arrangements with Haver to refer clients to Sabourin and Sun and Camdeton.

[15] Smith held various registrations with the Commission between May 1994 and November 2004 as a salesperson of a mutual fund dealer and a limited market dealer, but he is not now a registrant. He was a founder of Synergy Group (2000) Inc. ("Synergy"), a company offering alternative tax investment structures. Synergy is not a respondent in this matter but is referred to in these reasons because of its activities in offering investments which appear to include investments offered by Sabourin and Sun and Camdeton. Smith, Lloyd and Delahaye were all involved in offering Synergy investments.

[16] Lloyd held various registrations with the Commission between January 1997 and July 2005 as a salesperson of a mutual fund dealer and a limited market dealer. He is not currently a registrant.

[17] Delahaye held various registrations with the Commission between March 1994 and April 2005 as a salesperson of a broker and investment dealer. She is not currently a registrant.

C. The Allegations

[18] Staff alleged that beginning in August 2001, the Respondents have offered and sold the following investment schemes (which will be referred to as the "investments" or "investment schemes" in these reasons):

1. The Sabourin companies, including Sabourin and Sun Canada Inc. and Camdeton, were purportedly used to create investments which were sold to investors as off-shore investment vehicles. The investments were allegedly a form of prime bank investment scheme, and were variously described as a "Letter of Credit Rental Program", a "Currency Exchange Program" or a "Currency Trading Contract Program".

2. The investments shared several characteristics. Through promotional materials, representations and agreements and other documents signed by and presented to them, investors were promised that:

   (a) they would earn a return ranging from 15% to 22% per annum on the amount invested;
   (b) the investment would be "locked in" and could not be withdrawn for a fixed period; and
   (c) the principal and return on investment were "guaranteed".

3. Investors' funds were purportedly used or secured in some way by international banks. In respect of the investments, investors established and became the "agent" of their off-shore trust, typically in the British Virgin Islands.

[19] Staff alleged the following contraventions of the Act:

1. The activities of the Respondents constituted trading in securities without registration in respect of which no exemption was available, contrary to section 25 of the Act.

2. The activities of the Respondents constituted distributing securities for which no preliminary prospectus or prospectus was filed or receipted by the Director, contrary to section 53 of the Act.

3. The Respondents' conduct was contrary to the public interest and harmful to the integrity of Ontario capital markets.

II. THE ISSUES

[20] Sabourin did not appear at the hearing and did not communicate any position to the Commission in respect of the allegations against him.

[21] Keaveney attended the hearing but did not testify and made no submissions.

[22] At the commencement of the hearing, Haver, through counsel, moved for an immediate sanctions hearing in respect of the allegations against him, all of which he admitted, except for the allegation that the investments were a form of "prime bank investment scheme". Haver stated that he does not know what a prime bank investment scheme is and takes no position with respect to that allegation. He further submitted that Staff has not alleged conspiracy, collusion, cooperation "or even an agreement" amongst the Respondents. His counsel described him as "an unwitting tool" in the scheme. Haver, who stated that he is insolvent, retained counsel for the purpose of making an opening statement but not otherwise to represent him. Haver indicated that he is mainly concerned with avoiding a costs order against him.

[23] In response to Haver's motion, Staff submitted that while it stands by its allegations as stated in the Statement of Allegations, it has, quite properly, not pleaded evidence. Further, Staff submitted that it would not be appropriate to ask the Panel to "craft sanctions in an evidentiary vacuum" and that it is not possible to address the conduct of Haver without also considering his involvement with the other Respondents in this matter, particularly Smith, Lloyd and Delahaye.

[24] We denied Haver's motion to move to an immediate sanctions hearing. We ruled that Staff is entitled to adduce evidence with respect to the circumstances underlying its allegations and that such evidence should be considered in any sanctions hearing. Any costs award should also be decided at that time based on all of the relevant circumstances.

[25] In an opening statement, Irwin, through counsel, stated that he disputed Staff's allegations about the extent to which he benefitted from the investment schemes. In his testimony and his written closing submissions, he claimed that he believed and trusted Sabourin and had no reason to doubt what Sabourin told him. He said that he acted only on Sabourin's instructions and had only a limited role in the investment schemes as the person who assisted investors and salespersons in communicating with Sabourin. He claimed he had no control over the investments and had no decision-making role.

[26] Smith, Lloyd and Delahaye, through counsel, conceded that registration was required, but submitted that they had a reasonable belief that the structure of the investments did not give rise to a requirement for registration under the Act. Further, they submitted that they believed they were offering legitimate investment products, that their role was only to solicit clients and refer them to Sabourin and Sun and Camdeton, and that they did not know how the monies invested

were actually applied. They submitted that they should not be found culpable with respect to engaging in any prime bank investment scheme because they were not aware of any such improper scheme, based on their belief that the investments being offered were legitimate. They also stated that they did not know Sabourin and Sun and Camdeton were experiencing financial difficulties.

[27] Much of the evidence we heard over the 13 days of the hearing concerned the nature and operation of the investment schemes, including the roles of the various Respondents and the application of the funds raised from investors. Staff does not allege fraud but asks us to find that the investments were a form of prime bank investment scheme.

III. LEGAL ANALYSIS

A. Overall Objectives of the Act

[28] Section 1.1 of the Act sets out the two fundamental purposes of the Act: (1) to provide protection to investors from unfair, improper or fraudulent practices; and (2) to foster fair and efficient capital markets and confidence in capital markets.

[29] These purposes inform the exercise of the Commission's public interest jurisdiction under section 127 of the Act. The Commission's public interest jurisdiction is "neither remedial nor punitive; it is protective and preventative, intended to be exercised to prevent likely future harm to Ontario's capital markets (*Committee for the Equal Treatment of Asbestos Minority Shareholders v. The Queen in right of Quebec et al.*, [2001] 2 S.C.R. 132, 2001 SCC 37 at para. 42).

B. "Investment Contract"

[30] Staff alleges that the investments sold to the investors were "investment contracts" and therefore "securities" as defined in clause (n) of subsection 1(1) of the Act. That clause states:

> a "security" includes, . . . any investment contract, . . . whether any of the foregoing relate to an issuer or proposed issuer.

[31] The term "investment contract" is not defined in the Act.

[32] Smith, Lloyd and Delahaye conceded through counsel that the investments offered and sold by Sabourin and Sun and Camdeton were "investment contracts," but submitted that a person not expert in securities law might reasonably believe they were not, given the structure of the investment schemes, which included creating off-shore trusts. Smith, Lloyd and Delahaye say that they believed they were offering an interest in an off-shore trust, which is different from offering a security.

[33] None of the other Respondents took a position on this issue.

[34] We find that the investments being offered and sold by Sabourin and Sun and Camdeton were "investment contracts" and thus "securities" subject to regulation under the Act. We heard no submissions to the contrary, and there is, in our view, no doubt as to this conclusion.

[35] The leading Canadian case addressing the concept of an "investment contract" is *Pacific Coast Coin Exchange of Canada v. Ontario Securities Commission* (1977), 80 D.L.R. (3d) 529 (S.C.C.) [*Pacific Coast Coin*]. In that case, at pp. 539-41, the Supreme Court of Canada held that an "investment contract" involves:

> (i) the advancement of money by an investor;
>
> (ii) with an intention or expectation of profit;
>
> (iii) in a common enterprise, in which the fortunes of the investor are interwoven with and dependent upon the efforts and success of those who solicit the capital (the promoters) or third parties;
>
> (iv) where the efforts made by those other than the investor are the undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise.

[36] The Court confirmed that form should be disregarded for substance, and stated that "such remedial legislation must be construed broadly, and it must be read in the context of the economic realities to which it is addressed." (*Pacific Coast Coin, supra* at 538.)

[37] In considering the economic realities, the Court emphasized the investor's dependence for the success of the enterprise on the efforts of the promoters or third parties (*Pacific Coast Coin, supra* at 540).

[38] Finally, the Court held that the term "investment contract" should be given a flexible interpretation that is broad enough to include "the countless and variable schemes devised by those who seek the use of the money of others on the promise of profits." (*Pacific Coast Coin, supra* at 539, citing *Securities Exchange Commission v. W.J. Howey Co. et al.* (1946), 328 U.S. 293 at 299 [*Howey*].)

[39] The Commission has adopted the *Pacific Coast Coin* test for determining an "investment contract" in a number of cases. (See e.g. *St. John (Re)* (1998), 21 O.S.C.B. 3851; *First Federal Capital (Canada) Corp. (Re)* (2004), 27 O.S.C.B. 1603 [*First Federal*]; *Lett (Re)* (2004), 27 O.S.C.B. 3215 [*Lett*], aff'd [2006] O.J. No. 751 (Ont. Div. Ct.) [*Lett* Div. Court]; and *Universal Settlements International Inc. (Re)* (2006), 29 O.S.C.B. 7880.)

[40] For example, in *First Federal*, the respondents offered a trading program that purportedly offered an estimated return of 70%, with 20% to be shared amongst all the parties involved, and a net return to investors estimated at 50-55%. The respondents' website and the documents forwarded to prospective investors stated that the investment funds were guaranteed because they would be held on deposit in the investor's own "Custodial and Non-Depletion Bank Account" at a major bank. The investor would sign a trading contract with a "Trading and Settlement Bank," which would trade, on the investor's behalf, in "Bank Subordinate Notes" and other securities. The website included the statement, "our aim is to enable our clients to benefit as partners from the positive results of our asset management techniques." Promotional materials held out that these investments were "known and understood by a very few privileged and wealthy investors," and their existence would be denied by "any American bank and brokerage," because "the rich and powerful would be pleased if this information were kept secret." Though the minimum investment was stated to be $10 million, investors were told that "more recently, portfolios have cropped up that allow also the small investor to take advantage of this type of investing." (*First Federal, supra* at paras. 16-17, 37.)

[41] The Commission concluded that the trading program was an "investment contract", and therefore a "security", because it provided for the investment of money from investors "with profits to come from the efforts of others." (*First Federal, supra* at para. 40.)

[42] Although the trading program in *First Federal*, upon analysis, was "incomprehensible" and in some respects, "incredible", the Commission concluded, at para. 43:

> That does not mean it is not an investment contract and therefore not a security. It clearly is a scheme that, simplistically speaking, says: "Give us your money. We'll find others to invest it for you in accordance with our [t]rading [p]rogram. We have access to experts who know what they're doing although the vast majority of persons have no idea. The returns you're going to make are fantastic." We find this to be an investment contract within the meaning of *Howey* and *Pacific Coast*.

[43] *Lett* involved the following agreed facts:

> The Respondents did not create or devise the high yield program but received documentation from third parties which purported to describe the high yield program, and which introduced the Respondents to the program. The descriptions of the high yield program are not all consistent but have the following characteristics. The high yield program was to include the purchase on margin of a bank guarantee or debenture, issued by a foreign bank, through the Respondents' Accounts at Nesbitt. The proceeds from the purchase were to be directed to a third party who was represented as having access to a high yield program. The high yield program was supposed to involve the purchase and sale of medium term bank notes. The bank notes were to be purchased at a substantial discount based upon a commitment issued by the United States Treasury Department. Substantial profits were to be earned because of the ability of the

> commitment holder to purchase at a discount. A portion of the profits on the subsequent sale of the bank notes were represented to be used for projects associated with the United States government (i.e., an American foreign policy initiative) or for humanitarian purposes. The balance of the profits would be left in the hands of the commitment holder. According to some of the documents, profits in the range of 100% to 480% would be earned by the commitment holder which would be shared with the Respondents and the parties who would have provided funds in the first instance.
>
> (*Lett*, *supra* at para. 6.)

[44] The respondents in *Lett* submitted that the high yield program could not be a "security" because Staff alleged that "the program has characteristics of a prime bank instrument and as such has no basis in reality." The Commission rejected this submission, and distinguished between the merit or lack of merit of the high yield program and the question whether it came within the definition of a "security" in the Act. (*Lett*, *supra* at paras. 42-43.)

[45] The Commission quoted from the discussion of *Howey* and *Pacific Coast Coin* in *First Federal* and applied the same test to find that the high yield program in *Lett* was an "investment contract" and therefore a "security" as defined in the Act. (*Lett*, *supra* at paras. 46-47.)

[46] On appeal, the Ontario Divisional Court upheld the Commission's finding in *Lett* that the high yield program was a "security". The Court stated:

> The precise details of the high-yield program may not have been determined but sufficient of its characteristics were agreed to by the parties . . . to warrant the finding by the Commission that the program was itself an investment contract. The program was the security and not the individual assets that might be acquired by the program.
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> *(Lett* Div. Court, *supra* at para. 9.)

[47] For the reasons that follow, we find that the investment schemes were a sham and had no basis in reality. Nonetheless, we have no doubt the investment schemes entered into by the investors who testified before us were "investment contracts," and were therefore "securities." We find that the Respondents, other than Keaveney, solicited investments from investors, ostensibly for purposes of investing for high returns at no or limited risk. In our view, having represented and sold the investment schemes on this basis, the Respondents cannot now argue that the investment schemes had no basis in reality (because the funds were misappropriated for other purposes) and therefore did not constitute a security.

[48] The investment schemes were investment contracts, and therefore securities, sold in breach of the Act. While the determination of whether the investment schemes constituted an "investment contract" and thus a "security" may require some legal analysis, we find there is

ultimately little doubt what the Respondents (other than Keaveney) were doing: they were selling investments to investors in Ontario who had an expectation of gain or return based on the representations made to them. While the precise details of the purported investment schemes may be lacking, sufficient characteristics of them were known and represented to investors to justify our finding that the schemes were investment contracts and therefore securities, and the sale of them was in breach of the Act.

C. Prime Bank Investment Scheme

[49] Staff submits that the Sabourin and Sun and Camdeton investment schemes were a form of prime bank investment scheme. The characteristics of prime bank investment schemes are described in warnings posted by the Commission on its website and in two decisions of the British Columbia Securities Commission, *Tri-West Investment Club (Re)*, [2001] B.C.S.C.D. No. 1210 [*Tri-West*] and *International Fiduciary Corp. SA (Re)*, 2008 BCSECCOM 107.

[50] Staff relies on the following description of a prime bank investment scheme from *Tri-West* at para. 58*:*

> Prime bank instrument frauds claim to involve the purchase and sale of fully negotiable bank instruments. These bank instruments are purported to be the debt obligations of the top, or prime, world banks. In fact, neither these instruments, nor the markets on which they allegedly trade, exist. According to the warning circulars and bulletins, each fraud will generally display several of the following common characteristics:
>
> - The program guarantees unrealistically high rates of return within a short period of time.
> - The program claims to be risk free.
> - Investors are told that they are among the privileged few whose money will be pooled to invest in secret programs reserved for top financiers.
> - Investors are asked to sign secrecy or confidentiality agreements.
> - Investors are told that regulators and banks will deny the existence of these programs.
> - The description of the program is complex and difficult to understand.
> - The description of the program refers to official sounding financial terms and instruments, such as prime bank notes, prime bank guarantees, standby letters of credit, bills of exchange, certificates of deposit or zero coupon books. Some of these instruments really do exist in the financial markets, but most do not.

- The program claims to be endorsed by the [International Chamber of Commerce], the [International Monetary Fund], the World Bank or some other well known international organization.
- Some part of the program is transacted through a country regarded as a secrecy haven, which, it is claimed, enables investors to avoid paying taxes on their returns.
- Investors are given financial incentives for bringing in new investors.
- The money from one group of investors is used to show a profit to a subsequent group. Eventually, the promoters pocket the proceeds and disappear, leaving the pyramid to collapse.
- Investors are solicited through the Internet.

[51] Counsel for Smith, Lloyd and Delahaye submitted that we should be cautious about finding that the investment schemes here were a form of prime bank investment scheme because that is not a defined term and does not relate to a specific offence under the Act. Therefore it is not possible to identify the elements of the offence. Counsel submitted that Staff's use of the term relates to its factual allegations rather than defining a specific breach of the Act.

[52] Staff compiled a compendium of the investors' evidence in support of its submission that the investment schemes offered and sold by Sabourin and Sun and Camdeton had many of the indicia of a prime bank investment scheme.

[53] We agree that the investment schemes in this case display many of the indicia of a prime bank investment scheme referred to above. The investors were promised very high guaranteed returns with no or little risk. There was no clear statement as to the specific nature or terms of the investments, complex legal-sounding terms were used, investors were required to enter into a confidentiality agreement, and the investments purported to involve international banks in other countries such as Luxembourg and trusts in the British Virgin Islands. In our view, however, nothing turns on whether the investment schemes offered and sold are characterized as prime bank investment schemes.

D. Acts in Furtherance of a Trade

[54] Staff alleges that the Respondents traded in securities without registration, in circumstances in which no exemption from registration was available, contrary to section 25 of the Act. Subsection 1(1) of the Act defines "trade" to include "any sale or disposition of a security for valuable consideration" and "any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the foregoing."

[55] We must consider the scope of the definition of "trade," and in particular, "any act … directly or indirectly in furtherance of" a trade to determine whether each of the Respondents engaged in acts in furtherance of trades, and therefore traded within the meaning of the Act.

[56] In its submissions, Staff relied on the decisions in *Costello (Re)* (2003), 26 O.S.C.B. 1617 [*Costello*]; *Momentas Corp. (Re)* (2006), 29 O.S.C.B. 7408 [*Momentas*]; *Lett*, *supra*; *Brown (Re)* (2004), 27 O.S.C.B. 7955; and *Limelight Entertainment Inc. (Re)* (2008), 31 O.S.C.B. 1727 [*Limelight*].

[57] In *Costello*, the Commission stated at para. 47:

> There is no bright line separating acts, solicitations and conduct indirectly in furtherance of a trade from acts, solicitations and conduct not in furtherance of a trade. Whether a particular act is in furtherance of an actual trade is a question of fact that must be answered in the circumstances of each case. A useful guide is whether the activity in question had a sufficiently proximate connection to an actual trade.

[58] In *Lett*, there was no allegation of any actual trades, but the respondents opened brokerage accounts, accepted and deposited monies from investors for the purpose of participating in a third party investment program, and provided letters to third parties documenting the investments. The Commission found these actions were acts in furtherance of trades. (*Lett*, *supra* at paras. 48-64.)

[59] In *Momentas*, the Commission stated at para. 77:

> Staff submit that the jurisprudence on this issue shows that decision-makers adopt a contextual approach to determine whether non-registered individuals or companies have engaged in acts in furtherance of a trade. Such approach requires an examination of the totality of the conduct and the setting in which the acts have occurred, the primary consideration of which is the effects the acts had on those to whom they were directed (see *Re Guard Inc.* (1996), 19. O.S.C.B. 3737 at para. 77; *Re American Technology Exploration Corp.* (1988) B.C.S.C.W.S. 984 at 9-10; *Re First Federal Capital (Canada) Corp.* (2003), 27 O.S.C.B. 1603 at para. 55).

[60] The Commission in *Momentas* listed examples of activities found to have been "acts in furtherance" of a trade, at para. 80, including:

(a) providing potential investors with subscription agreements to execute;
(b) distributing promotional materials concerning potential investments;
(c) issuing and signing share certificates;
(d) preparing and disseminating materials describing investment programs;
(e) preparing and disseminating forms of agreements for signature by investors;
(f) conducting information sessions with groups of investors; and
(g) meeting with individual investors.

[61] The Commission has also found, in other cases, that evidence that a respondent "received consideration or other benefit from an eventual sale would be an indication of a promotional purpose and thus an act in furtherance of a trade." (*Momentas, supra* at paras. 87-88.)

[62] The Commission reaffirmed these principles in *Limelight*, stating at para. 131:

> The Commission has taken "a contextual approach" that examines "the totality of the conduct and the setting in which the acts have occurred." The primary consideration is, however, the effect of the acts on investors and potential investors. The Commission considered this issue in *Re Momentas Corporation* (2006), 29 O.S.C.B. 7408, at paras. 77-80, noting that "acts directly or indirectly in furtherance of a trade" include (i) providing promotional materials, agreements for signature and share certificates to investors, and (ii) accepting money; a completed sale is not necessary. In our view, depositing an investor cheque in a bank account is an act in furtherance of a trade.

[63] In this case, as discussed more fully below when we examine the role played by each Respondent, we find that each of them, other than Keaveney, traded in securities by engaging in acts to further, promote or effect the offering and sale of securities to investors.

E. State of Mind and Diligence

[64] An issue raised in this proceeding is whether what the Respondents knew, or believed, or intended has any relevance in this proceeding. Staff submits that it need not establish motive, intention, knowledge or belief on the part of Respondents in order to prove its allegations. Staff relies on the following passage from *Standard Trustco Ltd. (Re)* (1992), 15 O.S.C.B. 4322 at 4359-60:

> While the Commission should consider the state of mind of the Respondents in deciding whether to exercise its public interest jurisdiction, it is not determinative. It is not necessary for us to find that the Respondents acted wilfully or deceitfully in order to exercise our public interest jurisdiction. In the case of Gordon Capital Corporation and Ontario Securities Commission (1990), 13 OSCB 2035, affirmed (1991) 14 OSCB 2713 (Ont. Div. Ct.) at p. 14, Craig J. stated:
>
> > The fact that Gordon may have acted without malevolent motive and inadvertently is not determinative of the right of the OSC to exercise its regulatory and discretionary powers to impose a sanction upon Gordon.
>
> Although that case involved a hearing into whether it was in the public interest to suspend, cancel, restrict or impose conditions on the registration of a registrant and not a section 128 hearing, we believe the same principle applies in the case at hand.

[65] In *Re Gordon Capital Corporation* (1990), 13 O.S.C.B. 2035, affirmed (1991), 14 O.S.C.B. 2713 (Ont. Div. Ct.) [*Gordon Capital*], the respondents conceded that breaches of the Act occurred, but argued that they should be excused on the basis that the breaches were inadvertent and not reasonably foreseeable. The Commission rejected that position.

[66] In affirming the Commission's decision, the Ontario Divisional Court indicated that the classification of offences into categories of "absolute liability", "strict liability" and full "*mens rea*" is only relevant to criminal and quasi-criminal proceedings and that the due diligence defence is not applicable to proceedings that are regulatory, protective or corrective in nature. The court emphasized the distinction between charging a respondent with a criminal or quasi-criminal offence and alleging that a respondent breached a regulatory statute: while the former may result in punitive consequences, regulatory proceedings are protective of the public in regulating certain activities. The primary purpose of proceedings under the Act is "to maintain standards of behaviour and regulate the conduct of those who are licensed to carry on business in the securities industry." The court, therefore, concluded that the Commission did not commit any error in law by rejecting the due diligence defence (*Gordon Capital, supra* at 2723-26 (Ont. Div. Ct.).)

[67] Counsel for Smith, Lloyd and Delahaye submits that the Commission accepted a due diligence defence to an allegation under section 127 of the Act in *YBM Magnex International Inc.* (2003), 26 O.S.C.B. 5285. *YBM Magnex,* however, was a prospectus disclosure case. The Commission in that case also noted that *Gordon Capital* was not a prospectus disclosure case, and concluded that a due diligence defence is not available in all section 127 proceedings.

[68] In our view, there is no need for us to determine a respondent's motive or what a respondent knew, intended or believed in order to determine whether that respondent traded in breach of the Act or to exercise our public interest jurisdiction under section 127 of the Act.

[69] Further, we do not accept that a respondent's diligence or reasonable mistaken belief is a defence to an allegation that the respondent contravened section 25 or section 53 of the Act. In our view, Staff is required to demonstrate only that the relevant sections of the Act were breached by the Respondents or that the Respondents acted contrary to the public interest.

[70] If we conclude that there has been a breach of sections 25 or 53 or that the Respondents acted contrary to the public interest, there is no question that any sanctions we impose in this matter will depend in part on our findings as to the motives, intention, knowledge or beliefs of the various Respondents and any diligence that may have been exercised by the Respondents. There is a range of less serious to more serious breaches of the Act. All else being equal, a respondent who inadvertently breaches the Act or who is "an unwitting tool" of another or who conducted reasonable diligence to assess the legitimacy of an investment before recommending it or selling it to investors, will generally face less significant sanctions than a respondent who knew or ought to have known that a scheme was a sham or that it breached the Act, and nonetheless participated in it with the intention of profiting from it.

[71] In our view, fairness requires us, in imposing sanctions, to consider all of the relevant circumstances. Those circumstances will include what the various Respondents knew or ought to have known, what they intended or believed, what steps they took to determine the legitimacy of the investment schemes, and what their role was in offering and selling those schemes to investors. We discuss whether the Respondents conducted appropriate diligence under "Diligence by Individual Respondents" below.

IV. EVIDENCE AND FINDINGS

A. Investor Witnesses

[72] Fourteen witnesses were called by Staff to testify about the investments they made with Sabourin and Sun and Camdeton during the relevant time period of August 2001 to December 2006. These investors came from different backgrounds and circumstances and included a number of unsophisticated, older or vulnerable persons. The investors testified about the circumstances and events surrounding their investments, what they were told by the Respondents, the manner in which the investments were sold to them, and the expectations they had in making them. Many of the investors invested their life savings or very large portions of their financial assets in the investment schemes. Almost all of the investors testified that they were attracted to the Sabourin and Sun and Camdeton investments because of the promise of a guaranteed high rate of return, in most cases approximating 17.5% per year, with no or very limited risks. They did not have extensive knowledge about how off-shore investing worked, but had the expectation, based on the representations made to them, that their funds would grow without any active involvement on their part as a result of the efforts of others. Some investors received back a relatively small amount of their original investments, but almost all of the investors lost a large portion of the funds they initially invested, and some lost their entire investment. One investor testified that he had invested $330,000 (US) in addition to the approximate $530,000 (US) that his two brothers invested at the same time. In total, the family lost over $860,000 (US). Some of the investors told very heart-wrenching stories about the impact of the financial losses on them.

[73] Staff referred to three periods during which investors made investments with Sabourin and Sun and Camdeton:

1. August 2001 to Autumn of 2004: when investments were made with Sabourin and Sun (the "Sabourin and Sun Period");

2. Autumn of 2004 to Early 2005: the transitional period when investments were made with Sabourin and Sun and Camdeton (the "Transition Period"); and

3. Early 2005 to December 2006: when investments were made with Camdeton (the "Camdeton Period").

[74] The following is a summary of the testimony and experience of the investors who invested with Sabourin and Sun and Camdeton during the three periods referred to above. All of the investors told substantially similar and consistent stories. We will refer to the investors who testified by number rather than name in order to preserve confidentiality as to their identities and personal information. However, we have identified Robert Pope ("Pope") by name because he had a role in referring some of the investors to Sabourin and Sun and Camdeton. A chart summarizing the investments made by and the monies repaid to the investors who testified, apart from Pope, can be found at para. 170 below.

1. Sabourin and Sun Period

[75] Staff called four witnesses who invested with Sabourin and Sun between August 2001 and the Autumn of 2004: Pope, Investor One, Investor Two and Investor Three. During this time, the investors were primarily dealing with Sabourin and Irwin. The four investors were introduced to the company and Sabourin through referrals. Pope was introduced to Sabourin in 1999 through an acquaintance and was later recruited as an "associate" of Sabourin and Sun. As an associate, he was paid a commission for referring his friends and others to Sabourin and Sun. Pope personally referred ten investors to Sabourin and Sun, and two of the investors who testified, Investor Two and Investor Three, were individuals from that group. Investor One was referred to Sabourin by a friend, and was not connected to the group referred by Pope.

[76] Pope testified that he became an investor himself because he was told that as an associate, he had to understand the procedures an investor had to go through to participate, including setting up an off-shore trust. Pope was also provided with various materials to distribute and lend to potential investors: literature regarding investment procedures, promotional brochures by Sabourin and Sun and *Investing Offshore*, a book written by Sabourin. Pope also had documents promoting the two off-shore investment programs being sold to investors at the time, the Letter of Credit Rental Program and the Currency Trading Contract Program.

[77] Pope's understanding of the Letter of Credit Rental Program, from discussions with Sabourin and from the materials given to him, was that the investors' money paid to Sabourin and Sun would be lent as letters of credit to large mining companies around the world. He understood that these mining companies needed financing for short periods of time, so as to conduct explorations. Pope testified that the investment was explained to be very safe, and that he had the impression it was "basically foolproof", that "you couldn't lose on it". With respect to the Currency Trading Contract Program, Pope understood it as involving the buying and selling of currencies where commission fees would be paid for the benefit of investors on each transaction. He understood millions of transactions would occur each day with commission rates of 2% to 5%.

[78] Once investors were referred to him, Sabourin would meet with them to discuss their finances and the potential investment opportunities with Sabourin and Sun. For example, Investor One, who invested in the Letter of Credit Rental Program, testified that he was told by Sabourin that it was a very secure investment, had an annual rate of return of 22%, and would be locked in for 14 months with automatic renewals. He did not recall Sabourin advising of any

risks, but recalled Sabourin telling him that a letter of credit was the “most secure” investment. Investor One understood that money was going to stay in a bank and that there was no way that it could be lost or removed.

[79] Investors received a glossy brochure and other promotional materials about Sabourin and Sun and off-shore investing. Two of the investors who testified met directly with Sabourin to discuss investing and made an investment after one or two meetings. Pope testified that Sabourin was viewed by many investors as a very impressive and dynamic person who instilled great confidence.

[80] The investors were told that to make an investment, an off-shore company or trust would be created under a name that they chose, in which their funds would be deposited. The trust would then invest in the relevant program and its holdings represented the investment portfolio of the investor. The off-shore trust was also represented as a means of estate planning. Investors were told that they had the option of allowing returns to compound or receiving income at certain fixed intervals.

[81] After the investment was made, investors were told that updates to their account could be found online on the Sabourin and Sun website. Investor One received an unsigned welcome letter from Sabourin and Sun Group of Companies Inc. thanking him for his investment and advising him of the login and password for his account. The majority of the investors referred by Pope did not have access to a computer, so Pope would print out their statements for them or advise them how their portfolios were doing. The online account statements would show the interest that was earned on the investment each month, as well as confirm the details about the investor’s account. This included the amount invested, the rate of return and the purchase and maturity dates. These statements gave investors the impression that their investments were secure and earning a substantial return. Pope testified, however, that account statements were often inconsistent and late, and investors would frequently phone him to ask for updates. Pope would in turn call the Sabourin and Sun office and question Irwin about what was happening with the portfolios and account updates. Irwin would have no answer to the enquiries and would simply say that he would have to pass any question to Sabourin.

[82] Pope is the only investor who dealt directly with Sabourin over this period of time, although his contact gradually became less frequent. The other investors who purchased their investments directly from Sabourin had no face-to-face contact with Sabourin after the investment was made. Investor One testified that after the initial two meetings with Sabourin he had in August 2001, his contact with Sabourin was only through e-mail or letter correspondence. Investors would periodically receive letters from Sabourin with news and assurances about their investments. When investors would phone or visit the Sabourin and Sun office with questions or concerns, the investors testified that they usually dealt with Irwin and sometimes with Keaveney.

[83] By September 2002, some investors were beginning to have concerns about the Sabourin and Sun investments. For example, Pope testified that one of the investors he referred to Sabourin and Sun (who did not testify) was not receiving the income payments he was supposed to receive every three months. This investor’s wife had phoned the Sabourin and Sun office

several times about the failure to receive payments but had never received a satisfactory response. The investor and his wife were very frustrated, and Pope advised them to request a full payout of their investment. Pope took them to the Sabourin and Sun office and handed Irwin a letter requesting full payout. Irwin said it would take some time to pay them, but that it would happen. By June 2003, the payout had still not been made and Pope continued to be copied on letters the investor's wife was writing to Irwin requesting the payout.

[84] Pope also testified that investors periodically received letters from Sabourin apologizing for not paying them, making excuses as to why payments had not been made, and making additional promises to pay. For example, in February 2003, some investors received a letter from Sabourin explaining that he was working with accounting and legal counsel to properly format the payouts, and promised that once the structures and protocols were formalized, investors would be paid.

[85] For Investor One, the first indication that something was wrong with his Sabourin and Sun investment came in January 2003, when Sabourin sent a letter to his clients apologizing for "neglecting" them and their investments, and explaining that he had relocated to North Carolina to deal with weight and medical issues. Sabourin also wrote that there could be problems of accessibility to their investment funds, although he assured them that the investments were still secure. A month later, in February 2003, when Investor One's investment was maturing and he wanted to redeem it to buy a property, he received a letter from Irwin saying that his request would be granted by April 2003. By the end of April, Investor One still had not received his funds, and he was starting to worry.

[86] By January 2004, investors were continuing to receive letters from Sabourin with promises to pay them. In a letter dated January 2004, Sabourin referred to a theft of Sabourin and Sun funds in Costa Rica and his efforts to recover those funds for investors. Investor One testified that Sabourin told him that he had lost $28 million from the theft. Indicating that "the light is at the end of the tunnel", Sabourin promised a payout in April and August of that year, for both income payments and investments that had matured. Sabourin also told investors that a number of payments would be made in February for those who expressed an immediate need for a payment. Of the investors who testified, only Investor One received a payment. In August 2004, he received a payment of $15,000 and a letter explaining that the rest of the funds would be paid later. Investor One received another payment of $15,000 in October 2004, but never received the full amount promised to him of over $150,000 (US), which included his original $100,000 (US) investment and the anticipated $50,000 (US) return on the investment.

[87] As investors grew more concerned about their investments, their contact with Irwin increased. All the investors testified that when they had complaints about their investments, such as late portfolio updates or payments, it was usually Irwin to whom they spoke. Pope testified that he sympathized with Irwin, who was dealing with all the investors who were phoning and "bugging him to death" with issues about their investments. He testified that he would phone Irwin every day for answers, but that Irwin could never give him any satisfactory answers because he was only a go-between for Sabourin.

[88] Investor One also spoke to Irwin and Keaveney on numerous occasions when he phoned and visited the Sabourin and Sun office about receiving his full redemption. He testified that Irwin and Keaveney never had any answers for him, except that they had to speak to Sabourin first. Investor One raised other concerns with Irwin. For example, because of the delay in receiving the funds to which he was entitled, Investor One had to take out a bank loan to pay for a property and he asked Irwin for compensation in the amount of the interest payments on the loan. Irwin agreed and requested that Investor One obtain the exact amount of interest owing to the bank. Although Investor One complied with Irwin's request, he never received any compensation.

[89] Investors appear to have had very limited interaction with Keaveney, which mostly occurred when investors were trying to reach Sabourin. For example, other than speaking to him several times when phoning or visiting the Sabourin and Sun office, Investor One's only interaction with Keaveney was receiving a letter passed to him from Sabourin. Otherwise, there was one cheque he received that had Keaveney's name on it. Other investors testified that they would see Keaveney in the Sabourin and Sun office when they visited, but they did not have dealings with him.

[90] Despite not receiving payments from Sabourin and Sun and other indications that there were problems, it was never entirely clear to investors that their investments were at risk. In July 2004, Investor Three wanted to make an additional investment, and Pope accompanied him to the Sabourin and Sun office to see what could be done. Irwin arranged a conference call for Pope and Investor Three to speak with Sabourin. Investor Three testified that they discussed that his investment was doing very well, and that Sabourin and Pope did a lot of talking. Pope testified that he was reluctant to have Investor Three invest more money, as he was having concerns about what was happening with overdue payments to the investor who did not testify.

[91] Pope testified that after this telephone meeting, he and Investor Three felt "very comfortable". In fact, he wrote a letter to the investors he had referred to Sabourin and Sun informing them that he had visited the new Sabourin and Sun office to clarify issues with Sabourin and Irwin. He stated in the letter that he felt the attitude was very positive, and further: "I left the meeting feeling very excited about the future with Sabourin and Sun and their clients. I personally will be investing more with Sabourin and Sun and can only recommend this to anyone who wishes to increase their earnings, as demonstrated in your updated portfolio." On cross-examination, Pope acknowledged that although he was aware of the problems investors were already having at that time in receiving payments, he was convinced by Sabourin that the problems of the past had been resolved and that the office was "going to be the busiest office again". Describing Sabourin, he testified that: "Peter Sabourin is a very smooth, professional person and I don't care how angry you can get with him and everything else, he can wiggle out of anything."

[92] In August 2004, based on the conversation with Sabourin and the returns shown on his online portfolio statements, Investor Three decided to top up his earlier investment of $25,000. At that time, his $25,000 investment was shown to have grown to approximately $36,000 and he decided to invest approximately another $14,000 to increase his total investment to $50,000. In

making the second investment, Investor Three testified that he dealt with Irwin, who appeared at his workplace to fill in an application and customer agreement form and to pick up a cheque. Irwin also agreed to provide Investor Three with a beneficiary form to designate his wife as the beneficiary of the invested funds. When Investor Three did not receive any documentation back, he and Pope started to contact and pressure Irwin. When Investor Three did not get a response, Pope advised him to get out of the program and Investor Three requested a full payout from Sabourin and Sun shortly thereafter. He did not receive the full amount of that payment.

[93] By September 2004, many of the investors were waiting to be paid. There were frequent exchanges between the investors and Sabourin and Sun (through Sabourin and/or Irwin) during which investors would inquire about the status of their payments, and Sabourin and/or Irwin would apologize and make excuses for not having paid investors. Pope testified, "what we're having is one e-mail after another where Peter is making an excuse why he is not paying us the money. He's stalling, as far as I'm concerned, and that's what this is." The communications from Sabourin and Sun always implied that payments were going to be made in the future and there were often instructions on how to arrange for the payout. For instance, investors were told to set up an off-shore bank account to handle the transfer of funds, to execute a "forbearance agreement", and to send their bank account information and amounts owing to Sabourin and Sun for processing. The investors were increasingly upset.

[94] As a result of their constant demands for money, investors did begin to receive some payments. For a period of four to five months between October 2005 and March 2006, Investors One, Two and Three each received three or four cheques in small amounts ranging from approximately $750 to $12,000. During this period, Investor One received an amount of approximately $7,000, which was in addition to two earlier payments totalling $30,000. Investor Two and Investor Three received $16,000 and $11,300 respectively, representing 17.5% and 29% of the total amounts they originally invested. However, based on the substantial returns reflected in their online portfolio statements, the amounts paid to the investors represented a small percentage of what they believed was owed to them (see para. 170).

[95] Pope was entitled to receive commission payments of 2% per month based on the total cumulative value invested by the investors he referred to Sabourin and Sun. This cumulative value included the returns that were shown as accumulating in the investors' accounts. Pope did not, however, receive any payment for a long period of time. He testified that finally, around the summer of 2003, he was desperate for money and Irwin was able to arrange for him to receive $5,000 per month. These payments lasted for 17 months until approximately December 2004. The total amount paid to him was $85,000. Pope testified that this money represented a repayment of his initial investment, although it appears that most of his investment may have been made up of the commission monies owed to him. Since he wasn't paid from the beginning, the accumulating commission fees were reflected in his investment account with Sabourin and Sun. Pope also acknowledged that he may have received $50,000 as a one-time payment to purchase a vehicle. In total, it appears that Pope received approximately $135,000.

[96] In August 2006, Pope and the investors he had referred thought their problems with Sabourin and Sun were finally over when Sabourin wrote a letter to his clients inviting them to a

meeting in October 2006 to settle all accounts. Pope checked with the hotel where the meeting was to take place and was relieved to find that a meeting room had been booked. Pope reserved a limousine with champagne to take the investors to the meeting. In mid-October, however, the investors were informed that the meeting had been cancelled because the funds that were supposed to pay them were not available. After the cancellation of this meeting, Pope kept trying to get money back for the investors he had referred to Sabourin and Sun. By June 2007, however, he finally concluded that the money was gone and that he would not waste any more time and effort attempting to obtain repayment.

2. Transition Period

[97] Staff called five witnesses who invested with Sabourin and Sun between November 2004 and early 2005: Investors Four, Five, Six, Seven and Eight. Investors Four, Seven and Eight became involved with Sabourin and Sun through initial contact with Smith, while the other two investors, Five and Six, were introduced to Sabourin and Sun through Lloyd and Delahaye, respectively. Smith, Lloyd and Delahaye were acquainted with those investors through various personal and professional capacities. For example, Smith used to frequent Investor Seven's fishing supply shop and Delahaye met Investor Six in a women's social group. Lloyd was already an investment advisor and had introduced some of his clients, including Investor Five, to Sabourin and Sun. Those three Respondents informed the investors of opportunities with Sabourin and Sun and often assisted them in making an investment. Some of the investors made their investments after subsequently meeting with Haver, who arranged their investments. All five investors dealt with Haver after their investments were made.

[98] Typically, before investing, the investors would be visited in their homes to discuss the potential investment opportunities. Smith usually had the first meeting with investors. At this time in late 2004, Lloyd and Delahaye were beginning to get involved with Sabourin and Sun. For example, Delahaye accompanied Smith to the first meeting with Investor Six because Delahaye was still in the "mentoring training program", although she subsequently met with Investor Six on her own to assist with making her investment. In the case of Investor Five, Lloyd had invited him to a small seminar in his office where he was introduced to Smith. Investor Five testified that at that first seminar, Lloyd was somewhat "reluctant" to talk about the details of the Sabourin and Sun investment scheme and a second meeting was held in Lloyd's office for the purpose of having Haver explain the investment. Investor Five had a subsequent private meeting with Lloyd, where the Sabourin and Sun investment was discussed in more detail.

[99] Smith initially discussed with some of the investors the tax strategy products available through Synergy, which then led to contact and involvement with Sabourin and Sun. Investor Four, who was approached with the tax strategy, testified that he understood there to be an interplay or connection between the Sabourin and Sun and Synergy investments. In particular, part of the tax strategy Smith discussed with investors involved making an investment with a high guaranteed rate of return, such as the Sabourin and Sun investment. In turn, the Sabourin and Sun investment was understood to have a tax strategy element through a Synergy investment. It was represented, for example, that investors would save income taxes when they cashed in their RRSPs.

[100] Investors also testified that they received promotional materials from Smith or Lloyd regarding Synergy tax products and off-shore investing. This included a newspaper clipping from the National Post discussing an off-shore business investment that saved substantial taxes and other fees. One investor testified that Smith had shown him this article as support for the type of investment strategy he was recommending.

[101] During an investor meeting, Smith or Lloyd would go over the Currency Trading Contract Program (often referred to as the "currency investment" or "currency tool") with investors to explain how it worked. From the discussion, the investors understood the program to facilitate lending to the World Bank and 125 of the largest banks around the world. For example, Investor Five's understanding was that Sabourin and Sun was connected to a number of large European banks that required a certain degree of liquidity. He understood that there was a financial arrangement under which Sabourin and Sun would offer to lend or guarantee to each of these banks a minimum level of liquidity, for which the banks would pay a fee to Sabourin and Sun for an overnight or short-term loan. He understood that part of these fees would eventually accrue to the benefit of investors.

[102] Some of the investors would have a second meeting with Haver and Smith before they made an investment with Sabourin and Sun. Two of the investors testified that at these meetings, Haver did most of the talking and went over the Sabourin and Sun investment structure in greater detail.

[103] At one of the first few meetings, the investors also received promotional materials, including a glossy Sabourin and Sun brochure. Some investors were also advised about the Sabourin and Sun website, where articles promoting off-shore investing were featured. A pamphlet entitled "Bringing Offshore Onshore" promoting Sabourin and Sun's products was also given to some investors by Haver.

[104] During the investor meetings, Smith, Lloyd or Haver would outline the Sabourin and Sun investment and typically make handwritten notes as to the structure that were left with investors. The notes for each investor had substantially the same information regardless of which Respondent made the notes. For example, they contained a similar flow chart representing the application of the investors' funds: the money was to be invested with Sabourin and Sun Canada Inc., it went off-shore to Sabourin and Sun (BVI) Inc. and then into an off-shore trust in the name of the investor. It would be explained to investors that the money would then flow from the trust to the World Bank or the largest banks in the world. The chart also showed that a "letter of wishes" could be prepared for the investor's trust, directing where the money would go in case of their death. Each set of notes also contained a drawing of twelve consecutive circles that most of the investors understood to represent the "twelve seat bankers exchange" made up of the 12 leading world banks. One investor understood it to be "sort of the governing body of the World Bank".

[105] Several other names were used to describe the Currency Trading Contract Program, including the Trading Currency Contract, TCC and SSGC-TCC. Investors consistently testified that certain features of the investment were explained to them, including that the investment had:

a 110% guarantee of principal; a minimum guaranteed rate of return of 17.52% per year; a 28-month maturity date; a minimum investment of $50,000; and an option to take out income semi-annually. One investor testified that she recalled being told that there was no risk of losing money.

[106] Smith or Lloyd also gave advice to investors with respect to how investors could obtain the money needed to invest. For instance, Investor Five testified that Lloyd presented a PowerPoint presentation that modelled his personal financial data for a tax strategy with Synergy and an investment with Sabourin and Sun. The information provided to Investor Five calculated the potential investment he could make that year with Sabourin and Sun taking into account redemption of his RRSPs, tax considerations, cash in hand and applicable fees.

[107] Both Investor Four and Investor Seven testified that during their first meeting with Smith, he discussed cashing in their RRSPs/mutual funds and the amounts that could be obtained in order to make an investment. Investor Seven testified that because the $21,000 he could redeem from his RRSPs was less than the $50,000 minimum investment required by the Currency Trading Contract Program, Smith suggested that he and his wife mortgage their home. He said: "Mr. Smith kind of suggested to us it would be a great idea to do it, that we were wasting our money actually paying off the house". Investor Seven further testified that according to Smith, "[b]asically it's – didn't make sense you know, when you can make this kind of money you might as well put another mortgage on it and go this way." Investor Four testified that the RRSPs that he and Smith agreed to cash out in order to invest with Sabourin and Sun totalled approximately 80% to 90% of his life savings (he was 60 years old at the time of the hearing).

[108] All five investors who testified about the Transition Period made an investment during or after these meetings. The amounts that were invested ranged from $50,000 to $93,000. In order to make an investment, investors were told to produce certain authenticating documents, including a copy of a utility bill to verify their address and a notarized driver's licence, birth certificate or passport. Investors were also told that a personal cheque was insufficient and were asked to obtain a certified cheque or bank draft payable to Sabourin and Sun.

[109] Haver, Smith, Lloyd and Delahaye assisted investors with completing the documents necessary for their investments, including a Synergy application form (if applicable) and the Sabourin and Sun Application for Services containing some personal information about the investor and investment details. In many cases, Lloyd, Delahaye or Haver would fill in most of the application for the investor to sign. For one investor, the paperwork for the investment was not completed until over a year after the investment was made.

[110] Some investors, at a meeting with Smith, Delahaye or Haver, were told to sign non-disclosure agreements. Investor Six recalled Smith and Delahaye telling her in the first meeting, before she had decided to make an investment, that they did not want her to talk about their discussions with anyone. She understood at the time that it was because they were selling a confidential product with limited availability. She signed a non-disclosure agreement at a subsequent meeting when she made the actual investment. This made her think the investment was "super-secret". Investor Eight testified that he did not think about the implications of the

agreement and signed it as a matter of course when he signed the other documents in making his investment.

[111] Investors were also told to choose names for their trust, and later, were told that they could set up a letter of wishes to designate beneficiaries for their investments. Several investors testified that Haver sent them samples of a letter of wishes to assist them in completing one.

[112] After making an investment, investors would receive a welcome letter in the mail from Sabourin and Sun. Although these letters had Irwin's name on the signature line, most of the investors testified that they had not heard of Irwin before receiving the letter, and had never met him. For some investors, this letter did not come until three to four months after their investments were made. Investors Four and Eight testified that they were concerned because they had not received any confirmation of their investment from Sabourin and Sun and that they attempted to contact the company and Haver numerous times. Investor Four testified that it was Irwin who returned his calls. He also testified that Haver reassured him that everything was fine with his investment.

[113] The welcome letter confirmed the investors' investment details and provided their access information to check their accounts online, including the website address, login and password for their account.

[114] Access to these account statements gave investors comfort that their investments were secure. Most of the investors testified that the online account statements were consistent with their expectations of how the investment would perform and they were satisfied with the apparent performance of their investments. An approximately 2% monthly rate of return was shown to be accumulating in their accounts. Investor Seven testified that he was "excited" when he looked at the figures on his account statement because "it was growing good. Like, everything was looking good."

[115] At some point in 2005, the investors discovered that their investments with Sabourin and Sun had somehow become investments in Camdeton. The investors were made aware of this in various ways and at different times, although it appears that the switch occurred sometime in the first few months of 2005. Investor Four was suddenly informed to visit a different website, "www.camdetontrading.com", to check on the performance of his investment. When he inquired about this change with Haver, he was told that Sabourin and Sun had changed its name and that from then on, Camdeton would be holding his investment. Investor Four understood Camdeton to be an agent acting for Sabourin and Sun. Some of the other investors were sent e-mails from Haver between December 2005 and January 2006 advising them that their accounts had been switched over from the Sabourin and Sun website to the Camdeton website. Haver advised that obtaining access was the same, including login and password, except that they did not need to input their account number. Investor Six testified that she had no discussion with Haver or anyone else about the change.

[116] All the investors testified that there were no changes in their accounts other than the website they had to visit to access their account statements. Staff pointed out, however, that

during the Sabourin and Sun Period, the account statements identified an account by the investor's name, whereas after the switch, the Camdeton statements identified the accounts by the name of the trust that the investor had chosen when setting up his or her trust.

[117] Investor Eight was not made aware of the switch from Sabourin and Sun to Camdeton until he met with Smith and Haver in early April 2005 to make an additional investment. He testified that he was instructed to make the cheque payable to Camdeton Trading Ltd. rather than Sabourin and Sun. When Investor Eight asked about this, he was told that there had been organizational changes within Sabourin and Sun that led to the change. Investor Eight testified that during the April 2005 meeting, Haver did most of the talking and discussed some of the attributes of the investment. He also testified that Haver advised him that they had done him a favour by allowing him to invest $75,000 because a minimum investment of $150,000 was actually required. Investor Eight testified that this was the first time he had heard that.

[118] Investor Five also made a second investment in July 2005, eight or nine months after his first investment. Investor Five made his investment cheque of $46,000 payable to Camdeton Trading Ltd. Investor Five met with Lloyd to make this investment and Lloyd completed the paperwork for signature and accepted the bank draft on behalf of Camdeton. A few months after the investment was made, Investor Five was sent a thank you letter from Camdeton with Haver's name on the signature line and a copy of the completed paperwork. This included a Sabourin and Sun Application for Services and a Camdeton Customer Account Application and Customer Agreement form.

[119] During 2005, there were some indications to investors that there were problems with their investments with Sabourin and Sun and Camdeton. For example, in June 2005, shortly after making his second investment, Investor Eight was still having problems accessing his account statements online. He repeatedly called the Sabourin and Sun office asking for Irwin, based on the contact information shown in the welcome letter, but was never able to speak to him. He also testified that he spoke to Keaveney several times when he called the office, but Keaveney had no solution for him and eventually told him to contact Haver. Investor Eight e-mailed Haver and Smith with these concerns and Smith replied that he would "look after it immediately." He also sent other e-mails to Haver and Smith with other questions regarding income payments on his second investment.

[120] Investor Four testified that in hindsight, he should have noticed the red flags that indicated there was something wrong with his investment. For example, he originally believed the online account statements would be updated monthly, but when he stopped receiving updates, he was informed by Haver's assistant that the statements were only going to be published every six months. Investor Four also testified that other than the welcome letter, he was not ever mailed anything from Sabourin and Sun. Further, he stated: "if you start adding all the things up together, you kind of go 'hmm'. Like, I try to phone the phone numbers and you'd always get voice mail. You never, ever, got anybody at Sabourin and Sun ever when you called there." His online account statements were not updated after December 2006. At that time, his investment was reaching its maturity date, and even though he testified that he got "a little bit queasy" about

the lack of updates to his account, he was always assured by Haver that everything was fine and that he should go ahead and rollover his investment.

3. Camdeton Period

[121] From early to mid-2005 to December 2006, Sabourin and Sun was operating as Camdeton. Five investors who testified made an investment in Camdeton during this period: Investors Nine, Ten, Eleven, Twelve and Thirteen. Investors Nine and Thirteen dealt with Lloyd, while Investors Ten, Eleven and Twelve dealt with Delahaye. After meeting with Lloyd or Delahaye, some of the investors had a second meeting with Haver before making their investments. After the investments were made, the investors had more contact with Haver, but they also maintained contact with Lloyd or Delahaye, especially with respect to their growing concerns.

[122] The investors who testified and who met with Lloyd regarding the Camdeton investment were either existing clients of Lloyd (or his father) or were referred to them. The other investors were introduced to Delahaye through the internet when they came across Synergy advertising tax saving strategies. When the investors sent an e-mail to the contact provided, they were told that they would be contacted by a representative, who turned out to be Delahaye. Upon contact, Delahaye would suggest a visit to the investor's home.

[123] Delahaye initially met with investors as a representative of Synergy, but investors also believed that she was an agent for Camdeton. Typically during the first meeting with investors in their homes, which usually lasted for an hour, Delahaye would explain Camdeton's Currency Trading Contract Program. This was usually described with the aid of handwritten notes, similar to those described above in para. 104. For example, these notes contained the same flow chart showing the investors' funds going from Camdeton and eventually to an off-shore trust for which the investor was the agent. Delahaye sometimes went back for a second meeting or had follow-up phone calls with an investor if the investor wanted more information.

[124] Lloyd also had meetings with investors to discuss the Synergy and Camdeton investments. One investor, Investor Thirteen, had meetings with Lloyd at his office. Investor Thirteen had been referred to Lloyd and believed Lloyd to be a salesman for Camdeton. Investor Nine was an existing client of Lloyd's, and as Investor Nine's financial advisor, Lloyd would visit her and her husband in their home every four to six months to get updated on their financial status. In May 2005, when Investor Nine made an investment with Camdeton, she was going through severe personal problems. Her husband had been admitted to a long-term care facility after suffering a stroke, and he had other medical problems. This caused "escalating" expenses and Lloyd recommended the Camdeton investment so that the couple would "never have to worry about finances again". Lloyd visited Investor Nine's husband at the long-term care facility to explain the investment and get his approval.

[125] The Currency Trading Contract Program sold to investors during this period was described similarly to the investment sold during the Transition Period, except that Camdeton S.A., an entity supposedly located in Belgium, was included in the structure. One investor

testified that she understood the off-shore trust, for which she was the agent, would direct funds to Camdeton S.A. in Belgium. In turn, Camdeton S.A. would invest the money with a financial institution in Belgium, which would lend money and deal in foreign exchange transactions with many banks around the world. She understood that the transaction fees would eventually accrue to the benefit of investors.

[126] The investors were also told that the Currency Trading Contract Program included the following features: a 110% guarantee of principal; a minimum guaranteed rate of return of 17.52% per year; a 28-month maturity date; an option to deposit additional funds during the 28 months; and an option to take out income or have interest compound. Some investors were told that the payments of income were semi-annual, while others were told that they were quarterly.

[127] The notable difference in what was told to investors during this period was that the minimum investment had increased. All the investors in this period were told that the minimum required was $100,000 or $150,000. One investor was told that the minimum investment was $150,000 but that she could invest $100,000 as long as she increased the investment to $150,000 by the following year.

[128] Investor Thirteen testified that when he asked Lloyd about the risks, he was led to believe that "there was virtually no risk at all." Investor Ten testified that Delahaye also wrote figures on her notes showing how the investment could grow, that "basically your money doubles every four years and so if you invested $100,000, after twelve years, you would have $800,000 and if you invested $150,000 after, you know, eight years, you would have $600,000." When another investor mentioned to Delahaye that his friend's broker had remarked that there was something "funny" about the investment program, he testified that Delahaye suggested that the broker just "couldn't handle this sort of thing."

[129] Lloyd assisted his clients to invest by arranging their finances to make the funds available. For example, Investor Nine was drawing income for living expenses from CPP, OAS and her mutual funds. Investor Nine testified that Lloyd assisted her to deregister her RRSPs and withdraw all the money from her RRIFs in order to invest $365,000 in Camdeton.

[130] Most of the investors had a second meeting with Haver and either Lloyd or Delahaye at which Haver explained the Camdeton investment and confirmed what was said at earlier meetings. One investor testified that Haver showed him a copy of a banker's acceptance note that would back up his investment by 110%. That investor believed that he would receive a similar note after making the investment, but he never did receive one.

[131] All of Delahaye's clients made their investment at or after a meeting with Haver. Some of the investors had a cheque prepared and brought it with them to the second meeting. Lloyd's clients on the other hand, usually made their investment directly with him after one or two meetings, although one of his investors met with Haver after making her investment to learn more about the program.

[132] At the initial meetings, investors received promotional materials from Lloyd, Delahaye and Haver, including a glossy Sabourin and Sun brochure, an article written by Sabourin entitled "Offshore Investing, What You Should Know" and an article entitled "Offshore Returns Guaranteed" that referred to the Sabourin and Sun investment for "safety-minded investors". One investor testified that Delahaye would skip through these materials, reading only highlighted paragraphs indicating the investment was secure and that Sabourin was knowledgeable. Another investor testified that the fact that there were articles written by or referring to Sabourin gave him some comfort in investing. Investors were also referred to the Sabourin and Sun and Camdeton websites for more information.

[133] When making an investment, the investors provided copies of identification documents and signed several forms, with at least some parts, usually the investment details, filled in by Lloyd, Delahaye or Haver. These included a Camdeton Customer Account Application and Customer Agreement form, which investors understood to be their contract with Camdeton; and, a Sabourin and Sun Application for Services that was understood to set up a trust in a name that they chose. When asked about Sabourin and Sun's relationship with Camdeton, the investors testified that they believed the companies to be linked, that Sabourin and Sun was an administrator or representative of Camdeton. The certified cheques obtained by investors and handed to Lloyd, Delahaye or Haver were made out to Camdeton Trading Ltd.

[134] The investments made in Camdeton ranged from $150,000 to $365,000 (Canadian) and $330,000 (US). The investments represented significant portions of the relevant investors' assets. For example, Investor Twelve took out a line of credit against his house to raise the $200,000 to invest. Investor Ten testified that she pretty much "scraped together" the $150,000 to invest in Camdeton: she cashed out $100,000 from her RRSPs which gave her $70,000 cash in hand; drew $40,000 to $45,000 on a line of credit, cashed out some funds from her husband's retirement savings plans; and drew the rest on their mortgage line of credit. She testified that the RRSPs she cashed out constituted her entire life savings: "Well I guess I had been saving for a long time. It was very difficult, actually, to save that money, because I had lived with my mother and we were actually quite poor. We lived in the Jane and Finch area for 19 years and … it was – we basically scraped together the money dollar by dollar by not buying coffees and things like that. So it took a very long time for us to kind of claw our way out of poverty and that was sort of, you know, my security blanket on the side. So, yeah, it took a long time to basically pull together that money."

[135] In January 2006, Investor Thirteen and one of his relatives invested $330,000 (US) each, and another relative invested $200,000 (US) in Camdeton.

[136] After the investments were made, investors received by mail a copy of their paperwork; a welcome letter from Haver thanking them for their investment and informing them that they would receive an access code and password to view their online account statement; and, eventually (up to four months after their initial investment), a letter setting out their investment details and their online access information. Although the letters came on Camdeton Trading Ltd. letterhead, some of the letters referred to Camdeton as Camdeton Trading S.A. The investors

testified that they did not really turn their minds to, or know, the difference between the two companies. In any case, the investors assumed that they were part of the same corporate group.

[137] One of the investors testified that he was concerned that he did not receive his welcome letter until over five months after his investment. He also expected from his discussion with Haver and Delahaye that he would receive more documentation in the mail, such as certification that the trust was registered and a banker's acceptance note as security. When that investor expressed these concerns to Delahaye and Haver, he testified that he was always met with excuses: "Well, during this time I probably talked to Sandra and Jeff maybe three, four times saying when am I going to get documentation, when is it coming and I got the long put-off about the regulations changing with the U.S. regulations, Canadian regulations, and rather than issuing the documents and having to revise them later on, they delay it until they get it right. So it was a put-off by both of them."

[138] Investors were satisfied with what they saw on their online account statements and testified that the figures reflected in those statements accorded with their expectations. For example, approximately a year after his initial investment of $150,000 in October 2005, Investor Eleven's portfolio was shown to have grown to approximately $200,000.

[139] Lloyd, Delahaye and Haver also requested that investors set up a letter of wishes in the event of their deaths. Some investors drafted their own letters from the samples they were sent and others received assistance from Lloyd or Delahaye.

[140] Although all the investors believed they were setting up an off-shore trust to facilitate their investments, only one investor who testified was sent a deed of trust. Investor Nine received that deed of trust more than six months after her investment was made, indicating that a trust was established between her (as settlor) and Sabourin and Sun Group of Companies Inc. (as trustee). Investor Nine testified that she did not understand why Sabourin and Sun was the other party to the trust when she had made her investment in Camdeton. As noted above, Investor Nine was the only investor who testified who seems to have received a deed of trust, although Irwin testified that he sent out a stack of them at some point. Lloyd, who dealt with Investor Nine, testified that he never saw the deed of trust, but understood that it was a document that was supposed to be sent to investors approximately six months after making an investment.

[141] All the investors appear to have maintained contact with Lloyd and Delahaye regarding their investments. For example, Investor Ten received an e-mail from Delahaye a few months after she made her investment asking for confirmation that she had received her welcome letter, informing her that her internet accounts should be operating and welcoming questions and concerns. Some investors were also still dealing with Lloyd and Delahaye with respect to their Synergy investments. When problems with their investments and payments began to arise, however, investors had increased contact with Haver. They were also referred to Haver by Lloyd or Delahaye when investors contacted them about their problems.

[142] Four of the five investors who testified about the Camdeton Period had chosen the income option for their investments and began to experience late payments early on. For Investor

Twelve, his first semi-annual payment was due in April 2006, but he did not actually receive a cheque until September 2006. When investors did not receive the cheques they were expecting, they began to telephone Lloyd, Delahaye and Haver. Each time they contacted these Respondents inquiring about their payments, they were met with various excuses and were assured that everything was fine. For instance, when Investor Nine's income payments were late, Lloyd advised her that there was some kind of a mix up with addresses and gave her Haver's cell phone number. When Investor Nine spoke to Haver, he advised her not to worry, that the money would be coming.

[143] Investor Ten chose to have her interest compound and believed that everything was fine with her Camdeton investment. Although she was not receiving payments, Investor Ten received an e-mail in August 2006 from Haver informing investors that there was a delay in the current semi-annual payout due to US regulatory changes on the transfer of capital. The e-mail also indicated that online updates would now be made quarterly. When Investor Ten received this e-mail, she was not concerned because she hadn't experienced problems in accessing her online account statements, she was not affected by the delayed payouts and had the impression from her initial discussions with Delahaye that dealing with an international company meant that things would take longer to process.

[144] Investor Ten had a meeting with Delahaye in early November 2006 exploring the possibility of having other family members invest in Camdeton and Synergy. Delahaye went over the Camdeton investment and other off-shore trust opportunities with Investor Ten explaining how they worked, the features of the investments and the various tax strategies and implications.

[145] By November 2006, most of the investors who invested during the Camdeton Period, along with the investors from the Transition Period (who, by this time, were investors in Camdeton) became aware that there were problems with their investments. The problems were apparent when the time came for investors to receive their semi-annual income payments or when investors chose to redeem their investments at the maturity date.

[146] In November 2006, most of the investors received a letter from Camdeton advising them that they must "cease access" to the Currency Trading Contract Program in Canada as a result of concerns of the Commission. The investors were advised that their accounts would be settled on July 18, 2008, and that they would have the option to cash-out either partially or entirely, or renew their investment through a new trust structure. The letter also stated that "the OSC's concern should not be a reflection on the integrity and performance of the Currency Trading Contract Program."

[147] At this point, some of the investors were becoming increasingly alarmed. Some investors phoned Lloyd, Delahaye or Haver immediately to inquire about the letter and were told not to worry. One investor testified that both Delahaye and Haver explained to him that the Commission was only concerned about income taxes and how they were declared, but that there was nothing wrong with the investment and it was still secure.

[148] Investor Thirteen testified that he was informed by Lloyd that the Commission did not agree with the way Camdeton was trading, "so they've decided to more or less step in and throw a monkey wrench into everything and so therefore Camdeton wants to just wash their hands of it and give everybody their money back." Although he was alarmed by this letter, Investor Thirteen was also relieved because after experiencing the late payments, he was happy to get out of the program and have his money returned.

[149] After receiving this letter, some investors attempted to cash out their investments. When Investor Twelve asked for his money back as a result of the termination of the program, he was told by Haver that he could not be paid because the contract was an investment for a fixed term. Investor Twelve was not happy with this and told Haver that the contract was already broken because he was not receiving his interest payments. He also had a frustrating exchange with Delahaye about getting his money back, but she gave him excuses as to why it would not happen.

[150] Investor Six attempted to cash out her investment at its maturity date and wrote a letter to Camdeton with this request. When Investor Six did not receive a response to her letter of February 2007 requesting a payout in May 2007, she tried to contact both Haver and Delahaye. When she finally spoke to Haver, he advised her that she had missed the 100-day window to withdraw her funds and that her funds had already been committed. He advised her that she was bound by contract, but when she asked Haver to see a copy of the contract that specified the 100-day notice requirement, she received no response. Investor Six was later informed by Haver's assistant that she would have to wait until July 2008 to be cashed out along with everyone else. Investor Six testified that she was very upset with this information, considering that her investment matured in May 2007 and she would have to wait over a year to be paid out. Knowing she could not fully withdraw her funds at maturity, Investor Six made a request to Camdeton to change her investment to the income option to start receiving semi-annual payments. She testified that at that point, she was concerned and "was trying to get anything [she] could out of it". Although she received confirmation from Haver's assistant through Delahaye that her request was received and reflected, Investor Six never received any income payments.

[151] Investor Eight's investments were maturing in May and August 2007, and he wrote to Camdeton several months before the respective maturity dates, as instructed, to seek full payout. He believed that he was entitled to immediate payment because the maturity dates of his investment fell before July 2008. However, when he realized that he wasn't going to be paid at that time, he became angry because he was doing what he thought was expected, but it seemed that the rules kept changing. He testified, "I did write a letter to Jeff talking about the changing of the rules whereby they said you only have to advise us one month in advance and then it became three months in advance. Then the payout wasn't in the month of the maturity, it was going to be in the month after maturity…it just went on and on."

[152] On the other hand, Investor Ten was not concerned by the November 2006 letter because she was told by Delahaye at their meeting in early November 2006 that there would be slight structural changes to the investment program and that she might receive a letter informing her of

that. She testified that she was assured that the fundamentals of the program had not changed and understood that the program was still going forward essentially unchanged.

[153] However, when her husband did some research on his own a few weeks later in December 2006, he found on the Commission's website that there were concerns with Delahaye, Haver and the associated companies. Investor Ten testified that it was "pretty shocking" to her and she assumed that her money was gone. At this point, she tried to get out of the investment program and wrote several letters to Haver and Delahaye requesting the return of her $150,000 investment. She testified that Delahaye phoned her upon receipt of the letter and tried to reassure her that everything was still in order and that the concerns of the Commission were unfounded. During December 2006 and January 2007, Investor Ten had several telephone conversations with Delahaye and Haver in which she was very upset. She recalled Delahaye being very careful with her words and handing her over to Haver, who repeatedly assured her that there was nothing to be concerned about.

[154] Haver advised Investor Ten that the earliest date she could have her investment returned would be November 2007 when it matured. Haver told her that the funds were tied up with a financial institution and that he could not access them. When Investor Ten pressed him for more specifics, Haver advised her that he could not share that information with her. However, when Investor Ten asked Haver how all this could happen, Haver told her that the actual investments were taken care of by others and that he had no idea which financial institutions were involved. Haver also advised Investor Ten to submit the required paperwork to cash out her investment 100 days prior to the expiration of her contract. Investor Ten did as she was requested and took steps to confirm that Haver and Delahaye received her paperwork and understood clearly her intention to withdraw her money.

[155] By early 2007, all the investors were waiting to be paid out. During 2007, investors received more e-mails from Haver informing them of problems with the Currency Trading Contract Program. In April 2007, investors were advised that the Commission had issued a temporary order suspending Camdeton's operations and that there would no longer be (semi-annual) interest payments to their accounts. Instead, the investors would be paid out entirely "within an expeditious timeframe". In May 2007, investors received further information from Haver advising that their investments would mature in October 2007. Some investors were told that the problems with the payout and the changes in dates were due to the concerns of the Commission.

[156] Investors were given some indications that the Commission had concerns about the investments. For example, in March 2006, Investor Five testified that he and his wife received several telephone messages from Lloyd informing them that they would probably receive a letter from the Commission, but that they did not need to pay any attention to it or answer any questions from the Commission. Investor Six also testified that by the time she received these e-mails from Haver in May and June of 2007, she had already been interviewed by investigators at the Commission.

[157] Some of the investors also received a letter in June 2007 from Sabourin addressing investor concerns about the investigations by the Commission and the Ontario Provincial Police. Sabourin advised investors that the concerns of the Commission, including that all the funds invested through Sabourin and Sun were in peril or lost, were not true. The letter also confirmed that the payout date for all the investments would be October 2007 and would be arranged by Haver. Sabourin apologized for the stress and duress caused to investors as a result of what had occurred, but also said that there were thousands of very satisfied customers over the years. One investor testified that when he received this letter, he believed that something was "drastically wrong".

[158] In order to receive a payout, investors were advised by Haver in October 2007 to set up a separate bank account with the Caye International Bank of Belize in which their funds would be deposited. Most of the investors who testified opened a personal bank account in Belize and sent their information to Camdeton, but no money was ever deposited into their accounts.

[159] Investor Ten was the only investor who testified who did not open a bank account in Belize, as she was uncomfortable in doing so and did not understand why it had to be done. She had several exchanges with Haver regarding her concerns. Haver responded that there was no other way to get her funds back. Investor Ten testified that the explanations given to her "all sounded very ridiculous".

[160] After October 2007, when investors did not receive the payout they were promised, they had frequent contact with Haver, pressuring him about getting their money. Haver's office, often through Haver's assistant, usually replied that they were still waiting for final transfer details. Although the investors were dealing largely with Haver, most of them still had contact with Smith, Lloyd and Delahaye regarding their investments, and they expressed their frustration and concerns about what was happening.

[161] In December 2007, Haver sent an e-mail to investors informing them that he did not have further news regarding their payouts. He informed them that since the intended payout date in October, he had attempted to contact Sabourin without any success. However, he understood that Sabourin was going to Europe to work with Camdeton Trading S.A. on a settlement. In the meantime, investors were referred to a Detective Sergeant at the Ontario Provincial Police who was investigating Sabourin, Sabourin and Sun and Camdeton.

[162] In January 2008, investors received another e-mail from Haver informing them that he had still not heard from Sabourin regarding the payout, but was anxiously awaiting the settlement as well as any information on the status of the payout. An article was attached to the e-mail advising of Sabourin's insolvency.

[163] In March 2008, investors received another e-mail from Haver, this time expressing his regrets and acknowledging their anger and frustration. He indicated that he had no indication that there were problems with the investment programs. Haver also advised investors that it appeared Sabourin had left the jurisdiction and was no longer responding to civil lawsuits or appearing before the Commission in proceedings against him. He also informed investors that he was

making efforts to locate Sabourin and any off-shore bank accounts or assets that could potentially be pursued.

[164] Some investors testified that they still trusted Haver and believed he had good intentions and dealt with them honestly. By this time however, most of the investors had concluded that their money was gone. One investor testified that he met with Smith around this time who gave him the impression that he thought the money was still there. He testified that Smith told him he might not get the full amount owed to him, but that he might get his investment of $50,000 back.

[165] Many investors who invested with Sabourin and Sun and Camdeton during the Transition and Camdeton Periods had chosen the income option and received small payments. Some investors received only one cheque, although they expected to receive income at least every six months. The cheques ranged from $2,500 received by Investor Twelve, representing 1% of his original investment, to $18,000 received by Investor Eleven, representing 12% of his original investment.

[166] Other investors received three to four semi-annual payments, which ranged from a total of $1,500 received by Investor Seven to a total of approximately $110,000 received by Investor Nine. These amounts represented 3% to 30%, respectively, of their original investments.

[167] Many investors who chose the compound interest option, including Investors Four, Five, Six, and Ten, lost their entire investment.

[168] The loss of their investments had a significant impact on investors, who described their experience as “shocking”, “devastating” and a “tremendous worry”. Many of the investors had put all their financial assets into the Sabourin and Sun and/or Camdeton investment schemes and lost their ability to assist their families financially or enjoy their retirement as they were hoping or had expected to do. Most withdrew from their RRSPs to invest and suffered negative tax consequences. For example, Investor Six testified that she had no assets, and went from having no debt to having debt of $80,000. She had also taken $75,000 from her RRSPs to invest in the investment scheme.

[169] Many of the investors and their families were personally devastated by what happened and suffered great stress. According to Investor Four:

> Basically it’s put a lot of strain on our marriage, for openers. [My wife] and I still fight about it. You know, we had another beef about this last night. I mean, “you shouldn’t have gone there”. More importantly, stress wise, you know, I have been to the doctor and I’m on blood pressure mediation now; he’s upped that. I think this is part of it. I’ll have to work for at least two more years, which I hadn’t planned on. We’ve had to sell – we own some time shares, which we’ve had to sell. We are looking at ways to take the equity from our house to invest it so perhaps maybe we can retire, type of thing, and have a similar lifestyle as what

we had anticipated when we got into this program initially. So it's had a huge impact. It's taken how we travel, how we deal. It's been massive.

4. Summary Table

[170] The following table summarizes the investments made by and the monies repaid to the investors who testified, other than Pope.

Investor	Investment	Date Invested	Total Monies Invested*	Total Monies Repaid**
Investor One	Letter of Credit Rental Program	August 2001	(US) $100,000	$36,870
Investor Two	Letter of Credit Rental Program / Currency Trading Contract Program	November 2001 January 2003	$50,000 $40,910 $90,910	$16,000
Investor Three	Currency Trading Contract Program	December 2002 July-August 2004	$25,000 $13,588 $38,588	$11,300
Investor Four	Currency Trading Contract Program	November 2004	$93,000	$0
Investor Five	Currency Trading Contract Program	November 2004 July-September 2005	$50,000 $46,000 $96,000	$0
Investor Six	Currency Trading Contract Program	December-January 2004	$50,000	$0
Investor Seven	Currency Trading Contract Program	January 2005	$50,000	$1,500
Investor Eight	Currency Trading Contract Program	January 2005 March-April 2005	$75,000 $35,000 $110,000	$10,000
Investor Nine	Currency Trading Contract Program	May 2005	$365,000	$110,681
Investor Ten	Currency Trading Contract Program	July 2005	$150,000	$0
Investor Eleven	Currency Trading Contract Program	October 2005	$150,000	$18,000
Investor Twelve	Currency Trading Contract Program	November 2005	$200,000	$2,500
Investor Thirteen	Currency Trading Contract Program	January 2006	(US) $330,000	(US) $24,750

*Currency is in Canadian dollars unless otherwise indicated.
**As of April 2008 (at the date of hearing).

5. Flow of Investor Funds

[171] Through a Staff investigator, Albert Ciorma ("Ciorma"), Staff presented evidence of its attempts to trace the funds from the investors to the various Sabourin and Sun and Camdeton entities, including Sabourin and Sun Canada Inc., Sabourin and Sun Inc. and Camdeton Trading Ltd. Although there is insufficient evidence to trace all the funds that came from the many investors who invested with Sabourin and Sun and Camdeton during the Relevant Period, we were able to come to some conclusions as to bottom-line amounts. In doing so, we applied a very conservative approach.

[172] Ciorma testified that there were four bank accounts connected to Sabourin and Sun receiving investor funds at various times during the Relevant Period. These consist of accounts held by four corporations: 1) Websentry Inc. (Canadian and US accounts); 2) Sabourin and Sun Canada Inc. (Canadian and US accounts); 3) Sabourin and Sun Inc.; and 4) Camdeton Trading Ltd. Keaveney was a director of all four corporations and was also an officer of Websentry Inc. and Sabourin and Sun Inc. He also had signing authority on the Sabourin and Sun Inc. and Camdeton Trading Ltd. bank accounts. Irwin was listed as a director and officer of Sabourin and Sun Canada Inc., and had signing authority on the Websentry Inc. and Sabourin and Sun Canada Inc. accounts as well as shared signing authority with Keaveney on the Sabourin and Sun Inc. account.

[173] The Websentry bank accounts were opened in March 2001 and were active until December 2004. Within that period, the Sabourin and Sun Canada bank accounts were active between May 2001 and July 2003. Both companies' accounts were held at the Bank of Nova Scotia and appeared to be related. Many of the cheques deposited in the Websentry accounts were actually made out to Sabourin and Sun, and because Irwin had signing authority for both accounts, he was able to endorse each cheque to one of the two accounts. Significant funds obtained from investors were also shown to be transferred from the Sabourin and Sun Canada accounts to those held at Websentry. In total, the Sabourin and Sun Canada and Websentry accounts received approximately $6.5 million clearly identified as being from investors. The investigation also revealed that there were additional funds deposited in the accounts which could not be traced directly to individual investors, but which were likely to have come from other investors. Ciorma classified these as funds from "possible investors". Sabourin and Sun Canada and Websentry received approximately $4.4 million from possible investors, resulting in approximately $11 million received from investors and possible investors. It appears that approximately $2.4 million was paid out of these accounts as payments to some investors.

[174] Between October 2003 and June 2005, funds from investors appear to have also gone in and out of a bank account held by Sabourin and Sun Inc. at the Toronto-Dominion Bank. Some funds were also transferred between Sabourin and Sun Inc. and Websentry. An additional approximately $3.6 million from investors appears to have flowed into the Sabourin and Sun Inc. account together with another approximate $460,000 from possible investors. Approximately $250,000 appears to have been repaid to investors.

[175] From February 2005 to December 2006, a bank account held by Camdeton Trading Ltd. at the Korea Exchange Bank of Canada was active. During this time, there were also funds transferred between Sabourin and Sun Inc. and Camdeton Trading Ltd. In total, the Camdeton Trading Ltd. account received a further approximately $6.3 million from investors and another $12.6 million from possible investors. It appears that approximately $3.3 million was repaid to investors.

[176] In total, therefore, at least $16.4 million from investors was deposited into the four bank accounts, and another $17.5 million may have been received from possible investors, for a total of up to $33.9 million. These numbers compare to Staff's allegation that approximately $23 to $33 million was raised from investors between August 2001 and December 2006 and Haver's investor records that indicate that $21.3 million was received from investors between May 2003 and September 2006.

[177] Approximately $6 million in total appears to have been repaid to investors from the four corporate bank accounts.

[178] Ciorma also presented evidence derived from the bank account records with respect to amounts received by individual Respondents. Funds purported to have been received by Sabourin, Irwin, Keaveney and Haver (the Respondents who were directly involved in the management of Sabourin and Sun and Camdeton), totalled approximately $8.6 million and were traced from cheques and withdrawals from the four corporate bank accounts.

[179] The evidence presented by Staff shows that $19.3 million of the potential $33.9 million received from investors is unaccounted for.

B. Respondents

1. Sabourin and the Corporate Respondents

a) Involvement in the Sabourin and Sun and Camdeton Investment Schemes

[180] Sabourin did not appear or testify before the Commission, but it is clear from the evidence of investors as well as the other Respondents that he was the author and creator of the Sabourin and Sun and Camdeton investment schemes and the directing and controlling mind of all the Corporate Respondents (even though he was not a director or officer of them). In the early Sabourin and Sun Period, Sabourin spoke at seminars promoting off-shore investing and met personally with investors. He was described as an individual who was larger than life and who instilled great confidence in the people to whom he spoke. Sabourin gained the trust of investors and led them to believe that by investing with him, they would be making investments that would yield substantial returns with little or no risk. Clearly, Sabourin sold the investment schemes to investors directly or through others, including Irwin, Haver, Smith, Lloyd and Delahaye. Although by July 2004, Sabourin had stopped dealing personally with investors, he continued to send investors correspondence regarding updates of Sabourin and Sun and their off-

shore trusts, instructions with respect to their payouts, excuses for delayed payments and reassurances that they would be paid. Investors, however, had no way of contacting Sabourin and had to pass their enquiries and requests through Irwin or Haver, and sometimes Keaveney.

[181] According to Irwin and Haver, Sabourin controlled everything at Sabourin and Sun and Camdeton, including where funds went, how investments were processed and what information and payments were sent to clients. All returns reflected in the investors' account statements were posted by Irwin at the direction of Sabourin. Irwin testified that in 2005, Sabourin was living at his cottage in Huntsville, but Irwin contacted him on an almost daily basis to get instructions from him. Irwin travelled to Huntsville weekly to see Sabourin and deliver cash and documents, such as new account applications and bills.

[182] The Corporate Respondents did not appear and were not represented at the hearing. The evidence indicates, however, that they were all involved in the Sabourin and Sun and Camdeton investment schemes. Sabourin and Sun Inc. and Camdeton Trading Ltd. were represented as the primary companies through which investments were sold and which directly received funds from investors. Sabourin and Sun (BVI) Inc. and Camdeton Trading S.A. appear to have been their international counterparts through which investors were led to believe they were making off-shore investments. Sabourin and Sun Inc. often operated as Sabourin and Sun Group of Companies Inc. We have no evidence that Sabourin and Sun (BVI) Inc., Sabourin and Sun Group of Companies Inc. or Camdeton Trading S.A. received any investor funds, but we believe that the companies were so intertwined in the operation of the investment schemes that it would be impossible to treat them separately.

b) Funds Received

[183] Based on Ciorma's testimony, in total, approximately $3.3 million (Canadian) and $200,000 (US) appears to have been received by Sabourin or paid to third parties for his benefit. In addition to funds going directly to Sabourin, these amounts include funds paid out of the four corporate bank accounts to pay down credit card balances and a mortgage for the cottage that belonged to him. There were also funds going to overweightpeople.com Inc., another business which was apparently owned by Sabourin. Some of the funds were transferred out of the Sabourin and Sun Inc. and Camdeton Trading Ltd. bank accounts into a numbered company that had Keaveney as sole director, but according to Ciorma, those funds appear to have been paid for Sabourin's benefit. This total does not include any funds that Sabourin obtained indirectly, such as funds received through Irwin.

[184] Of the five Corporate Respondents, there is evidence that Sabourin and Sun Inc. received up to $4 million, and Camdeton Trading Ltd. received up to $19 million, from investors.

c) Analysis and Conclusions about Sabourin and the Corporate Respondents

[185] In our view, based on the evidence before us, there is little doubt that Sabourin sold sham investment schemes directly and through others. Sabourin created, marketed and sold the various investment schemes to investors through Sabourin and Sun and Camdeton. While investors were

led to believe that they were making legitimate off-shore investments that would generate a substantial return, in fact, the invested funds did not go into any of the investment schemes described to investors. Instead, the money went into corporate bank accounts here in Canada and was used by Sabourin essentially as he pleased. That included paying exorbitant commissions to sales agents (up to 2% per month on an on-going basis) and returning a relatively small portion of the monies to a limited number of investors. All of the investors' remaining money has disappeared and there appears to be no hope for any recovery. We find that Sabourin concocted the investment schemes, solicited investments based on representations he knew to be false, lied to and misled investors, and misappropriated investors' funds.

[186] There is no doubt that Sabourin orchestrated the investment schemes. We find that he traded in securities in breach of sections 25 and 53 of the Act. In breaching those sections, he misappropriated millions of dollars from Ontario investors and caused them great harm. Those investors are intended to be protected from just such activity by sections 25 and 53 of the Act.

[187] We find that Sabourin was the directing and controlling mind of Sabourin and Sun, Camdeton and the other Corporate Respondents. All of the Sabourin and Sun and Camdeton companies were so intertwined in the sale and operation of the investment schemes that it would be impossible to treat them separately. Accordingly, we make the same findings and reach the same conclusions with respect to each of the Corporate Respondents that we make and find against Sabourin.

[188] We find that Sabourin and the Corporate Respondents breached sections 25 and 53 of the Act and that their conduct was contrary to the public interest and harmful to the integrity of Ontario capital markets.

2. Irwin

a) Involvement in the Sabourin and Sun and Camdeton Investment Schemes

[189] Irwin has never been registered with the Commission and testified that he had no training in finance or securities. He described himself as having a very low understanding of the securities regulatory scheme.

[190] Irwin worked for Sabourin since November 1993, for a period of approximately 13 years. He met Sabourin while he was employed at a postal outlet that Sabourin frequented and eventually quit his job to work in a yard work business owned by Sabourin. Within a year, Irwin's role began to change and he became Sabourin's personal assistant: driving Sabourin to meetings, helping him keep track of his schedule and answering phones.

[191] Irwin testified that, in the fall of 1994, Sabourin began talking to him about off-shore investing. He understood that Sabourin had a few clients and was working with another individual to set up off-shore companies to help his clients make investments and minimize taxes. Around 1995, Irwin was asked to find office space for Sabourin's company, which began

operating soon after as Sabourin and Sun Inc. According to Irwin, he performed administrative work and helped Sabourin set up seminars on off-shore investing. He was also asked to research management companies, banks and trust offices in different jurisdictions to facilitate setting up off-shore companies. He testified that he merely passed on this information to Sabourin who would make contact with these companies.

[192] According to Irwin, Sabourin and Sun began to grow in late 1995 and early 1996. Irwin's responsibilities began to include banking, which consisted of keeping track of office expenses and arranging and authorizing wire transfers between Sabourin's bank accounts. Irwin also facilitated setting up companies and bank accounts off-shore by sending the necessary information and funds. This later included setting up the Sabourin and Sun companies off-shore, in particular Sabourin and Sun (BVI) Inc., Millennium Trading Group Limited, and Chain Mail Investments Limited (which became Sabourin and Sun Group of Companies Inc.).

[193] Irwin testified that by the end of 1997, Sabourin had approximately 12 to 24 clients. As the company grew, Irwin became the office manager with responsibility for bookkeeping and human resources. He was also asked to set up a computer network for the office, create a website for Sabourin and produce a glossy Sabourin and Sun brochure with content provided to him by Sabourin. Irwin's banking responsibilities also grew as he obtained signing authority over the company's bank accounts. He recalled depositing investor cheques into the accounts, writing cheques to some clients and transferring funds from the company's accounts to Sabourin's personal account.

[194] The Sabourin and Sun website was also created and maintained by Irwin, who testified that Sabourin provided the content and instructions for maintaining it. Irwin also participated in creating a spreadsheet available through the website for investors to access information on their account statements. Sabourin provided Irwin with a rate to plug into the spreadsheet that would calculate monthly returns for clients. He acknowledged that the same rate would be used for every client and that clients automatically appeared to receive these returns on their accounts.

[195] By late 2000 to early 2001, Sabourin's operation had grown to approximately 100 clients and $2 million per year in investments. Irwin testified that at this time, there were several other employees at Sabourin and Sun, including Keaveney, and he was asked to find a larger office space from which to operate the business.

[196] During the Relevant Period, Irwin testified that he primarily had two responsibilities at Sabourin and Sun: personal responsibility to Sabourin and responsibility to Sabourin's companies. According to Irwin, the line between these two roles was not always clear. The former consisted of doing personal errands for Sabourin, including making bank deposits, assisting in purchasing personal properties and purchasing and renting vehicles for Sabourin's use. With respect to the latter, Irwin's duties included managing the Sabourin and Sun office: answering telephones, putting clients in touch with Sabourin or relaying their messages to him, printing documents for clients and doing banking for the companies. He was also responsible for creating documents on Sabourin and Sun letterhead based on information provided by Sabourin, such as letters to investors regarding investment opportunities and other correspondence

Sabourin needed to send in relation to the investments. Irwin also had the task of customizing welcome letters for clients after they made their investments, which included inserting the relevant investment details and online access information. In addition, he would set up and update their accounts on the website based on the interest rates provided by Sabourin.

[197] Irwin testified that he mainly acted as a go-between for Sabourin and had limited contact with clients. He acknowledged, however, that there were a few instances where he accepted money from investors and facilitated investments by them. In one instance, a client made an investment with Irwin, but Irwin testified that Sabourin was on the phone giving instructions to him while he was completing the application form for the client. With respect to another investor, Irwin also completed the application forms and went to the investor's workplace to pick up a cheque.

[198] According to Irwin, he had very little decision-making authority; he was limited to paying office expenses and performing the general duties of running an office. He testified that decisions of any consequence were made by Sabourin, especially regarding investments. In January 2002, when Sabourin spent approximately 16 months in North Carolina, Irwin testified that he was in contact with Sabourin on almost a daily basis and received instructions by telephone or e-mail. He stated that even in Sabourin's absence, his decision-making authority did not change.

[199] Irwin testified that Sabourin designated him as a "token" director and/or officer of some of the companies that Sabourin controlled, such as Websentry Inc. He further stated that he did not know all the companies for which he was named as a director.

[200] During his involvement in Sabourin and Sun, Irwin testified that as early as 1996, he questioned what investor funds were being used for. He understood that Sabourin was receiving money from clients for investment purposes and believed that returns of 10% to 15% were being promised. Although he did not know what was being told to investors regarding how those returns were to be achieved or where their funds were to go, he became concerned that it appeared investor funds were being used to pay Sabourin and Sun's office expenses. When Irwin raised this matter with Sabourin, he was told that Sabourin had a pool of funds off-shore that allowed him to allocate an equivalent amount for the client's investment off-shore while using the funds in Toronto. Irwin testified that he accepted this explanation.

[201] From September 2002, during the time that Sabourin was away in North Carolina, Irwin noted that clients started calling and visiting the Sabourin and Sun office regularly to ask for their money back. He testified that he would forward these requests to Sabourin, who told him what to say to clients and to reassure them that they would get paid. Sabourin also told Irwin that he was speaking directly to clients and gave him excuses as to the problems he was having in paying them, such as that funds had been stolen in Costa Rica. Staff submitted that Irwin should have known something was very wrong by this time. Notwithstanding, he continued to run the office and input information on investment returns for investors online.

[202] When the investment schemes transitioned from Sabourin and Sun to Camdeton in 2005, Irwin was instructed to set up the Camdeton website, update the online accounts for investors and continue to run the office and correspond with investors. Irwin testified, however, that sending out welcome letters eventually became Haver's responsibility and, by this time, banking had become Keaveney's primary responsibility. Since Sabourin was working from his cottage in Huntsville at this time, Irwin met him personally on a weekly basis to get instructions from him.

[203] With respect to the Currency Trading Contract Program, Sabourin had explained to Irwin that it involved currency traders in Belgium and Luxembourg who conducted trades with profits that could reach 25% to 400% per month. Irwin testified that although these rates of return seemed high, the way it was explained to him by Sabourin made sense. When Irwin questioned Sabourin about who the traders were, Sabourin told him that the identities of the traders were none of his business.

[204] According to Irwin, he was not directly involved with client investments and did not know what was happening with them. Even though he was active in setting up companies off-shore, he testified that he was not involved with respect to the funds that were supposedly in the off-shore accounts. He also testified that he did not set up the individual trusts for investors. Further, although he had signing authority and bookkeeping responsibilities with respect to company accounts, he was not keeping track of funds invested on behalf of clients. Other than the information passed to him by Sabourin to update the client account statements on the website, he did not see any records of where money was invested or how the investments were performing.

[205] Irwin did state, however, that he "saw no evidence that any of the money received from investors in the currency trading program was transferred overseas. It was being used to pay the company expenses in Canada." As noted above, when he questioned Sabourin, he was told that there were already funds with the traders in Europe that covered the currency trading done on the clients' behalf and would offset the corresponding amount received in Canada. Irwin also stated that he did not know what investors were told, including whether they were told that their funds were being offset by Sabourin's account. When he questioned Sabourin, Irwin was always told that everything off-shore was not his concern.

[206] Staff submitted that Irwin should have at least made enquiries or advised the Commission about his concerns when he knew that the Commission was conducting an investigation into Sabourin and Sun. In March 2004, Sabourin and Sun received a letter from the Commission requesting information about the company and its activities. Irwin forwarded the letter to Sabourin for Sabourin's lawyer to respond and he testified that he accepted Sabourin's assurance that this letter did not mean there were problems with what they were doing. He acknowledged making no other enquiries although he knew that Sabourin and Sun was selling investments and he had concerns dating back to 1996 about the use of investors' funds.

[207] We find that Irwin misled Staff when he was interviewed in June 2005. He did not advise Staff that investors were clamouring for their money or that he was concerned that investor funds were not being sent off-shore. Rather, he told Staff that Camdeton Trading S.A. was a European currency trading program and the funds from investors were going to Camdeton in Europe.

[208] In June 2006, Irwin received a letter from Commonwealth Trust in the British Virgin Islands, the entity through which he set up Sabourin and Sun (BVI), informing him that the BVI Financial Services Commission was inquiring about Sabourin and Sun Group of Companies Inc. and Sabourin and Sun (BVI) Inc. due to enquiries from the Commission. Irwin did not respond to the letter.

[209] Even after the Commission commenced proceedings and issued a cease trade order in December 2006 against Sabourin and Sun and Camdeton, there is evidence that Irwin continued to conduct bank transactions for Sabourin through the bank account of Irwin's numbered company.

[210] According to Irwin, Sabourin told him in early 2007 that he was selling his resort properties in Ontario that were valued at between $5 and $8 million to pay back investors. He also asked Irwin to sell some of his personal belongings for him. The last time that Irwin saw Sabourin was in August 2007 when he met Sabourin at a storage facility to give him a box of documents relating to Camdeton. Irwin testified that these documents may have consisted of some bills and account statements.

[211] Irwin concluded in his testimony that:

> I feel that I was used as a person, used extremely badly. I feel that my trust was violated by Sabourin. I felt that I had a good relationship with him and a trusting manner, and somewhat on a friendly manner, and I feel that everything is destroyed at this point. He's left me in a very bad situation, and it's just – just a very bad situation.

b) Funds Received

[212] Irwin testified that he received compensation totalling $438,000 during the time he was involved with Sabourin and Sun and Camdeton.

[213] From Ciorma's analysis, a total of approximately $1.4 million from the four corporate bank accounts was paid to Irwin. This includes cheques payable directly to Irwin, payments to his credit card account and cash withdrawals from various accounts. The cash withdrawals of approximately $250,000 were assumed to be received by Irwin because he had signing authority over the accounts. Also included in the total were transfers from the Camdeton Trading Ltd. account to a numbered company that Irwin owned, and of which he was the sole director.

[214] Other than Irwin's testimony, there is no evidence to determine the purpose for which the funds were taken out as cash or applied towards the credit card, including whether they were used for Sabourin and Sun expenses. Irwin testified that he was never paid in cash, and that the amounts he received or withdrew were for other purposes including Sabourin's personal and travel expenses and general office expenses. However, Irwin had no records to support the

expenses he incurred. He also testified that he was not the only person who had access to the bank accounts through an ATM.

[215] According to Irwin, many of the cheques or bank drafts that were made out to him from the corporate bank accounts were his paycheques. He testified that approximately $338,000 of the funds attributed to him from the four accounts were payments of his salary. He testified that in the beginning of his employment with Sabourin and Sun, he was being paid $7,500 per month; and, later in approximately December 2004, his salary increased to $9,500 per month. The statements of his bank account which Irwin submitted showed payments to him in various amounts ranging from $5,000 to $15,000. Irwin explained that his paycheques were often irregular and that subsequent payments would cover deferred payments from previous months as well as reimbursement for expenses he had incurred on behalf of the company.

[216] Other than his salary, Irwin testified that the only other personal benefit he received from his relationship with Sabourin and Sun was a one-time bonus of $100,000, which he used for a down payment on a cottage.

[217] Irwin attempted to give a more detailed accounting of what happened to the other approximately $1 million that was attributed to him in Ciorma's analysis. According to Irwin, the majority of the funds went either to Sabourin personally or for office expenses for Sabourin and Sun. He identified close to $600,000 in total that he said went towards company and personal expenses of Sabourin. Some of the bank statements submitted by Irwin indicate that he incurred expenses on behalf of Sabourin and the companies on the personal credit card account he shared with his wife. These included for example, rental car fees for Sabourin, web hosting fees for the Sabourin and Sun company websites, and fees for online gambling websites that Irwin testified were used by Sabourin. Irwin had no explanation of the use of approximately $67,000.

[218] Irwin testified that Sabourin would sometimes direct him to withdraw cash from the corporate accounts, and that some of the cheques made out to "cash" were actually given to Sabourin. Irwin believed that those funds were Sabourin's wages or for his personal use. Irwin also testified that upon Sabourin's request, he permitted Sabourin to use his brokerage account to conduct trading and $300,000 was transferred from the Sabourin and Sun Inc. account for this use.

[219] With respect to the funds received by his numbered company, which were estimated to be approximately $293,000, Irwin testified that Sabourin would ask him to deposit funds into this corporate account to allow for certain payments, but he never knew why. Irwin's records indicate that some payments were made out of the corporate account on Sabourin's behalf, including $100,000 for one of Sabourin's companies, Group North Properties, office rentals and other expenses. Further, Irwin testified that approximately $94,000 of the funds allocated on the books to his numbered company were never actually deposited into his account, and that he has no idea what actually happened to those funds.

[220] We conclude that Irwin received between $438,000 and $1.4 million from his involvement with Sabourin and Sun and Camdeton. There is no documentation to support many

of the amounts Irwin claimed to have paid to Sabourin or for Sabourin and Sun expenses, but we accept that a substantial amount was likely paid to Sabourin. Based on Irwin's calculations, there was approximately $161,000 attributed to him that he could not explain.

c) Analysis and Conclusions about Irwin

[221] Irwin helped certain of the investors to complete applications for investment, received cheques from investors and sent confirmation letters to investors as to those investments. He also ran the Sabourin and Sun website and entered the purported investment returns on the various client accounts as directed by Sabourin. In our view, his actions constituted trading in securities within the meaning of the Act. Irwin was paid between $438,000 and $1.4 million for his services.

[222] We acknowledge that Irwin had no financial industry experience and was never registered with the Commission.

[223] At the same time, Irwin knew first-hand, as early as 2002, about the complaints from investors about the failures by Sabourin and Sun in making payments to them. Irwin also knew that investor funds were not being sent off-shore for investment as represented to them. He accepted Sabourin's facile explanation that corresponding amounts were being held off-shore and were being invested on behalf of the investors. Irwin took no action and did nothing when he became aware that the Commission was making enquiries about Sabourin and Sun and Camdeton. We also find that Irwin misled Staff during his interview in June 2005.

[224] Irwin may have put too much trust in Sabourin and may have been an unwilling dupe. But because of his direct role with Sabourin in managing the office and Sabourin's financial arrangements, Irwin was in the best position of the individual respondents (apart from Sabourin himself) to know that the investment schemes offered by Sabourin and Sun and Camdeton were not legitimate. In our view, Irwin ignored the facts before him, did not ask the right questions (or blithely accepted the answers to the questions he asked) and ignored red flags that should have alerted him to investigate more diligently.

[225] Based on the evidence with respect to Irwin summarized in paras. 189 to 220, we conclude that Irwin traded in securities in breach of sections 25 and 53 of the Act. We also find that his conduct was contrary to the public interest and harmful to the integrity of Ontario capital markets.

3. Keaveney

a) Involvement in the Sabourin and Sun and Camdeton Investment Schemes

[226] Keaveney did not testify. Evidence about his role came from other witnesses and from the documentary evidence presented by Staff. Taken as a whole, the evidence suggests that Keaveney had very limited interaction with investors or the other respondents, with the exception of Irwin. Irwin testified that Keaveney worked with him in the Sabourin and Sun office as

another assistant to Sabourin. Irwin also testified that Keaveney's role primarily consisted of taking calls and making bank deposits. Keaveney has never been registered with the Commission.

[227] There is no evidence that Keaveney talked to any investors about making an investment or that he was present at any of the meetings where investments were explained or sold. Most of the evidence regarding Keaveney concerned occasions when investors would call the Sabourin and Sun office with questions or concerns and Keaveney would answer the phone and tell them that he would pass their enquiries along to Sabourin. Some investors also testified that they saw Keaveney in the office when they visited and that Keaveney passed them letters or correspondence from Sabourin. According to Haver, Keaveney was involved in running the office with Irwin, and Keaveney was the only person running the office during the Camdeton period.

[228] One investor testified that one of the cheques he received as an income payment was from Keaveney rather than from Sabourin and Sun. It appears that this cheque may have been drawn on the account of a numbered company of which Keaveney was the sole director.

[229] The evidence presented by Staff indicates that Keaveney had access to, and some control over, the bank accounts into which investor funds were deposited. For instance, a bank draft received from one investor was deposited in the Camdeton bank account by Keaveney. Keaveney also purchased some bank drafts on the Sabourin and Sun Inc. account that were delivered to investors, and some of the cheques drawn on the accounts, for example, for Irwin's paycheque, were signed by Keaveney.

[230] Keaveney was a director and/or officer of all the companies associated with Sabourin and Sun and Camdeton that received investor funds, including Websentry Inc., Sabourin and Sun Canada Inc., Sabourin and Sun Inc. and Camdeton Trading Ltd. He was also a director of Sabourin and Sun (BVI) Inc. and other numbered companies connected with Sabourin and Sun and Camdeton. Keaveney had joint signing authority with Irwin over the Sabourin and Sun Inc. bank account and had signing authority over the Camdeton trading account. Irwin testified that by the Camdeton Period, Keaveney was primarily responsible for the company's banking.

[231] In his role as director of Sabourin and Sun (BVI) Inc. and in exercising his signing authority over the accounts of Sabourin and Sun Inc. and Camdeton Trading Ltd., Keaveney authorized monthly payments to be drawn on these accounts to pay the mortgage on Sabourin's cottage. Further, Irwin testified that Keaveney had access to the bank cards that would have allowed him to make ATM cash withdrawals from the accounts to pay for Sabourin and Sun expenses.

[232] Irwin also testified, however, that everything Keaveney did with the corporate bank accounts was under Sabourin's direction, including opening a bank account for Camdeton Trading Ltd., making withdrawals from or deposits to the accounts, obtaining bank drafts to make quarterly payments to clients and paying them according to a list of names and amounts provided to him by Sabourin, and writing cheques for Irwin's salary and reimbursements.

According to Irwin, Keaveney also incorporated companies in accordance with Sabourin's orders.

[233] According to Irwin, Keaveney passed him a letter from Sabourin in October 2007 after Keaveney paid Sabourin a visit at a medical facility in New York state. It appears that this was the last time Keaveney had any contact with Sabourin.

[234] Staff submits that Keaveney's activities in relation to Sabourin and Sun and Camdeton, which included depositing one investor's cheque in the Camdeton bank account and paying another investor an amount of $5,000, constituted acts in furtherance of trades in securities.

b) Funds Received

[235] From Staff's analysis, it appears that Keaveney may have received up to $1.4 million from the Sabourin and Sun Inc. and Camdeton Trading Ltd. bank accounts. This amount includes cheques payable directly to Keaveney and cash withdrawn from the Camdeton Trading Ltd. account for which he had sole signing authority. Although Keaveney was the sole director of two numbered companies that also received funds from these two accounts, Ciorma testified that the evidence indicates that Keaveney did not use the funds personally, and thus Ciorma did not allocate those amounts to him.

[236] The cash withdrawals attributed to Keaveney amount to approximately $1 million. There is no evidence as to where the funds went after they were withdrawn as cash, including whether the funds were used for Sabourin and Sun expenses. We believe that it is a fair inference from the evidence before us that some portion of the $1 million was not retained by Keaveney.

c) Analysis and Conclusions about Keaveney

[237] As noted above, in determining whether a person has engaged in an act in furtherance of a trade, the Commission has taken "a contextual approach" that examines "the totality of the conduct and the setting in which the acts have occurred," with the "primary consideration" being "the effect of the acts on investors and potential investors" (*Momentas, supra* at paras. 77-80, *Limelight, supra* at para. 131).

[238] The evidence before us establishes that Keaveney worked with Irwin in the Sabourin and Sun office and that his role primarily consisted of taking phone calls and managing the corporate bank accounts under Sabourin's direction. There is no evidence that Keaveney met with prospective investors or that he had any significant role in promoting or selling the investments. Although some investors testified that Keaveney took some of their phone calls after they had made their investments, they also testified that he would say only that he would pass messages on to Sabourin.

[239] Keaveney was mainly involved in running the Sabourin and Sun office and managing the corporate bank accounts under the direct instructions of Sabourin. Considering the evidence that Keaveney had a limited role in the distribution and operation of the investment schemes, we are

not satisfied there is sufficient evidence that he engaged in acts in furtherance of a trade or trades in securities.

[240] From Staff's analysis, it appears that Keaveney may have received up to $1.4 million from the Sabourin and Sun and Camdeton corporate bank accounts. We received no evidence on how much, if any, of this money benefitted Keaveney personally, and we think it likely that some portion of it was directed to Sabourin.

[241] It may be that Keaveney would have potential liability under securities laws for the actions of the Corporate Respondents of which he was a director or officer. That was not, however, alleged by Staff in this proceeding.

[242] Accordingly, we are not satisfied that there is sufficient evidence to justify a conclusion that Keaveney traded in securities in breach of sections 25 and 53 of the Act or that his conduct was contrary to the public interest.

4. Haver

a) Admission

[243] Haver admits the allegations made by Staff against him that he contravened sections 25 and 53 of the Act, but he does not concede that he participated in a prime bank investment scheme, as alleged by Staff.

b) Involvement in the Sabourin and Sun and Camdeton Investment Schemes

[244] Before becoming involved with Sabourin and Sun, Haver worked in the insurance industry as an insurance broker and branch manager at various companies between 1985 and 1994. Haver then spent a few years in the oil and gas industry in the United States, where he was involved in a family-run broker dealer as a registered representative (with the NASD). Haver returned to Canada in 1998 and obtained his mutual funds licence with Global Allocation Financial Group Inc. ("Global"). He later moved to another insurance company before he became involved with Sabourin and Sun in 2003. Haver was registered with the Commission as a salesperson of a mutual fund dealer and limited market dealer from April 2000 until June 22, 2004.

[245] Haver was introduced to Sabourin and Sun through Gord Edwards ("Edwards"), whom he had known since 1985 when they both worked at the same insurance company. Haver testified that he had known Edwards for a long time and that Edwards was his mentor.

[246] In 2001, Edwards told Haver about the off-shore investment opportunities available through Sabourin and Sun, and the great returns he was receiving on his investment. Haver indicated that Edwards was so confident in Sabourin and Sun that Edwards had left the mutual fund industry in order to sell the Sabourin and Sun investments to his clients. Edwards showed

Haver statements of the returns on his investments as well as those of his clients, and the returns led him to believe that Sabourin and Sun offered a good investment. For example, these statements showed consistent returns of approximately 2% per month, showing a $45,000 investment growing to over $65,000, and a $125,000 investment growing to over $180,000, in 1.5 years. Haver testified that some of Edwards' clients invested with Sabourin and Sun as early as 1999, some invested as much as $400,000 and some had received significant payments up to $100,000. At a meeting in the spring of 2003, Haver met many of Edwards' clients, all of whom seemed to be happy with their Sabourin and Sun investments.

[247] In 2003, Haver was invited by Edwards to attend several Sabourin and Sun meetings with Edwards and his clients. Sabourin spoke at some of those meetings. According to Haver, Sabourin was an impressive person who was likeable and knowledgeable. Haver testified that Sabourin's explanation of the investment schemes was believable to him.

[248] Sabourin impressed Haver with stories about helping the RCMP and Interpol track funds after the terrorist attacks of September 11, 2001. Haver also testified that he spoke to one individual who claimed that he had worked with Edgar Sabourin (Sabourin's father), who had set up 400 companies in the Bahamas in the 1980s and reaped tax benefits. Haver believed the many things Sabourin told him, including that Sabourin's father had started the business as early as 1958 in the Bahamas.

[249] Haver also testified that he did his own internet research into Sabourin and Sun, and had a lawyer look at the Sabourin and Sun documentation. Haver testified that his lawyer thought the rates of return were higher than normal, but did not think they were outrageous or unrealistic. Haver did find a court case on the internet in which an investor was suing Sabourin. Haver asked Sabourin about it, but Sabourin dismissed it with an explanation. Although Haver acknowledged that Sabourin eventually lost the case, he believed Sabourin because, at the time, it appeared that the court had dismissed the case.

[250] Around this time in 2003, Edwards asked Haver to gather a small group of six to eight of his clients together for Edwards to explain how the Sabourin and Sun investment worked. Haver was told that in order for him to get involved with Sabourin and Sun, he had to participate in the investment and, as a result, Haver invested the minimum of $25,000. Haver had also given to his father (who had a PhD in economics) Sabourin's book, background information on Sabourin and Sun, and a copy of a deed of trust. Haver testified that his father wanted to invest $25,000 and to meet Sabourin to learn how the trust and currency investment worked. Haver testified that his father had a five-hour meeting with Sabourin to discuss investment opportunities and after that meeting, his father invested $100,000.

[251] In the spring/summer of 2003, Haver arranged a small seminar in Ottawa where Sabourin spoke to prospective clients and described the off-shore investment opportunities. Haver testified that Sabourin was very knowledgeable. At this time, Haver became more heavily involved with Sabourin and Sun, primarily working with a small group of his clients and helping Edwards deal with his clients. Haver received a portion of the fees that Edwards collected. Edwards continued to build business with Sabourin and Sun until he had a stroke in June 2004. At that time, Haver

started to take over Edwards' responsibilities. Haver surrendered his registration with the Commission in June 2004 and sold his book of business at the insurance company.

[252] Haver's role in Sabourin and Sun and Camdeton consisted primarily of dealing with clients and explaining to them the investment opportunities. He met with clients referred to him by sales agents such as Smith, Lloyd and Delahaye and took them through the investment structure and an overview of the trust and the currency investment. He acknowledged that he usually explained the investment schemes using a flowchart and handwritten notes.

[253] According to Haver, the information he communicated to clients was determined and reviewed by Sabourin. Haver was provided with a briefing binder from Edwards containing brochures and descriptions of the currency investment and information from Sabourin regarding the process for clients to make an investment, such as descriptions of the currency investment, the steps required to invest and what to tell prospective clients. This included information on how to access the online account statements, how to split income with an international business corporation, benefits from using an off-shore trust, how to redeem an investment, and copies of application forms and a deed of trust. Haver also passed this information on to his agents.

[254] The promotional material that Haver passed on to clients included brochures such as "Offshore Returns Guaranteed", promoting the Sabourin and Sun Letter of Credit Rental Program (although Haver never sold that investment); "Offshore Investing", an article written by Sabourin; articles on the Sabourin and Sun website; and references to a list of articles written about Sabourin and Sun in the media.

[255] We note that none of the marketing materials specifically discuss the Currency Trading Contract Program or guaranteed investments. In Sabourin's e-mail instructions to Haver on what to say to clients, he stated that "it is important to avoid telling a potential client too much information regarding the specific breakdowns of the trust as it tends to give them [what] we call 'Bobble-head', a term we use when the client gets too much information and overloads, panics, and doesn't go off-shore. I think the mention of using a compliant trust should suffice."

[256] Haver testified that he gave clients all the information he had, but also expected that they would do their own due diligence if they were going to invest significant sums. He asked clients to sign non-disclosure agreements, which he justified as being necessary for them to have the opportunity to review the trust structure with their lawyers, to determine whether they wanted to make an investment. He also indicated that this also gave him an opportunity to restrict the investments to those clients that he knew.

[257] It was Haver's responsibility to gather the appropriate paperwork from the clients to set up a trust and to pass that material on to the Sabourin and Sun office. This included assisting clients to complete application forms, choosing a trust name, executing a letter of wishes and collecting cheques. He understood that once he delivered the paperwork to Irwin, Sabourin and Sun would somehow make the investment through the off-shore trust.

[258] Haver testified that he also tried to make sure that his clients received welcome letters after they made their investments. He testified that Sabourin asked him to write the welcome letters because it would get things moving faster, although he was not otherwise part of the business and administrative side of Sabourin and Sun.

[259] Haver testified that, in the beginning of his involvement with Sabourin and Sun, he would monitor the investments and make sure that payments were being made and the investments were working as expected, based on what Sabourin told him. Haver testified that, after he and his father invested with Sabourin and Sun, things seemed to be going well for them and the small group of clients he was working with. The online account statements indicated to his clients that their investments were achieving very attractive returns.

[260] Haver was the point of contact between his investors and Sabourin and Sun and Camdeton when the investors had issues with their investment, such as with late online updates and late payments. It was also Haver who dealt with the investors when they had problems with redeeming their funds. Haver also wrote to investors regarding Sabourin and Sun's collapse. Haver testified that for the last year and a half, he has been trying to help investors get their money back.

[261] Haver's role in Sabourin and Sun and Camdeton also included dealing with the sales agents who referred investors or sold the investments for Sabourin and Sun and Camdeton. He had contractual arrangements with Smith, Lloyd and Delahaye to pay them commissions on the amounts of money they sourced for the Sabourin and Sun and Camdeton investment schemes. Haver was essentially the middle-man between Sabourin and Sun and those three Respondents.

[262] According to Haver, all the sales agents he worked with were asked to do their own due diligence on Sabourin and Sun. For example, he testified that a private investigator was hired by one of his sales agents to do a background check and ensure that Sabourin and Sun was offering a viable investment. Throughout his involvement, Haver testified that Sabourin always made it seem like everything was fine.

[263] According to Haver, he never intended his business with Sabourin and Sun to grow as fast as it did. Prior to meeting Smith, he had only seven clients and generally worked with people he knew. Haver testified that Smith wanted to expand the business quickly, but that Haver was uncomfortable with that because he wanted time to understand the business himself. Haver did not want to make the investment schemes available to everyone because he wanted to have time to get to know potential clients. He also testified that he did not agree with Smith's approach of marketing Sabourin and Sun together with Synergy, especially the mass marketing over the internet to solicit clients, because he believed that the Sabourin and Sun investment schemes were not a "tool" that was appropriate for everyone. Haver was overwhelmed with how quickly his client business was expanding and he had to hire a full-time assistant.

[264] Haver testified that he understood returns on the currency investment to be in the range of 6% to 8% per month, which was divided equally amongst the banks, traders, Sabourin and the investors. He did not consider projected returns of 72% to 96% per year to be outrageous. Haver

also testified that he was told by Sabourin that there were funds off-shore in the Camdeton bank account that covered the currency trading on behalf of investors. He believed that once funds were received from investors in Canada, almost simultaneously, Camdeton in Europe would allocate the corresponding amount for the investors' trading. Haver did not know, however, any specifics about where the traders were located or where the funds that were supposed to offset investor funds were on deposit, and he testified that Sabourin kept that information confidential.

[265] Haver was aware that the Commission was investigating Sabourin and Sun as early as March 2005. At that time, Haver was forwarded an e-mail from Smith in which a client informed him that an investigator at the Commission had contacted him regarding the Commission investigation into the business activities of Sabourin and Sun. Haver forwarded the same e-mail to Sabourin and Irwin, and indicated that the Commission was "on a witch hunt the bastards". Haver testified that he had thought at the time that there was no basis for the investigation; he believed that the Sabourin and Sun investment schemes complied with securities laws because they involved an off-shore trust making an off-shore investment. Because Sabourin was moving the business to Camdeton around this time, Haver testified that he wanted to make sure the legal issues were cleared up. He was told by Sabourin that the Commission's investigation had been going on for years and that it was finally going to be "put to bed". According to Haver, Sabourin put his lawyer on the phone to confirm that the issues with the Commission had been resolved. Haver testified that he was led to believe that the legal issues stemmed from the fact that some of his agents were still registered with the Commission and had crossed the line by "working both tools at the same time". He didn't think it reflected on the investment vehicle itself, which he still believed to be legitimate.

[266] It appears that Haver was in the process of taking over the Camdeton business from Sabourin at that time. In 2005, Haver "rented" a company, Nicholson Financial Services, which carried on business as Nickel and Sun Group of Companies ("Nickel and Sun").

[267] The Nickel and Sun website was closely tied to Sabourin and Sun. For example, the website indicated that the core business of Nickel and Sun was offering the Sabourin and Sun trust investment and also indicated that Nickel and Sun represented Camdeton Trading S.A. The website also stated that Nickel and Sun was associated with the Sabourin and Sun Group of Companies and Camdeton Trading Ltd. Moreover, all the commissions owed to Smith, Lloyd and Delahaye were paid to Nickel and Sun from the Sabourin and Sun and Camdeton corporate bank accounts, and Nickel and Sun, in turn, paid the sales agents.

[268] Haver indicated that he had obtained the exclusive marketing rights to the Sabourin and Sun and Camdeton investment schemes. Sabourin had also asked Haver to develop a website and Sabourin said he had begun the process of transferring all the Camdeton business to Haver. Although Haver expected to buy the Camdeton business from Sabourin, nothing ever came of it.

[269] Nickel and Sun made a client presentation dated August 15, 2006 that was similar to the presentations reflected by the other handwritten notes submitted in evidence that were used to sell the Sabourin and Sun and Camdeton investments. The presentation, which used the same investment diagram, indicated that the "strategy" was established in 1958, described how to set

up a trust, explained the benefits of a trust, and indicated that the investment involved 125 international banks and bankers' acceptance notes. It also explained that the investment involved a 28-month lock-in and an income option, and provided for a guaranteed return of 17.52% annually. Haver testified that he was "evolving" the product and that he had put together the investment package for Sabourin's verification.

[270] In August 2006, Haver received a summons from the Commission for an interview with Staff that took place on September 27, 2006. There is some evidence that Haver and his agents sold approximately $2 million of the Camdeton investments in September 2006, even though Haver was aware of the Commission's investigation and knew that he was to be interviewed by Staff. Haver testified that he stopped selling the Sabourin and Sun and Camdeton investments after the interview.

c) Funds Received

[271] According to Ciorma, approximately $2.2 million in total appears to have been received by Haver for his role in Sabourin and Sun and Camdeton. This amount (paid from the corporate bank accounts) includes the funds paid directly to Haver or for his benefit (including funds paid to his daughter's boarding school) and funds paid to Nickel and Sun.

[272] According to Haver, part of his compensation also included an arrangement with Sabourin and Sun under which he earned commissions on the investments he personally referred. In his early involvement in 2003 and 2004, he was paid 0.5% per month on the total cumulative amount invested by his clients, including the compound returns on those investments.

[273] Haver testified that Edwards was earning 2% per month on the total amount invested by investors he referred to Sabourin and Sun. When Edwards had to reduce his involvement in June 2004, Edwards split his commission with Haver so that they would each earn 1% per month on the original amounts invested by clients and the amounts shown as compounded returns on the amounts invested. In the autumn of 2004 after Edwards became ill, Haver began working with Smith to get more clients involved in the Sabourin and Sun investment schemes and Haver's commission rate increased to 2% per month, from which he paid Smith referral fees.

[274] Haver testified that, by the end of 2006, he was entitled to commissions on approximately $3 million of investments sold directly by him for Sabourin and Sun.

[275] In his testimony, Haver outlined the revenue and expenses paid from Nickel and Sun in connection with the Sabourin and Sun and Camdeton investment schemes. Haver submitted several business records and statements of activities showing his combined income, what he paid to sales agents, and corporate and self-employed expenses. In total, Haver's records showed that approximately $2.6 million was paid to him and to Nickel and Sun. However, over the four years that he was involved with Sabourin and Sun and Camdeton, after paying his sales agents and operating expenses, he testified that he had realized only a profit of approximately $127,000. In addition, he received $185,000 in loans from Sabourin to develop and expand his business. Haver testified that the loans were forgiven because he was owed funds from Sabourin that were

not paid to him. He further stated: “I’m insolvent today because of trying to maintain the books [of] the business and because I was never fully paid my compensation outstanding.”

[276] It appears from the evidence that, from 2003 to 2006, Haver received a total of at least $345,000, which includes his profit after expenses, the loan from Sabourin that was not repaid, and an amount of $33,000 that went to pay for his daughter’s boarding school.

d) Analysis and Conclusions about Haver

[277] Haver was held out as an officer of Sabourin and Sun and Camdeton. He sold the Sabourin and Sun and Camdeton investments to investors and received funds for his benefit of at least $345,000 for doing so. He purported to understand the investments and explained them in detail to investors. He made handwritten notes during investor presentations that he left with investors reflecting his explanations. He also entered into contracts with Smith, Lloyd and Delahaye providing for their roles as sales agents selling the investments. It is clear that Haver’s activities constituted trading in securities within the meaning of the Act.

[278] We note that Haver and his father both invested with Sabourin and Sun at the beginning of Haver’s involvement with Sabourin and Sun and Camdeton, but we give relatively little weight to that fact.

[279] We find that Haver, as a former registrant, knew or ought to have known that he was selling securities in breach of securities law. We find it incredible that Haver believed that the Sabourin and Sun and Camdeton investment schemes could generate returns of 72% to 96% per year with no or very limited risk to investors. He also knew that Sabourin and Sun and Camdeton were paying commissions of 24% per year on the accumulating balances of investors. Even when Haver became aware that the Commission was investigating, he took no action and continued to sell the investments. In our view, Haver ignored the facts before him, did not ask the right questions (or blithely accepted the answers to the questions he asked) and ignored red flags that should have alerted him to investigate more diligently.

[280] Based on the evidence with respect to Haver summarized in paras. 243 to 276, we conclude that Haver traded in securities in breach of sections 25 and 53 of the Act. Haver has acknowledged that. We also find that Haver knew or ought to have known that his actions were in breach of sections 25 and 53 of the Act. We find that his conduct was contrary to the public interest and harmful to the integrity of Ontario capital markets.

5. Smith

a) Admission

[281] Smith conceded that he contravened sections 25 and 53 of the Act, but argued that he reasonably believed he was not selling a security and did not need to be registered under the Act. He submitted that he exercised due care and did not know anything about a so-called “prime bank investment scheme”.

b) Involvement in the Sabourin and Sun and Camdeton Investment Schemes

[282] Prior to the time of his involvement with Sabourin and Sun, Smith had worked primarily in the mutual fund industry. He worked at various companies, starting out as a salesperson at Investors Group in 1994 and working up to become a branch manager at Investia Financial Services Inc. (formerly Global) ("Investia") in 2004. His qualifications include completing mutual fund, investment fund and branch manager courses.

[283] At various times between May 1994 and November 2004, Smith held registrations with the Commission as a salesperson of a mutual fund dealer and a limited market dealer. From May to November 2004, he was also registered as a branch manager. Smith was employed at Investia in November 2004 when he surrendered his registration.

[284] Smith was introduced to Sabourin and Sun by Edwards, whom he met while employed at Global. Over the years, Smith had attended investment seminars with Edwards, which included a seminar hosted by Sabourin and Sun, and also some small group and client meetings. He understood that Edwards' role was to develop the Sabourin and Sun name and to refer business and clients to the company. Smith was offered an opportunity by Edwards to work with Sabourin and Sun in 2003, but when Smith decided to get involved in 2004, Edwards had become ill and Smith was contacted by Haver, who was looking for people to help him build the business.

[285] Smith testified that between 2003, when he was invited by Edwards to work with Sabourin and Sun, and 2004, when he actually became involved, he conducted some due diligence to learn about the company and to become comfortable that its success was real. According to his testimony, Smith conducted diligence that was wide-ranging and yielded positive results, including:

(i) He learned about Sabourin from discussions with Edwards, whom he had known for some time and whose opinion he trusted. According to Smith, Edwards was extremely positive about Sabourin and Sun and his experience with investing his own money and that of his family and friends. Smith testified that Edwards told him that he had worked with Sabourin and Sun for several years, and had nothing but great things to say about Sabourin, the company and its investment programs. According to Smith, Edwards never shared any information with him that indicated there were problems with Sabourin and Sun.

(ii) Smith met with clients of Edwards who seemed to be very happy with their Sabourin and Sun investments. Smith testified that he took time to speak to different people to get their opinions on how things had worked for them over a period of time. Many people he spoke to seemed to be very confident and comfortable with the opportunity, including, according to Smith, Haver's father, who had himself done a lot of homework and invested a substantial amount of money with Sabourin and Sun.

(iii) He found Sabourin and Sun to be a company that was highly regarded. According to Smith, there were several interviews of Sabourin on television and articles in Maclean's, the Globe and Mail and the Toronto Star that were "fairly glowing" about Sabourin.

(iv) Smith says he contracted a private investigative team to check out Sabourin and Sun nationally and internationally. Smith testified that this research did not reveal any black marks against the company.

(v) He contacted the Commission to inquire about whether there were hearings or notices outstanding with respect to Sabourin. He testified that he was told that there was nothing at that time. Smith also testified that he was told that Sabourin and Sun did business off-shore and was accordingly not under the Commission's jurisdiction. Smith, however, does not recall the individual he spoke to at the Commission.

(vi) He read the glossy Sabourin and Sun brochure and Sabourin's book, which he understood was co-written by Sabourin and two lawyers.

(vii) He spoke to the Vice-President of his then employer about his intention to leave. According to Smith, that person told him to "get rid of" his registration, or it would cause him a problem. Smith testified that it seemed reasonable to him at the time that the Sabourin and Sun investment opportunity was not a security because it involved a trust domiciled off-shore.

(viii) Smith spoke to Sabourin himself in the early summer of 2005 and inquired about whether he needed to be registered under the Act. Smith testified that Sabourin told him that he and his lawyer had been speaking to the Commission over a two to three year period, answering questions and explaining the Sabourin and Sun structure, and that the Commission accepted that they were not selling a security. Smith testified that he contacted Sabourin's lawyer to confirm this information.

[286] Most of this testimony was not substantiated by any other evidence before us. We are very skeptical of Smith's testimony including his testimony as to his discussion with the Commission referred to in para. 285(v) above.

[287] In the late summer of 2004, Smith sent a letter to his clients informing them that he would be surrendering his mutual fund licence by the end of the year and introducing them to the Synergy and Sabourin and Sun investment opportunities. He also invited his clients to consider these investment opportunities and to make the move with him from his then employer.

[288] At that time, Smith was serving as the Executive Vice-President of Synergy. He testified that he was primarily focused on building Synergy and viewed the Sabourin and Sun work as an "add-on". When he learned of the Sabourin and Sun opportunity, he concluded there was "a synergistic kind of marriage" between the Synergy and Sabourin and Sun products and believed the combination would work for certain clients. According to Smith, he would always approach clients with the Synergy product first, and would then introduce the Sabourin and Sun product if it was appropriate. He also testified that Haver felt it was important that Sabourin and Sun clients were initially involved with Synergy because those clients typically had a higher net worth and more interest in estate planning.

[289] Smith understood that his role at Sabourin and Sun was to refer clients to Haver, who would give them a full presentation and sell the investments. Smith testified that he was told by Haver that the clients belonged to Sabourin and Sun and only Haver would be dealing with them. Smith would be compensated for referring the clients to Sabourin and Sun. Sales agents working for Smith at Synergy were also approached by Haver to help build business for Sabourin and Sun. Smith testified that because this took away capital and resources from Synergy, he received an additional commission based on the amounts invested by clients brought to Sabourin and Sun by his agents.

[290] Smith's role also included training his sales agents, such as Delahaye, about the Sabourin and Sun investments and how they worked together with the Synergy investments. In his meetings with clients, Smith would describe the structure of the Currency Trading Contract Program, make handwritten notes and flowcharts, and pass along marketing material including the glossy Sabourin and Sun brochure on off-shore investing.

[291] Smith acknowledged that he marketed Sabourin and Sun at least indirectly through marketing for Synergy. In the Synergy marketing brochures, although they did not mention Sabourin and Sun by name, they frequently mentioned an investment that could "double your savings every 3-4 years without stock market risk". Smith acknowledged that this referred to the Sabourin and Sun investment. It was also described as a "tax-exempt guaranteed strategy". One of the themes in the marketing material was that an investment with Sabourin and Sun would allow average investors to do what was generally available only to the wealthy. For example, a hypothetical scenario was used to solicit the Sabourin and Sun investment:

> **Connie's** $300,000 house is fully paid for, and she would like to turn the "dead equity" into an income generator. **Solution:** Take a $225,000 mortgage or line of credit at 4% interest per year. Move the $225,0000 into a Perpetual Trust with a guaranteed minimum annual return of 13.5%+ *above and beyond the mortgage interest*. Connie may choose to receive annual **cash-flow** of $28,000+, **TAX-FREE**.
>
> [Emphasis in original.]

[292] Smith also sent this type of marketing material by e-mail to his clients and to his agents, who sent it to their clients.

[293] According to the investors who became involved with Sabourin and Sun through Smith, he advised them how they could make funds available to invest, including by deregistering their RRSPs and remortgaging their homes. Smith also asked clients to sign non-disclosure agreements, helped them complete the paperwork, picked up investment cheques, and corresponded with clients regarding the problems they had with their investments, such as with late payments or updates to their online account statements.

[294] Smith testified that he was not aware of any issues with late payments to investors. In fact, he believed that, with one exception, his clients always received their quarterly payments. He also believed that one of his clients received a full redemption amounting to $130,000 that was received within six weeks of the redemption notice. Smith also testified that quarterly payments were always made and clients were taking their approximate 18% per annum return as income. He indicated that payments stopped only when there was a cease trade order issued in respect of Sabourin and Sun in December 2006.

[295] Smith acknowledged that he complained to Haver about minor issues with the investments, including that he did not receive any trust documentation and that updates to the website were sometimes late. Despite the administrative problems, Smith testified that he believed there were no problems with the capital invested.

[296] Smith acknowledged that the materials he read, such as the Sabourin and Sun glossy brochure, did not specifically mention the Currency Trading Contract Program, the 125 international banks, bankers' acceptance notes, or 110% guarantee. He says that he did not, however, inquire into certain aspects of the program. For example, although he understood that the relevant currency exchange through which Sabourin and Sun was trading was in Luxembourg, Smith did not find the exchange on the internet and accepted that there was "not much talk of exchanges internationally at all on the Internet. Nothing you could really take of substance."

[297] In his supervisory role with his sales agents, Smith sent several e-mails outlining the investment process and what agents should be telling clients about the investments. For example, in an e-mail in December 2004, agents were specifically instructed not to tell clients that they were "selling" the off-shore product, but only that Synergy "has an opportunity" whereby they can "participate". Smith also warned agents not to contact the Sabourin and Sun office. He instructed that no client or agent should call Sabourin and no client was to learn of Haver's name. He also stressed to his agents that this was a very lucrative opportunity and "to lose this tool would be suicide and would banish you back to the world of .05% trailers and clients who want to ram that mutual fund".

[298] There is evidence that Smith sold Sabourin and Sun investments while he was still a registrant. It appears that Smith began selling the Sabourin and Sun investment as early as August 2004, prior to the surrender of his registration in November 2004. There is also evidence that Smith was terminated for cause, although he testified that he had resigned. For example, in response to enquiries made by the Commission, the compliance officer at his firm wrote a letter to the Commission in November 2004 outlining Smith's alleged misconduct and some of the

client complaints made against him. It appears from the letter that some of Smith's former clients complained that he advised them, while he was still employed and a registrant, to cash in their RRSPs to purchase another investment, which it was suspected may have been the investments offered by Synergy or Sabourin and Sun.

[299] In March 2005, Smith was interviewed by Staff at which time he told Staff he was not aware of aspects of the Sabourin and Sun investments, including to whom clients wrote cheques, who made decisions regarding the investment of funds from investors, and how investors would get their principal and interest back and from whom. He also told Staff that he did not discuss risks with clients because it was Sabourin and Sun's role to discuss them. Smith described his role as limited to referring interested individuals to Haver, who would deal with payments and any contracts that had to be signed. Smith told Staff that his participation (and knowledge) ended at the point where investors were left to decide whether and how much they wanted to invest. Accordingly, he had no idea how much money was invested by clients he had referred to Sabourin and Sun and was not sure of what his compensation was for making the referrals. In fact, he had executed a contract with Haver in September 2004 and had already made many sales by the time of the interview in March, 2005. Smith testified that he understood the contract was not binding at the time of the interview because a new contract from Haver was to be put in place. Based on the evidence before us, we find that Smith lied to and misled Staff during the investigation.

[300] Smith testified that, at his March 2005 interview, Staff gave no indication that Sabourin and Sun had any financial issues or problems, and provided no information that investors were having trouble redeeming their investments.

[301] In our view, the interview with Staff should have alerted Smith to the significant regulatory issues around Sabourin and Sun and Camdeton. Notwithstanding, Smith continued to sell the Sabourin and Sun and Camdeton investments until October 2005. His sales agents sold the investments for an even longer period of time, and he received commissions in respect of their sales.

[302] Smith testified that he had personally invested $50,000 with Sabourin and Sun and that his sister invested $50,000. This was confirmed by Ciorma's evidence. Smith and his sister have not had any of their investment repaid.

[303] According to Smith, he referred clients to Sabourin and Sun and Camdeton from late 2004 to July or August 2005. Although the business records indicate that Smith referred clients as late as October 2005, Smith testified that it appeared that way because it took some time for client investments to appear in the business records.

c) Funds Received

[304] The commissions paid to Smith were based on a contract he signed with Haver and Haver & Associates in September 2004. The contract provided that his compensation would be based on a pre-set schedule of basis points (a basis point being one one-hundredth of 1%) according to

the total cumulative value that his clients had invested with Sabourin and Sun at a given time. This total cumulative value included both the original investment amount and the apparent compounding returns on those investments. Specifically, on the total amount invested by his clients, Smith would earn 25 basis points per month on investments up to the first $2.5 million; 50 basis points per month on total investments between $2.5 million and $5 million; and 100 basis points per month on total investments over $5 million.

[305] Smith also had a special arrangement with Haver under which he could hire agents to sell Sabourin and Sun products or make referrals to Sabourin and Sun. In addition to earning commission fees on the amounts invested by his clients, he would also earn commission fees on the amounts invested as a result of the efforts of his agents. Accordingly, the total cumulative value invested on which his commission fees were based would also include the combined totals of his agents.

[306] Ciorma presented, based on Haver's business records and investor lists, a summary of the commissions earned by Smith. This summary showed that Smith earned commissions on $2.8 million of investments sold directly by him to 36 clients and on $12.8 million of investments sold by his agents.

[307] Staff submitted Haver's business records showing commissions and bonuses paid to Smith over the time period of November 2004 to June 2006. Haver's records indicated that approximately $1 million was paid to Smith in commission fees during that period.

[308] Based on additional documentation provided by Haver, including copies of cheques from Nicholson Financial Services made out to Smith and entities connected to him, it appears that at least $738,000 was paid to Smith between April 2005 and June 2006. To cover the entire period Smith was involved with Sabourin and Sun and Camdeton, Ciorma conducted some further analysis, which did not take into account any purported returns that would have accumulated in clients' accounts. Based on that further analysis and assuming that commission payments started in September 2004 and continued until December 1, 2006, Ciorma estimated that Smith would have received at least another $285,000.

[309] Based on his analysis, Ciorma concluded that approximately $1.02 million had been received by Smith in total commissions for the period from September 2004 to December 1, 2006.

[310] Smith acknowledged that he was compensated based on an "upward referral system" whereby he was paid on the referrals he made to Sabourin and Sun as well as on the sales made by his agents. He did not testify, however, as to the actual amounts he received from Sabourin and Sun.

[311] Although it is likely that he received more, we are satisfied that Smith was paid commissions of at least $1 million over the period of his involvement with Sabourin and Sun and Camdeton.

d) Analysis and Conclusions about Smith

[312] Smith sold the Sabourin and Sun and Camdeton investments to investors and received at least $1 million in commissions for doing so. He trained other sales agents, such as Lloyd and Delahaye, and received on-going commissions from their sales. It is clear that these activities constituted trading in securities within the meaning of the Act.

[313] We are particularly concerned that Smith:

(i) initially sold the investments at a time when he was still employed with a registrant and was not entitled to carry on any investment business except through his employer;

(ii) encouraged clients to collapse their RRSPs and mortgage their homes in order to invest in what was represented as a "guaranteed" return;

(iii) appears to have understood the securities law issues raised by the investment schemes, i.e. he encouraged sales agents to refer to an investment as an "opportunity" whereby an investor could "participate" or "establish a trust" and warned salespersons that they could "lose this tool" if they didn't preserve confidentiality;

(iv) made misleading and untrue statements to Staff in his interview with Staff in March, 2005; and

(v) continued to sell the investments even after he became aware of the Commission's enquiries and after he was interviewed by Staff.

[314] We find that Smith, a former registrant who had been registered in various categories with the Commission, including Branch Manager, knew or ought to have known that he was selling securities in breach of securities law. In our view, Smith ignored the facts before him, did not ask the right questions (or blithely accepted the answers to the questions he asked) and ignored red flags that should have alerted him to investigate more diligently.

[315] We note that Smith and his sister each invested $50,000 with Sabourin and Sun in December 2004 near the beginning of his involvement in the Sabourin and Sun investment schemes. We give relatively little weight to that fact.

[316] Based on the evidence with respect to Smith summarized in paras. 281 to 311, we conclude that Smith traded in securities in breach of sections 25 and 53 of the Act. Smith has acknowledged that. We also find that Smith knew or ought to have known that his actions were

in breach of sections 25 and 53 of the Act. We find that his conduct was contrary to the public interest and harmful to the integrity of Ontario capital markets.

6. Lloyd

a) Admission

[317] Lloyd conceded that he contravened sections 25 and 53 of the Act, but submitted that he reasonably believed that he was not selling a security and, accordingly, he did not need to be registered under the Act. He also submitted that he exercised due care when he became involved in Sabourin and Sun and did not know that the Sabourin and Sun and Camdeton investments were a prime bank investment scheme.

b) Involvement in the Sabourin and Sun and Camdeton Investment Schemes

[318] From January 1997 to July 2005, Lloyd held various registrations with the Commission as a salesperson of a mutual fund dealer and a limited market dealer. Lloyd was employed with the Investment Planning Counsel when he was introduced to Sabourin and Sun in the summer of 2004. He surrendered his registration in July 2005.

[319] Lloyd had also obtained a certified financial planner's certificate. Lloyd established a financial planning practice and worked closely with his father at various financial planning and mutual fund companies, including Global, Investment Planning Counsel and Canavista International Limited. Lloyd and his father later formed Canavista Financial Centre ("Canavista"). It appears that later a company called Andrepa Holdings became the primary company through which Lloyd and his father carried on business.

[320] Lloyd was introduced to Sabourin and Sun and Haver through Smith, whom he met at Global in 1996. In the summer of 2004, Lloyd was exploring different investment structures and became interested in Synergy and possible off-shore opportunities. Lloyd testified that as an investment advisor, he was attracted to the idea of obtaining better returns for his clients with lower risk exposure. By October or November 2004, after learning from Haver and Smith about the Sabourin and Sun investment schemes, particularly the Currency Trading Contract Program, Lloyd began to arrange meetings and seminars for Haver to explain the investments to his clients.

[321] Lloyd and Haver entered into a referral contract in February 2005. According to Lloyd, his role consisted mainly of giving information to clients about the investments and referring interested clients to Haver and Sabourin and Sun. He testified that in a typical meeting at his office, he would give clients an overview of the Currency Trading Contract Program and how the off-shore trust worked. He would explain the investment through notes on a whiteboard and would tell investors that a full presentation and detailed explanation would be given to them by Haver. He also told clients that the Currency Trading Contract Program was a very safe tool with strong growth and an option to take income. Lloyd says that he considered himself a go-between, an educator and referral agent, rather than an advisor to his clients. Lloyd testified that after a

referral was made, he no longer had any involvement with the investment and acted only as an information source for his clients. However, Lloyd was the first point of contact for his clients regarding their concerns and Lloyd would call Haver on their behalf when problems occurred. Lloyd usually encouraged his clients to direct questions and concerns to Haver, and Lloyd testified that after their investment, he believed he no longer had any obligation to the clients.

[322] There were some transactions, however, in which Haver was not involved. In those cases, Lloyd met with the clients and sold them the investment. Lloyd's actions in these transactions included explaining the investment; passing on Sabourin and Sun marketing materials; performing financial modelling for the client to determine available funds to invest, including funds from deregistering or cashing out RRSPs or RRIFs; asking the client to sign a non-disclosure agreement; completing paperwork and sending it to Sabourin and Sun; and collecting cheques from his clients to deliver to Haver and Sabourin and Sun.

[323] Lloyd testified that before beginning to work as a referral agent for Haver, he took steps to gather appropriate information about Sabourin and Sun, including:

(i) He spoke to his father, who he testified had experience and extensive knowledge of off-shore investments. Lloyd said that his father told him he had heard of Sabourin as early as 1995.

(ii) He spoke to Haver, who gave him the impression that Sabourin and Sun had a long record of success, with a well-established company and investment products. Lloyd said that he had assumed that all the information he received from Haver had been researched and subjected to due diligence.

(iii) He searched Sabourin on the internet, which revealed the Sabourin and Sun website as the first hit. On the website, there was a lot of information in terms of related articles and references to interviews and radio shows that Sabourin had done. Haver also referred Lloyd to an article in Offshore Finance Canada, an established Canadian periodical, that gave a fairly positive review of the Sabourin "tools".

(iv) He searched the internet to determine whether there were any outstanding issues with the Commission. When his search did not reveal anything, Lloyd says that he asked Haver and Smith about the Commission's view on the Sabourin and Sun investment. He was told that there were communications between Sabourin and the Commission, but they did not give rise to any issues. For example, there were no warnings or asset freezes at the time. Because he believed that Sabourin had spoken to the Commission, he assumed the Commission would have done something if there were any issues.

(v) He inquired whether he needed to be registered with the Commission in order to be able to introduce investors to Sabourin and Sun. Lloyd testified that he was told by Haver or Smith that it was not necessary because "this was a trust that is being established, a non-resident entity that's resident in an area outside of Canada and Ontario, specifically here, and that trust was making the investment. Therefore, it was reasonable to assume that investment was being done or if there was going to be any securities issues, they might be through the country that the trust is resident as opposed to the – where the actual first sale is being made".

(vi) He inquired whether there were any instances where investors did not receive their redemption or income in a timely manner. According to Lloyd, he was told by Haver or Smith that everyone received their quarterly payments on time and that investors had the opportunity to redeem their funds and some had done so.

[324] Lloyd insisted that he was not engaged in selling the Sabourin and Sun investments, although it appears that he provided promotional materials to clients. These included Sabourin's book and marketing materials for Synergy tax strategies which recommended an investment component that appeared to be the Sabourin and Sun investment. Lloyd testified that he did not have any control over the management or administration of an investment and was not involved in preparing promotional materials or creating websites or documents.

[325] According to Lloyd, fewer than 20% of the clients he worked with were referred to Sabourin and Sun. Lloyd had a book of business with mutual fund clients through Investment Planning Counsel and was also referred clients by his father as well as by his father's business partner. Lloyd testified that he referred only those clients he wanted to work with for a long period of time. He believed that the Sabourin and Sun investment was suitable for clients who had a balanced portfolio and who were looking for consistent returns over a period of 3 to 6 years. Lloyd said that he ensured that clients to whom he referred the investments understood the potential risks involved. Lloyd acknowledged, however, that the fact that a client had a high net worth would play a part in his decision to refer the client to Sabourin and Sun.

[326] Lloyd also acknowledged that the commissions he earned for referring clients to Sabourin and Sun and Camdeton were more attractive than those he had previously earned by working with mutual funds. With respect to the Sabourin and Sun and Camdeton investment schemes, he was earning 6% per year in commissions on the investments made by his clients, that were locked in for at least a two and a half year period. Lloyd testified that he did not believe those commissions were unreasonably high.

[327] Lloyd was not clear on the details of the Currency Trading Contract Program. He said that he never saw any formal documentation, currency backed note or letter of credit, or actual evidence as to any guarantee of the investments. He did not know what financial institutions were involved in the investment structure. He accepted, and testified that he also told clients, that this type of off-shore investment was not a transparent one where they could receive information readily. Although Lloyd spoke to his father about Sabourin, he acknowledged that his father would not have been aware of the Currency Trading Contract Program.

[328] Lloyd acknowledged that Sabourin's book and the other articles about off-shore investing did not mention currency tools, a banker's exchange or a 110% collateral guarantee. We also note that the article entitled "Offshore Returns Guaranteed" contained a warning about guarantees.

[329] We note that Lloyd was still a registrant until July 2005, even though he was selling the Sabourin and Sun investment as early as November 2004. In June 2005, Lloyd received a letter from the Chief Compliance Officer (the "CCO") at his firm inquiring about his off-book activities with Sabourin and Sun. He was reminded that he was not permitted to have referral arrangements regarding securities related business outside his firm and was told to cease his activities with Sabourin and Sun while a review was conducted.

[330] In a letter responding to the CCO, Lloyd stated that he was not offering securities and that Sabourin and Sun "is a company that provides customized individual offshore tax strategies." He also wrote that there was no formal or informal arrangement in place with Sabourin and Sun. In a subsequent letter to the CCO, he explained that he did not have a referral arrangement with Sabourin and Sun but did have a referral arrangement with "an individual who is connected to with [sic] the Sabourin group of companies for North America." In his testimony at the hearing, Lloyd maintained that he did not believe that he was carrying on a securities-related activity, even though the CCO suggested to him that he was, and accordingly, he did not believe it was necessary at the time to disclose to his employer his off-book activities with Sabourin and Sun. He did not stop his activities with Sabourin and Sun, as he was asked to, and resigned from his former employer a month after he received the letter from the CCO.

[331] At one point, Lloyd learned that Staff was conducting an investigation and making enquiries of investors with respect to Sabourin and Sun. One of the investors who dealt with Lloyd testified that he received a telephone message from Lloyd in March 2006 to the effect that he would receive a letter from the Commission and that he did not have to pay any attention to it. Lloyd admitted that he had called many of his clients to tell them to expect a letter from the Commission and that it was their choice whether they wanted to cooperate.

[332] We note that Lloyd made a personal investment of $25,000 with Sabourin and Sun or Camdeton. Lloyd testified that he did not have the net worth to invest more, but that he believed investing his own money was required to continue his referral relationship with Sabourin and Sun. Lloyd did not receive repayment of any of that investment.

[333] According to Lloyd, he referred investors to Sabourin and Sun and Camdeton primarily during the period from November 2004 to July 2005. He testified that he stopped referring investors from approximately June 2005 to December 2005 (he resumed referring investors for a short period in December 2005 and January 2006). After that time, Lloyd said he stopped making referrals because of administrative issues with the investments and the fact that his clients were receiving late payments. It appears from the evidence, however, that one client who made a significant investment was referred by Lloyd to Camdeton in February 2006 and an additional client was referred in July 2006.

c) Funds Received

[334] Lloyd's commission structure under his contract with Haver was substantially similar to Smith's, except that it was at lower rates. On the total cumulative value of investments by his clients, he would earn 25 basis points per month for the first $2.5 million invested; 50 basis points per month on a total investment between $2.5 million and $7.5 million; and 75 basis points per month on a total investment of over $7.5 million.

[335] Staff submitted Haver's business records for the period from April 2005 to June 2006, which indicated that approximately $257,000 was paid to Lloyd during that period.

[336] Based on additional documentation provided by Haver that included copies of cheques made out by Nicholson Financial Services in favour of Lloyd and other entities connected to him, it appears that at least $266,000 was paid as commissions to Lloyd in the period from January 2005 to June 2006. Following the same analysis as was applied in calculating amounts paid to Smith (which did not take into account any returns that were to have accumulated in the clients' accounts), Ciorma added to this amount commission fees of approximately $102,000 that Lloyd may have received after June 2006 and up to December 1, 2006. In total, Ciorma concluded that Lloyd may have received at least $370,000 in commissions from December 2004 to December 1, 2006.

[337] In his testimony, Lloyd estimated that he received between $257,000 and $266,000 in commissions. Lloyd also testified that because the majority of the cheques went to Andrepa Holdings, a company he owned with his father, he received only approximately half of these funds. Lloyd testified that he sold between $4 and $5 million of investments over two years. On cross-examination, however, he acknowledged that Haver's records showed that approximately $5.3 million of Sabourin and Sun and Camdeton investments were sold by him to 34 clients.

[338] We note that there is no evidence, either through cheques, business records or other documents that indicate Lloyd was paid the commissions he was entitled to for the period after June 2006. Based on all of this evidence, we are satisfied that at least $266,000 was actually paid to Lloyd in commissions.

d) Analysis and Conclusions about Lloyd

[339] We find that Lloyd solicited clients to invest, explained the investment schemes to them, referred investors to Sabourin and Sun and Camdeton, sold the Sabourin and Sun and Camdeton investments to investors, and received at least $266,000 in commissions for doing so. It is clear that these activities constituted trading in securities within the meaning of the Act.

[340] We are particularly concerned that Lloyd:

(i) initially sold Sabourin and Sun investments at a time when he was still employed with a registrant and was not entitled to carry on any investment business except through his employer;

(ii) told clients that they did not need to pay attention to a letter that they would be receiving from the Commission as part of the Commission's enquiries into Sabourin and Sun and Camdeton; and

(iii) continued to sell the Sabourin and Sun and Camdeton investments even after he became aware of the Commission's investigation.

[341] We find that Lloyd, a former registrant who held himself out to be a financial planner, knew or ought to have known that he was selling securities in breach of securities law. In our view, Lloyd ignored the facts before him, did not ask the right questions (or blithely accepted the answers to the questions he asked) and ignored red flags that should have alerted him to investigate more diligently.

[342] We note that Lloyd invested $25,000 with Camdeton in January 2006. He said that this investment was required to continue his referral relationship with Sabourin and Sun. We give little weight to that fact.

[343] Based on the evidence with respect to Lloyd summarized in paras. 317 to 338, we conclude that Lloyd traded in securities in breach of sections 25 and 53 of the Act. He has acknowledged that. We also find that Lloyd knew or ought to have known that his actions were in breach of sections 25 and 53 of the Act. We also find that his conduct was contrary to the public interest and harmful to Ontario capital markets.

7. Delahaye

a) Admission

[344] Delahaye admitted that she contravened sections 25 and 53 of the Act. She said however, that she exercised due diligence before recommending the investments and she believed they were legitimate.

b) Involvement in the Sabourin and Sun and Camdeton Investment Schemes

[345] Delahaye received her designation as a Chartered Accountant in 1980 and was registered with the Commission as an investment advisor while employed by Midland Walwyn, and later by Merrill Lynch and Raymond James. She was still employed by Raymond James when she was introduced to Sabourin and Sun and Camdeton in late 2004 and began selling the Sabourin and Sun investments in January 2005. Her registration was automatically terminated effective April 26, 2005 when she left Raymond James.

[346] Delahaye testified that she was researching mutual funds on the internet when she found a link to the Synergy website. In October or November 2004, Delahaye attended a Synergy seminar. She testified that the off-shore strategy and tax strategy appealed to her. Afterwards, she spoke to Smith, who asked her if she was interested in looking into it further.

[347] Delahaye testified that she became interested in Sabourin and Sun because it offered a guarantee on the principal and "a real rate of return … higher than inflation and after taxes." She began referring her friends, acquaintances and her former clients at Raymond James to Sabourin and Sun. She also introduced the investment scheme to individuals who responded to Synergy advertisements over the internet.

[348] According to Delahaye, her role was as a sales agent for Sabourin and Sun and Camdeton. She would visit potential investors in their homes and explain the investments. If interested, the investor would then meet with Delahaye and Haver. According to Delahaye, the meeting with Haver was an essential part of the investment process. Delahaye says she never met Sabourin.

[349] The investors who dealt with Delahaye testified that she also spoke to them on the phone after their first meeting to discuss any concerns and how they could make funds available to invest. According to the investors, Delahaye provided them with promotional materials, asked them to sign a non-disclosure agreement, received their investment cheques and assisted them in completing the required paperwork. She also corresponded with clients regarding issues they were having with their investments and reassured them when they received letters from Sabourin and Sun informing them of the termination of the Currency Trading Contract Program, the concerns of the Commission, and the delay in receiving their full redemptions.

[350] In May 2006, Delahaye, together with her fiancé, invested $80,000 with Sabourin and Sun or Camdeton. She and her fiancé did not request periodic interest payments and their investment has not been repaid. Delahaye also testified that she referred her aunt and her best friend, each of whom invested $50,000.

[351] With respect to due diligence, Delahaye testified that she checked the Better Business Bureau and found that no complaints had been made against Sabourin and Sun. She also did internet research and found the Sabourin and Sun website. On that website were links to a National Post article and other articles about Sabourin and reference to the fact that Sabourin had written a book on off-shore investing. Delahaye testified that this lent credibility to the investments offered by Sabourin and Sun. She understood that the off-shore strategy had been offered since 1958 and that Sabourin had been using it since the early 90s. She believed any regulatory issues would have been dealt with by the time she became involved.

[352] We note Smith's December 3, 2004 e-mail to Delahaye and other sales agents, which states, amongst other things:

> Your job is to screen potential clients. Through your financial abilities, you will determine their "suitability – i.e.: Cash, Assets, Equity that can move them into position to compile the necessary minimum.

[353] Delahaye insisted that she "never looked at clients purely from their money point of view", but considered suitability, including income needs.

[354] In our view, the evidence shows that Delahaye's principal concern was whether clients had the ability to put together the minimum amount necessary to invest in the schemes. For example, Delahaye's March 2005 memorandum to Haver describes current prospects solely by reference to name, address, age, amount to be invested and income needs. The seven identified individuals and couples include an 84-year-old woman, living alone, who "will be investing approximately $90,000 and wants about $12,000 income," a 73-year-old woman, described as "conservative", who "will be investing $50,000 and will need max income," and an 85-year-old woman who would be investing $350,000-$400,000 and would "need about 15% income."

[355] Delahaye acknowledged that she had never previously in her career seen an investment with a principal guarantee and such a high rate of return. She felt she was familiar with the "product", though she admitted that she never saw the "banker's acceptance note" that was supposed to guarantee the investment, did not know which bank was offering the guarantee, could not identify the 125 world banks that were supposedly involved in the scheme, and could not identify the "bankers exchange". She admitted that neither the brochures Haver sent her nor the Sabourin book talked about the currency tool, the banker's acceptance note, the world banks or the 110% collateral guarantee.

[356] Delahaye acknowledged that she did not check with the Commission before getting involved with the Sabourin and Sun investment schemes. She explained that "it had been strongly emphasized to her that this was not an investment", that she was told by Haver and Smith that Sabourin had spoken to the Commission and she assumed any regulatory issues would have been dealt with because the product had been available for over ten years.

[357] There is evidence that Delahaye sold Sabourin and Sun investments while she was still registered and employed by a registrant. She began selling the Sabourin and Sun investments as early as January 2005, prior to the surrender of her registration in April 2005. She did not disclose this off-book activity to her firm.

[358] On April 21, 2005, Delahaye was interviewed by Staff in relation to the Sabourin and Sun, Camdeton and Synergy investment schemes. At that time, she was about to leave her firm and she was asked about her future plans. She responded: "It's a little bit up in the air. I'm going to be doing the Synergy business. Sabourin. I don't know. I had liked the idea, but with your looking into it, it's making me wonder is there something that I'm missing here. I'm not sure exactly what I'm doing, so I'm sort of caught betwixt and between." Delahaye continued to sell the investments after the interview, referring over $1 million in investments during the remainder of 2005. Questioned about this in cross-examination, Delahaye stated that she did not understand her Commission interview to mean that there was an issue with Sabourin.

c) Funds Received

[359] The commission arrangement Delahaye had with Haver and Haver & Associates was the same as Lloyd's. Her contract, dated February 2005, provided that, on the total investments by her clients, she would earn 25 basis points per month for the first $2.5 million invested; 50 basis points per month on total investments between $2.5 million and $7.5 million; and 75 basis points per month on total investments over $7.5 million.

[360] Staff submitted Haver's business records with respect to the commissions paid to Delahaye in the period from June 2005 to June 2006, which indicated that she was paid approximately $70,000.

[361] Based on the additional documentation that was provided by Haver, including copies of cheques to Delahaye, it appears that at least $70,000 in commissions was paid to her in the period from March 2005 to June 2006. Ciorma conducted some additional analysis, which did not take into account any returns that were accumulated in the clients' accounts, and concluded that Delahaye may have received at least $98,000 in commissions from February 2005 to December 1, 2006.

[362] Delahaye admitted in her testimony that she received commissions in the vicinity of $70,000 and had sold investments to 21 clients totalling approximately $2.3 million between January 2005 and May 2006.

[363] We note that although commissions for the entire period up to December 2006 were payable to Delahaye, there is no evidence that she actually received commissions for her services after June 2006. We are satisfied that Delahaye received at least $70,000 in commissions in connection with her sales efforts for Sabourin and Sun and Camdeton.

d) Analysis and Conclusions about Delahaye

[364] Delahaye met investors in their homes, explained the investments, solicited sales of the investments, recommended that some clients mortgage their homes and put all of their financial assets in the investments, helped clients complete the paperwork, and asked them to sign non-disclosure agreements. We find that Delahaye sold the Sabourin and Sun and Camdeton investments to her clients and received at least $70,000 in commissions for doing so. It is clear that these activities constituted trading in securities within the meaning of the Act.

[365] Delahaye starting selling the Sabourin and Sun investments while she was employed with a registrant and was not entitled to carry on any investment business except through her employer. She continued to sell the investments even after her interview with Staff in April 2005.

[366] We find that Delahaye, as a former registrant, knew or ought to have known that she was selling securities in breach of securities law. In our view, Delahaye ignored the facts before her,

did not ask the right questions (or accepted too blithely the answers to the questions asked) and ignored red flags that should have alerted her to investigate more diligently.

[367] It seems to us unlikely that Delahaye and her fiancé would have invested $80,000 with Camdeton in May 2006 if Delahaye had known at the time that the investments were not legitimate. That amount may equal the full amount of the commissions that were paid to her.

[368] Based on the evidence with respect to Delahaye summarized in paras. 344 to 363, we conclude that Delahaye traded in securities in breach of sections 25 and 53 of the Act. She has acknowledged that. We also find that Delahaye knew or ought to have known that her actions were in breach of sections 25 and 53 of the Act. We also find that her conduct was contrary to the public interest and harmful to the integrity of Ontario capital markets.

V. CONCLUSION

[369] We find that the investors who testified, and many other investors, were offered and sold investments with Sabourin and Sun and Camdeton between August 2001 and December 2006. Investors were led to believe, based on the representations made to them, that they would profit from substantial returns on their investments with little or no risk and with no active involvement on their part. Many of them were encouraged to mortgage their homes, draw down their lines of credit or collapse their RRSPs in order to invest. An amount of up to $33.9 million was invested in the investment schemes and investors lost most of their money. We note that the investment schemes had attributes similar to the characteristics of a prime bank investment scheme as described in para. 50. The investment schemes were a sham and the representations made to investors were lies. Sections 25 and 53 of the Act are intended to protect the public from such illegitimate schemes.

[370] We find that Sabourin concocted and orchestrated the investment schemes and sold sham investments, directly and through Irwin, Haver, Smith, Lloyd, Delahaye and others. He was the directing and controlling mind of Sabourin and Sun and Camdeton and directed everything, including where funds went, how investments were processed and what information and payments were sent to investors. He solicited and sold investments he knew to be a sham, lied to and misled investors, and misappropriated investors' funds. Based on the evidence, it appears that at least $3.3 million (Canadian) and $200,000 (US) was received by Sabourin or paid to third parties for his benefit. We also find that the Corporate Respondents contravened sections 25 and 53 of the Act and acted in a manner contrary to the public interest and harmful to the integrity of Ontario capital markets.

[371] We find that Irwin accepted money from investors, helped investors complete application forms, prepared welcome letters and corresponded with investors, helped set up the off-shore companies, created and updated investors' online accounts, and exercised signing authority over the corporate bank accounts. We find that Irwin, because of his close working relationship with Sabourin, was in the best position of the individual respondents (apart from Sabourin himself) to recognize that the investment schemes were not legitimate. Although he questioned the use of investor funds, he accepted Sabourin's explanations and passed on Sabourin's reassurances to

investors. We find that he misled Staff. Irwin received between $438,000 and $1.4 million from his involvement with Sabourin and Sun and Camdeton.

[372] Haver, a former registrant, admitted that he contravened sections 25 and 53 of the Act. We find that Haver solicited clients to invest, met with clients, including some who were referred by Smith, Lloyd and Delahaye and other sales agents, explained the investment schemes, provided promotional material, received clients' investment cheques, helped clients complete the paperwork and passed that material on to the Sabourin and Sun office, sent out welcome letters and other correspondence, and acted as the point of contact between investors and Sabourin when investors had problems with their investments. Haver also dealt with Smith, Lloyd and Delahaye and other sales agents, entered into contracts with them and paid their commissions. We find that as a former registrant, Haver knew or ought to have known that he was selling securities in breach of the Act. It appears he received funds for his benefit of at least $345,000 from his involvement with Sabourin and Sun and Camdeton.

[373] Smith, Lloyd and Delahaye, the sales agents, admitted that they contravened sections 25 and 53 of the Act. They solicited clients to invest, met with clients to provide promotional material and explain the investment schemes, helped clients complete the required paperwork and received clients' investment cheques. They terminated their registrations so as to be able to sell the investment schemes, and continued to sell them even after being interviewed by the Commission. We find that as former registrants, they knew or ought to have known that they were selling securities in breach of the Act. We find that Smith was paid commissions of at least $1 million, Lloyd received at least $266,000, and Delahaye received at least $70,000, over the period of their involvement with Sabourin and Sun and Camdeton.

[374] We find that Haver, Smith, Lloyd and Delahaye continued to sell the investment schemes after learning that the Commission was making enquiries and conducting interviews. We also find that Irwin and Smith misled Staff during their interviews. In addition, Lloyd told investors to ignore any enquiries from the Commission regarding Sabourin and Sun.

[375] We are satisfied that Staff presented clear and convincing proof, based upon cogent evidence, that Sabourin, Irwin, Haver, Smith, Lloyd, Delahaye and the Corporate Respondents:

(i) contravened section 25 of the Act by trading in securities without registration in circumstances where no exemption was available;

(ii) contravened section 53 of the Act by distributing securities for which no preliminary prospectus or prospectus was filed or receipted by the Director in circumstances where no exemption was available; and

(iii) acted contrary to the public interest and in a manner harmful to the integrity of Ontario capital markets.

[376] We are not satisfied, based upon the evidence, that Keaveney contravened sections 25 or 53 of the Act or acted contrary to the public interest.

[377] Staff and the Respondents other than Keaveney should contact the Office of the Secretary within 10 days of this decision to schedule a date for a sanctions hearing, failing which, a date will be set by the Office of the Secretary.

Dated at Toronto this 20th day of March, 2009.

"James E. A. Turner"

James E. A. Turner

"David L. Knight"

David L. Knight, FCA

"Carol S. Perry"

Carol S. Perry