Ontario Securities Commission
Commission des valeurs mobilières de l'Ontario
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**IN THE MATTER OF THE *SECURITIES ACT*,
R.S.O. 1990, c. S.5, AS AMENDED**

AND

**IN THE MATTER OF
GLOBAL PARTNERS CAPITAL, ASIA PACIFIC ENERGY, INC., 1666475 ONTARIO INC. operating as "ASIAN PACIFIC ENERGY", ALEX PIDGEON, KIT CHING PAN also known as Christine Pan, HAU WAI CHEUNG, also known as Peter Cheung, Tony Cheung, Mike Davidson, or Peter McDonald, GURDIP SINGH GAHUNIA, also known as Michael Gahunia or Shawn Miller, BASIL MARCELLINIUS TOUSSAINT, also known as Peter Beckford, and RAFIQUE JIWANI, also known as Ralph Jay**

**REASONS AND DECISION
(Section 127 of the Act)**

Hearing:	May 25, 28 and 29, 2009 June 1 and 2, 2009	
Decision:	August 31, 2010	
Panel:	Suresh Thakrar Paulette L. Kennedy	- Commissioner and Chair of the Panel - Commissioner
Counsel:	Matthew Boswell	- For Staff of the Commission
	Aaron Rosseau	- For Kit Ching Pan and Hau Wai Cheung
		No one appeared for the other respondents.

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REASONS AND DECISION

I. BACKGROUND

A. OVERVIEW

[1] This was a hearing on the merits 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 Global Partners Capital ("**GPC**"), Asia Pacific Energy, Inc. ("**Asia Pacific**"), 1666475 Ontario Inc., operating as "Asian Pacific Energy" ("**1666475**"), Alex Pidgeon ("**Pidgeon**"), Kit Ching Pan, also known as Christine Pan ("**Pan**"), Hau Wai Cheung, also known as Peter Cheung, Tony Cheung, Mike Davidson, or Peter McDonald ("**Cheung**"), Gurdip Singh Gahunia, also known as Michael Gahunia or Shawn Miller ("**Gahunia**"), Basil Toussaint, also known as Peter Beckford ("**Toussaint**") and Rafique Jiwani, also known as Ralph Jay ("**Jiwani**") (collectively, the "**Respondents**") breached the Act and acted contrary to the public interest.

[2] On September 4, 2008, a Statement of Allegations was filed by Staff of the Commission ("**Staff**") and a Notice of Hearing was issued by the Commission. Staff alleges that between February 2006 and October 2007 (the "**Material Time**"), the Respondents were involved in a scheme to market and issue securities of Asia Pacific. Asia Pacific securities were sold to over 110 investors, raising a total of over US $2.2 million. The investors were primarily located in the United States, but there were also investors in the United Kingdom, the Caribbean, New Zealand, Singapore and Ontario.

[3] Staff alleges that the Respondents were involved in fraudulent and misleading activities related to the issuance of these securities, for which registration and prospectus requirements were not met, and for which the Respondents did not claim any exemptions under Ontario securities laws relating to the sale and distribution of securities. Staff alleges illegal representations and undertakings were made to investors with the intention of effecting trades in Asia Pacific securities. Staff further alleges that the Respondents' conduct was contrary to the public interest.

B. HISTORY OF PROCEEDINGS

[4] A temporary cease trade order in this matter was issued on October 11, 2007 against GPC, Cheung, Pan, Gahunia and another corporation that is not a respondent in this matter. This temporary order was extended to the conclusion of the hearing on the merits. After the Statement of Allegations was issued by Staff, another order was issued by the Commission on October 1, 2008, allowing the temporary order against the non-respondent corporation to lapse.

[5] On May 25, 28, and 29 and June 1, 2009, we heard evidence on the merits in this matter, and on June 2, 2009, we heard closing submissions from Staff. None of the Respondents was present or represented by counsel, other than Pan and Cheung, whose counsel appeared on June 1, 2009 to make certain admissions on their behalf.

[6] We also received written submissions from Staff on July 3, 2009. None of the Respondents provided any written submissions.

[7] The following are our reasons and decision on the merits in this matter.

C. THE RESPONDENTS

1. Corporate Respondents and other Entities

[8] GPC is an unincorporated business that operated in the Toronto, Ontario area. It was created to market shares in Asia Pacific to individual investors.

[9] Asia Pacific was incorporated in Nevada on December 19, 2005. There is no record that Asia Pacific was ever registered under Ontario securities laws, or that it was a reporting issuer in Ontario.

[10] 1666475 was incorporated in Ontario on July 13, 2005 and operated out of the Toronto area as "Asian Pacific Energy". 1666475 has never been registered under Ontario securities laws.

[11] GPC, Asia Pacific, and 1666475 are collectively referred to as the "**Corporate Respondents**".

2. Individual Respondents

[12] Pidgeon was the President, Secretary and Treasurer, and a director of Asia Pacific, according to documents filed with the State of Nevada, as of June 19, 2007. Prior to this, as of February 21, 2007, Pidgeon was listed as Asia Pacific's Secretary. In account-opening documentation for three Asia Pacific bank accounts in the United States, Pidgeon was alternatively described as President, Secretary and Member of Asia Pacific.

[13] Pan (also known as Christine Pan) was the President and sole director of 1666475. Pan is Cheung's wife.

[14] Cheung (also known as Peter Cheung, Tony Cheung, Mike Davidson, or Peter McDonald, according to Staff) was the President and sole director of Asia Pacific, as of February 21, 2007. Cheung is Pan's husband.

[15] Gahunia (also known as Shawn Miller and Mike Gahunia) was a salesperson and manager of GPC.

[16] Toussaint (also known as Peter Beckford) was a salesperson and manager of GPC.

[17] Jiwani was a manager of GPC.

[18] Staff alleges that Pan, Cheung, Gahunia, Toussaint and Jiwani were also *de facto* directors and officers of GPC.

[19] Pidgeon, Pan, Cheung, Gahunia, Toussaint, and Jiwani are collectively referred to as the "**Individual Respondents**".

[20] None of the Individual Respondents was registered in any capacity with the Commission.

D. THE ALLEGATIONS

[21] Staff alleges that:

(a) Between and including February 2006 and October 2007, the Respondents engaged or participated in acts, practices or courses of conduct relating to Asia Pacific securities that the Respondents knew or reasonably ought to have known perpetrated a fraud on persons or companies, contrary to section 126.1(b) of the Act and contrary to the public interest;

(b) Between and including February 2006 and October 2007, the Respondents traded in securities of Asia Pacific without being registered to trade in securities, contrary to section 25(1)(a) of the Act and contrary to the public interest;

(c) Between and including February 2006 and October 2007, the Respondents traded in securities of Asia Pacific when a preliminary prospectus and a prospectus had not been filed and receipts had not been issued for them by the Director, contrary to section 53(1) of the Act and contrary to the public interest;

(d) Between and including February 2006 and October 2007, Cheung, Gahunia, and Toussaint, with the intention of effecting a trade in securities of Asia Pacific, made representations that the Asia Pacific securities would be repurchased or that the purchase price would be refunded, contrary to section 38(1) of the Act and contrary to the public interest;

(e) Between and including February 2006 and October 2007, Cheung, Gahunia, and Toussaint gave undertakings, with the intention of effecting a trade in securities of Asia Pacific, as to the future value or price of the securities of Asia Pacific, contrary to section 38(2) of the Act and contrary to the public interest;

(f) Between and including February 2006 and October 2007, Cheung, Gahunia, and Toussaint made representations without the written permission of the Director, with the intention of effecting a trade in securities of Asia Pacific, that such securities would be listed on a stock exchange or quoted on any quotation and trade reporting system, contrary to section 38(3) of the Act and contrary to the public interest;

(g) Between and including February 2006 and October 2007, Pan, Cheung, Gahunia, Toussaint, and Jiwani, being directors or officers of GPC, did authorize, permit or acquiesce in the commission of the violations of sections 126.1, 25, 53, and 38 of the Act, set out above, by GPC or by the employees, agents or representatives of GPC, which constitute offences under subsection 122(1)(c) of the Act, contrary to section 122(3) of the Act and contrary to the public interest;

(h) Between and including February 2006 and October 2007, Pidgeon and Cheung, being directors or officers of Asia Pacific, did authorize, permit, or acquiesce in the commission of the violations of sections 126.1, 25, and 53 of the Act, set out above, by Asia Pacific or by the employees, agents or representatives of Asia Pacific, which constitute offences under subsection 122(1)(c) of the Act, contrary to section 122(3) of the Act and contrary to the public interest;

(i) Between and including February 2006 and October 2007, Pan and Cheung, being directors or officers of 1666475, did authorize, permit or acquiesce in the commission of the violations of sections 126.1, 25, and 53 of the Act, set out above, by 1666475 or by the employees, agents, or representatives of 1666475, which constitute offences under subsection 122(1)(c) of the Act, contrary to section 122(3) of the Act and contrary to the public interest;

(j) On or about November 1, 2007, Toussaint made statements to Staff appointed to make an investigation or examination under the Act, during an examination conducted by Staff, that he was not involved in the sales of securities of Asia Pacific, that, in a material respect and at the time and in the light of the circumstances under which they were made, were misleading or untrue, contrary to section 122(1)(a) of the Act and contrary to the public interest; and

(k) On or about January 28, 2008, Gahunia made a statement to Staff appointed to make an investigation or examination under the Act, during an examination conducted by Staff, that he never used the name Sean Miller at the GPC office, that, in a material respect and at the time and in the light of the circumstances under which it was made, was misleading or untrue and did thereby commit an offence, contrary to section 122(1)(a) of the Act and contrary to the public interest.

[22] Following the hearing, Staff acknowledged in their written submissions that there was insufficient evidence as against Cheung for allegations (d), (e), (f), and (i), listed above. Accordingly, we deem these four allegations withdrawn against Cheung.

II. PRELIMINARY ISSUES

A. FAILURE OF THE RESPONDENTS TO APPEAR

[23] None of the Respondents appeared personally at the hearing and none presented evidence or made submissions. Cheung and Pan appeared through counsel once, who made admissions on their behalf.

[24] The *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended (the "**SPPA**") permits the Commission to proceed in the absence of any party who has been given adequate notice. Subsection 7(1) of the SPPA states:

> **Effect of non-attendance at hearing after due notice**
>
> **7.** (1) Where notice of an oral hearing has been given to a party to a proceeding in accordance with this Act and the party does not attend at the hearing, the tribunal may proceed in the absence of the party and the party is not entitled to any further notice in the proceeding.

[25] Similarly, the Commission's *Rules of Procedure* (2009), 32 O.S.C.B. 1991 state under Rule 7.1 – Failure to Participate:

> If a Notice of Hearing has been served on any party and the party does not attend the hearing, the Panel may proceed in the party's absence and that party is not entitled to any further notice in the proceeding.

[26] At the outset of the hearing, Staff filed a brief of documents dated May 22, 2009 that set out the service and attempted service by Staff on the Respondents. We are satisfied that Staff took all reasonable steps to provide the Respondents with adequate notice of this proceeding, and as such, we were entitled to proceed with the hearing on the merits in their absence, in accordance with subsection 7(1) of the SPPA.

B. THE APPROPRIATE STANDARD OF PROOF

[27] The standard of proof for proceedings before the Commission is proof on a balance of probabilities. This standard was recently affirmed by the Supreme Court of Canada in its decision in *F.H. v. McDougall*, [2008] 3 S.C.R. 41. The Supreme Court explained at paragraphs 45-49 of the judgement:

> … I think it is inappropriate to say that there are legally recognized different levels of scrutiny of the evidence depending upon the seriousness of the case. There is only one legal rule and that is that in all cases, evidence must be scrutinized with care by the trial judge.
>
> Similarly, evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test. But again, there is no objective standard to measure sufficiency. …
>
> …
>
> In the result, I would reaffirm that in civil cases there is only one standard of proof and that is proof on a balance of probabilities. In all civil cases, the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred.

[28] This is the standard we have applied in this proceeding.

[29] Accordingly, we will decide this matter on a balance of probabilities, and we must be satisfied that there is sufficiently clear, convincing and cogent evidence to support our findings. We find that the evidence before us is clear, convincing and cogent and provides a sufficient basis for our findings, below. We are satisfied that the acts, events and conduct described in these reasons are more likely than not to have occurred.

C. THE USE OF HEARSAY EVIDENCE

[30] Staff relies on evidence from their investigation and also seeks to admit hearsay evidence including the compelled examinations of individuals, including some Respondents, interviewed in the course of Staff's investigation into this matter.

[31] The SPPA permits the Commission to use its discretion to allow hearsay evidence in an administrative proceeding. Subsection 15(1) states:

> **What is admissible in evidence at a hearing**
>
> **15.** (1) Subject to subsections (2) and (3), a tribunal may admit as evidence at a hearing, whether or not given or proven under oath or affirmation or admissible as evidence in a court,

(a) any oral testimony; and

(b) any document or thing,

relevant to the subject-matter of the proceeding and may act on such evidence, but the tribunal may exclude anything unduly repetitious.

[32] In *Re Sunwide Finance Inc.* (2009), 32 O.S.C.B. 4671 ("***Sunwide***"), the Commission made the following findings regarding the admissibility of hearsay evidence in a hearing before the Commission at paragraph 22:

> Although hearsay evidence is admissible under the SPPA, the weight to be accorded to such evidence must be determined by the panel. Care must be taken to avoid placing undue reliance on uncorroborated evidence that lacks sufficient indicia of reliability (*Starson v. Swayze*, [2003] 1 S.C.R. 722 at para. 115). In the circumstances, we admitted the hearsay evidence tendered by Staff, subject to our consideration of the weight to be given to that evidence.

[33] *Sunwide* further states at paragraph 24:

> One of the concerns with respect to the introduction of hearsay evidence is that it may infringe on the rights of a party to cross-examine a witness or to introduce contradictory evidence. This engages the rules of procedural fairness. In the case before us, none of the Respondents appeared before us, were represented or present to object to the use of the hearsay evidence, to cross-examine on it or to introduce contradictory evidence of their own. As a result, the Respondents have waived their right to do so.

[34] We note that Staff relies on the compelled testimony of four of the Respondents (Toussaint, Cheung, Gahunia, and Jiwani) and five non-respondents. The non-respondents include four GPC employees, Oliver MacIntosh ("**MacIntosh**"), Marcela Manriquez ("**Manriquez**"), Gordon McQuarrie ("**McQuarrie**") and Natalia Rotondo ("**Rotondo**"), and one individual hired to provide telephone and IT services to GPC. We note that this testimony was given under oath during Staff's investigation of this matter, pursuant to section 13 of the Act.

[35] Staff submits that statements made by the Individual Respondents are only to be used as evidence against the particular Respondent that is making the statement. We agree with Staff's submission regarding the use of a Respondent's compelled testimony.

[36] As in *Sunwide*, the Respondents in this case did not appear and were not present to object to the use of hearsay evidence, to cross-examine on it, or to introduce contradictory evidence. They have therefore waived their right to do so.

[37] We were presented with documentary evidence introduced by Staff that was consistent with the hearsay evidence presented at the hearing, including evidence from compelled examinations that Staff is seeking to admit.

[38] In the circumstances, we admitted the hearsay evidence tendered by Staff, subject to our consideration of the weight to be given to that evidence.

[39] We find that, taken as a whole, the totality of the evidence is corroborative and consistent.

D. ONTARIO JURISDICTION

[40] The majority of investors involved in this matter were located outside of Ontario, primarily in the United States. However, we find there is a sufficient nexus to Ontario for the Commission to have jurisdiction over the conduct of the Respondents.

[41] The Supreme Court of Canada ruled in *Gregory & Co. v. Quebec (Securities Commission)*, [1961] S.C.R. 584 that the fact that the securities would be for the account of customers outside of Quebec did not support a conclusion that the appellant was not trading in securities in Quebec.

[42] In *Re Lett* (2004), 27 O.S.C.B. 3215 at paragraph 69, the Commission found that it still had jurisdiction to find a breach of section 25(1)(a), despite the fact that none of the investors resided in Ontario. The Commission determined it was sufficient that the acts in furtherance of trades that the respondents engaged in took place in Ontario.

[43] There is sufficient evidence for us to conclude that there is a significant connection to Ontario, and that the Commission has jurisdiction. Although the issuer, Asia Pacific, was a Nevada corporation, its representatives were located in Ontario; GPC operated out of Ontario; 1666475 is an Ontario corporation; the Individual Respondents other than Pidgeon resided in Ontario during the Material Time; marketing was done from locations in the Greater Toronto Area; copies of subscription agreements were ultimately sent to Ontario; share certificates were mailed from Ontario; and investor funds were ultimately transferred to bank accounts located in Ontario. Therefore, we find that the Commission has jurisdiction over the conduct of the Respondents in this matter.

III. ISSUES

[44] Staff's allegations raise the following issues in this matter:

(a) Did the Respondents trade in securities, contrary to subsection 25(1)(a) of the Act?

(b) Did the Respondents engage in distributions of securities, contrary to subsection 53(1) of the Act?

(c) Were any registration or prospectus exemptions available to the Respondents?

(d) Did Gahunia and Toussaint make prohibited representations to repurchase securities, contrary to subsection 38(1) of the Act?

(e) Did Gahunia and Toussaint make prohibited undertakings regarding the future value or price of securities, contrary to subsection 38(2) of the Act?

(f) Did Gahunia and Toussaint make prohibited representations regarding the future listing of securities, contrary to subsection 38(3) of the Act?

(g) Did the Respondents, directly or indirectly, engage or participate in acts, practices or a course of conduct relating to securities of Asia Pacific that they knew or ought to have known would perpetrate a fraud, contrary to section 126.1(b) of the Act?

(h) Did Pan, Cheung, Gahunia, Toussaint, and Jiwani, as directors or officers of GPC; Pidgeon and Cheung as directors or officers of Asia Pacific; and Pan and Cheung as a directors or officers of 1666475, authorize, permit or acquiesce in contraventions of the Act by the respective Corporate Respondents, contrary to subsection 122(3) of the Act?

(i) Did Toussaint and Gahunia make misleading or untrue statements to Staff during its investigation, contrary to subsection 122(1)(a) of the Act?

(j) Was the Respondents' conduct contrary to the public interest and harmful to the integrity of Ontario's capital markets?

IV. EVIDENCE

A. EVIDENCE TENDERED AT THE HEARING

[45] Staff submitted 27 exhibits of documentary evidence, which were referred to during the hearing by Staff investigators and investor witnesses.

[46] Staff also called 10 witnesses during the hearing – two Staff investigators and eight Asia Pacific investors.

[47] The Staff investigators, Gregory Gard ("**Gard**") and Donald Panchuk ("**Panchuk**"), testified about Staff's investigation. The investigation began when Staff received information from the Texas State Securities Board and included an initial pretext visit to GPC's office in Toronto on September 5, 2007, and a formal inspection on October 11, 2007.

[48] Gard and Panchuk also testified regarding evidence obtained through the investigation of the Respondents, such as information on the GPC and Asia Pacific websites, bank account history for the Corporate Respondents, and information from telephone and courier accounts held by the Corporate Respondents. They also testified about documents obtained from GPC offices during Staff's investigation, including subscription agreement forms, call scripts, and payroll documentation.

[49] Eight investors testified at the hearing; six by video conference, and two in person. The investors testified about how Asia Pacific shares were marketed to them and identified documents that included subscription agreements, share certificates, correspondence from Asia Pacific and GPC, Asia Pacific press releases and investment brochures, and copies of cheques and confirmations of wire transfers made to Asia Pacific. To protect their privacy, we have anonymized the names of all the investors. We have requested that Staff also provide a redacted version of the record to protect the privacy interests of investors.

[50] Staff also obtained responses from 70 of 114 investors they contacted as part of their investigation regarding their investments in Asia Pacific. In addition to providing basic information on their investments in response to Staff's questionnaire (dates of investments, amounts invested, etc.), investors also provided Staff with copies of correspondence between themselves and GPC or Asia Pacific representatives and marketing materials that they were provided in relation to their investments in Asia Pacific shares. Included in the evidence is documentation relating to 23 of these investors who did not testify. Evidence from these investors has also been anonymized to protect their privacy.

[51] Staff also relied on statements made by nine individuals in their compelled examination, as noted at paragraph 34. Despite their efforts, Panchuk testified that Staff was not able to examine Pan or Pidgeon.

[52] None of the Respondents appeared at the hearing to dispute Staff's evidence, nor made any submissions, except that counsel for Pan and Cheung appeared to make certain admissions on their behalf.

B. DOCUMENTS SUBMITTED BY JIWANI AND CHEUNG

[53] Staff informed us that Jiwani voluntarily provided five boxes of documents, which contained lead sheets, subscription agreements, letters, sales records, press releases, phone lists, payroll records, administrative documents and sales scripts.

[54] Included in these documents were administrative papers indicating that certain aliases were used by individuals working at GPC and Asia Pacific. Also amongst these documents are payroll records that are consistent with the evidence of investors regarding which individuals they dealt with when making their investment.

[55] Staff also advise that Cheung voluntarily provided three boxes of documents through his counsel, which consisted primarily of subscription agreements, lead sheets, payroll records, invoices, letters, and emails. In addition, the documents provided by Cheung included copies of Asia Pacific promotional materials identical to the ones received by investors, copies of scripts, and print-outs of emails between Pan, Cheung, Jiwani, and Gahunia.

[56] Documents from Cheung also included copies of payroll records and evidence of payments to sales representatives, including Toussaint, Gahunia, and Jiwani. The documents indicate that Toussaint received payments through his company, Titan VC, and that Gahunia received payments through his company, Netgrowth Enterprises. The documents from Cheung also contain information on how commissions were divided between various individuals.

[57] Documents from Jiwani and Cheung include evidence of the calculation of payments to Jiwani, Gahunia, and Toussaint, which correspond with the investments made by specific Asia Pacific investors.

[58] These documents were consistent with each other and with other evidence presented at the hearing, including evidence from investors.

C. ADMISSIONS BY CHEUNG AND PAN

[59] Counsel for Pan and Cheung briefly appeared on June 1, 2009 and admitted on their behalf to the following allegations brought by Staff:

- Asia Pacific securities were sold to over 110 investors, and those investors sent over US $2,200,000 to Asia Pacific (Statement of Allegations, at para. 18).

- After agreeing to invest, investors received a subscription agreement from Asia Pacific. The subscription agreement set out the quantity, unit price, and the total amount of the investment. Investors were instructed to make cheques payable to Asia Pacific and to send the subscription agreements and cheques to an address in Dallas, Texas, United States. The address in Dallas was a virtual office run by Regus/HQ Business Centres. Some investors were also given instructions on

how to send their funds to Asia Pacific via wire transfer and did so. (Statement of Allegations, at para. 19)

- Investors received a share certificate signed by Cheung for common shares in Asia Pacific (Statement of Allegations, at para. 20).

- The investor funds were deposited into one of three Asia Pacific bank accounts in the United States (the "**US Bank Accounts**"). These accounts were all controlled by Pidgeon. (Statement of Allegations, at para. 21)

- Between and including March 2006 and October 2007, over US $2,000,000 was transferred from the US Bank Accounts to a U.S. dollar bank account in Canada, held by 1666475. Pan was the sole signatory on this account. (Statement of Allegations, at para. 23)

- Over US $1,000,000 was transferred from the 1666475 U.S. dollar account to a Canadian dollar account in Canada held by 1666475. Pan was the sole signatory on this account. (Statement of Allegations, at para. 24)

- $150,000 of investor funds, rather than the approximately $300,000 alleged by Staff, was used to pay credit card bills for Pan from the 1666475 Canadian account (Statement of Allegations, at para. 27). Pan and Cheung claim this money was used for expenses relating to the business activities of the corporate entities.

[60] Counsel for Pan and Cheung also communicated that Pan and Cheung expressed a great deal of regret about what happened.

V. THE ASIA PACIFIC INVESTMENT SCHEME

A. OVERVIEW OF THE INVESTMENT SCHEME

[61] This matter deals with an investment scheme that involved selling previously unissued shares of Asia Pacific to the public at a price of US $1.00 per share.

[62] Staff described the investment scheme as an out-and-out scam, designed to take money from unsuspecting and perhaps too trusting individuals and to put it into the pockets of the Respondents. Staff submits that investors were dealing with a boiler room in Ontario that was pumping out worthless share certificates to unsuspecting individuals.

[63] The evidence shows that the investment scheme had characteristic traits of a "boiler room" operation. Characteristics common in boiler room schemes include:

- creating companies falsely purporting to be engaged in legitimate business;

- establishing websites containing fabricated information to promote and give legitimacy to the company and its securities;

- creating infrastructure to support the fraudulent scheme (e.g. virtual offices, bank account, phone lines, couriers, etc.);

- developing and using sales/promotion/marketing pitches which involved call scripts, high pressure sales tactics, promises of high returns, and increased future value;

- issuing press releases containing false and/or misleading information to give legitimacy to the scheme, to show signs of progress and development, and to entice potential investors to invest and current investors to invest more; and

- transferring funds from investors to accounts controlled by the respondents or related individuals.

[64] These boiler room characteristics were present in the investment scheme in this case. Specifically, 1666475 was incorporated in Ontario on July 13, 2005; Asia Pacific was incorporated in Nevada, United States on December 19, 2005; and GPC was an unincorporated entity that was held out to be an American venture capital company raising funds for Asia Pacific by selling its shares to investors.

[65] Asia Pacific and GPC websites were set up and were accessible to the public as of January 27, 2006 and February 3, 2006, respectively. Bank accounts for Asia Pacific and 1666475 were opened in the U.S. and Canada around February 2006.

[66] Office space in Toronto, mail drop-off boxes in Texas, telephone accounts in the U.S. and Canada, and courier accounts were also established commencing February 2006.

[67] Once the infrastructure was set up, representatives of GPC and Asia Pacific solicited potential investors to purchase shares of Asia Pacific. These representatives made statements to investors as to the future value of Asia Pacific shares. Investors were also referred to the websites, press releases, and promotional materials which contained fraudulent and/or misleading information during the Material Time.

B. ALIASES USED BY INDIVIDUAL RESPONDENTS

[68] The investment scheme was facilitated by the use of aliases by several Respondents when dealing with investors and potential investors.

[69] Staff alleges that the Respondents used the following aliases:

- Pan also went by “Christine Pan”;

- Cheung was also known as “Peter Cheung”, “Tony Cheung”, “Mike Davidson”, and “Peter McDonald”;

- Gahunia used the aliases “Michael Gahunia” and “Shawn Miller” (sometimes spelled as “Sean Miller”);

- Toussaint used the alias “Peter Beckford”; and

- Jiwani used the alias “Ralph Jay”.

[70] MacIntosh and Manriquez both stated in their compelled examinations that people used aliases on the phone at GPC.

[71] Based on the evidence, we find that the Respondents used these aliases, as described below.

(a) Pan

[72] Staff alleges that Pan also went by "Christine Pan".

[73] We note that the banking service agreements and signature card for TD Canada Trust accounts held by 1666475 list Christine Kit Ching Pan as the President, with a noted address that matches Pan's residential address during the Material Time in Richmond Hill, Ontario.

[74] Based on Pan's admissions, set out in paragraph 59, above, regarding her level of involvement in the investment scheme, and based on other documentary evidence provided to us, there is sufficient evidence for us to find that Pan used the alias Christine Pan in communications with GPC employees and for other purposes relating to selling Asia Pacific securities to investors.

(b) Cheung

[75] Cheung informed Staff in his compelled examination that he also uses the names Peter Cheung and Tony Cheung. Our findings in these Reasons and Decision are not based on any evidence that Cheung operated under any other aliases, including Mike Davidson and Peter McDonald.

(c) Gahunia

[76] Gahunia told Staff in his compelled examination that his legal name is Gurdip Singh Gahunia. He also stated that he never used a name other than Michael Gahunia for business purposes and that he never used the name Sean Miller at the GPC office.

[77] However, a GPC phone listing for its management, sales and qualifiers lists two names for sales people, including "Mike Gahunia / Sean Miller". It appears that the second name is the one used when dealing with the public.

[78] Asia Pacific payroll and sales commission documentation and cheques also link Gahunia to this alias. For example, we were presented with evidence that indicates that Shawn Miller sold Investor 9 5,000 shares of Asia Pacific for US $5,000 on November 10, 2006. A subscription agreement and invoice for this amount were provided to Investor 9, and his payment of $5,000 was deposited in a US Bank Account on November 17, 2006. The payroll and commission record prepared for the November 20 to November 24, 2006 period lists the sale of the shares, identified by the same invoice number, and a resulting sales commission of 22%, or US $1,100, payable to Netgrowth Enterprises. This and other commissions for Shawn Miller for the period of November 20, 2006 to November 24, 2006 were paid from a 1666475 bank account and deposited into a bank account in the name of Netgrowth Enterprises on November 24, 2006. The Banking Service Agreement and signature card for the Netgrowth Enterprises account list Gahunia as the sole owner of Netgrowth Enterprises. In addition, an Asia Pacific letter listing payment instructions for employees notes "Net Growth Enterprises" as the payee on cheques for Gahunia.

[79] We find there is sufficient evidence to conclude that Gahunia used the alias Shawn (sometimes spelled "Sean") Miller ("**Miller**") while working at GPC.

(d) Toussaint

[80] Toussaint told Staff under oath in his compelled examination that while he did a bit of qualifying, introducing people to the product, and helped run the GPC office, he did not sell securities to people.

[81] We were presented with sufficient evidence, however, to conclude that Toussaint used the alias Peter Beckford as a GPC sales agent for Asia Pacific securities. The GPC phone list had an entry for "Basil Toussaint / Peter Beckford" and there were Asia Pacific payroll records for a salesman identified as "Basil (Peter Beckford)". On March 20, 2006, Investor 14 made a US $10,000 wire transfer to the Chase Bank Account. In a sales commission statement for the period of March 16, 2006 to March 31, 2006, a 22% commission for a US $10,000 sale to Investor 14 is attributed to the salesman "Basil (Peter Beckford)" with the company "Titan VC". The total amount payable to Titan VC for this pay period noted on the sales commission statement is $3,574, which included the US $2,250 commission from the sale to Investor 14. Banking records indicate that Titan VC received $3,574 on March 31, 2006 from the 1666475 CDN$ Account. In addition, an Asia Pacific letter listing payment instructions for employees notes "Titan VC" as the payee on cheques for Toussaint. Sales commission payments for sales made by Peter Beckford were paid from the 1666475 bank accounts to Titan VC.

[82] We therefore find that Toussaint used the alias Peter Beckford ("**Beckford**") in his work with GPC and Asia Pacific.

(e) Jiwani

[83] Staff identifies Jiwani as being also known as Ralph Jay. In his compelled examination by Staff, Jiwani stated that "Ralph J." was the anglicised name that he has used for the past 30 years. He said that it was not an official name, but it is something always used in his franchise consulting business. We are sufficiently convinced that Jiwani used the alias Ralph Jay, or "Ralph J.".

C. FUNDS RAISED FROM INVESTORS

[84] Staff did not locate a shareholder list for Asia Pacific, but through various sources of information, including banking, payroll and courier records, Staff identified 114 individuals and companies who were sold Asia Pacific shares. Staff's investigation revealed that the investors were primarily located in the United States, but there were also investors in the United Kingdom, the Caribbean, New Zealand, Singapore, and Ontario.

[85] Panchuk testified about the funds raised from investors. Staff presented evidence of various documents, including bank account transaction records for the US Bank Accounts and Canadian bank accounts held by 1666475, Canadian banking records for the various Respondents, cheques and wire transfers, payroll records, sales activity records, credit card transaction records and courier records. As there were no accounting or financial records, Panchuk testified as to how Staff reconciled the various documents to identify the funds raised from investors, and to determine the flow and disbursement of the investor funds.

[86] The evidence shows that over US $2.2 million was raised from Asia Pacific investors. This was corroborated by Pan and Cheung in their admissions. Specifically, shares of Asia Pacific were sold to at least 114 individuals and companies during the Material Time.

[87] Eight investor witnesses testified that they made the following investments in Asia Pacific:

- Investor 1 invested a total of US $20,000 to purchase 20,000 shares on two different occasions during the Material Time. He invested US $10,000 in December 2006 and another US $10,000 in August 2007.

- Investor 2 invested US $20,000 in December 2006 to buy 20,000 shares of Asia Pacific. He and his wife, Investor 3, invested an additional US $50,000 in 2007 to buy 50,000 shares of Asia Pacific. The couple cashed in their retirement savings and used lines of credit attached to the equity of their home to purchase shares in Asia Pacific. Investor 2 testified that they were going to be debt-free in a couple of years, but that now they owe more money on their home than it is worth; he testified that they had been left in "very bad shape", primarily as a result of their investments in Asia Pacific.

- Investor 4 testified that the first time he and his wife invested was when he initially purchased 60,000 shares of Asia Pacific in 2006. He then purchased another 40,000 shares in September 2007, for a total investment in Asia Pacific shares of US $100,000. He testified that he and his wife funded these investments using the equity on their home, cashing in retirement funds, taking a cash advance on a credit card and borrowing from their bank. Investor 4 also testified that his investment in Asia Pacific has left him and his wife in very bad financial shape.

- Investor 5 testified that he purchased 15,000 shares of Asia Pacific for US $15,000 in June 2006, using a cash advance on his credit card to obtain the funds. The next month, he purchased a further 15,000 shares, using money from his mother's matured Certificate of Deposit. Investor 5 invested a total of US $30,000.

- Investor 6 testified that she bought 2,000 shares of Asia Pacific for US $2,000 in August 2007, using her Canada Savings Bond for the investment.

- Investor 7 testified that she invested twice in Asia Pacific, investing a total of US $4,000 for 4,000 shares.

- Investor 8 purchased 17,500 shares of Asia Pacific in April 2006, and purchased another 17,500 shares in May 2006, for a total of US $35,000.

[88] Overall, 70 investors who responded to questionnaires sent by Staff documented their Asia Pacific share purchases.

[89] Investors who purchased shares in Asia Pacific sent their payment (in the form of cheques, direct deposits or wire transfers) to one of the three US Bank Accounts, which in total received over US $2.2 million:

- Approximately US $1,127,000 of investor funds was deposited in an account at Compass Bank (the "**Compass Bank Account**");

- Approximately US $222,000 was deposited in an account at Marshall & Illsley Bank (the "**M & I Bank Account**"); and

- Approximately US $935,000 was deposited in an account at JPMorgan Chase Bank (the "**Chase Bank Account**").

[90] Panchuk testified that the investments made in Asia Pacific securities would be worthless today, as a result of a reverse merger Asia Pacific made with China Bio Life Enterprises, Inc. on October 29, 2007, wherein Asia Pacific shares were exchanged. None of the investors who purchased Asia Pacific shares during the Material Time were included in the new shareholder list as detailed at paragraph 278.

[91] Within a few days of being deposited into the US Bank Accounts, almost all of the investor funds were transferred to a 1666475 bank account in Canada. Subsequently, part of these funds were distributed to other respondents, related entities, and others as described below.

D. DISBURSEMENT OF INVESTORS' FUNDS

[92] The evidence shows that in total, over US $2.1 million was transferred from the US Bank Accounts to a US dollar account in the name of 1666475 at TD Canada Trust in Ontario (the "**1666475 US$ Account**"). From this account, approximately US $1,090,000 of these investor funds were transferred to a Canadian dollar account in the name of 1666475 at TD Canada Trust in Ontario (the "**1666475 CDN$ Account**"). Collectively, these accounts are referred to as the "**1666475 Bank Accounts**".

[93] To summarize, based on the evidence presented to us, some of the funds raised from Asia Pacific investors were distributed from the 1666475 Bank Accounts directly or by transfers through other accounts to Individual Respondents, related entities and others as shown below:

- US $400,000 was paid to a subsidiary of Empire Oil & Gas NL that was involved in drilling oil wells in Australia. This money, sent in May, 2006, appears to be the one investment Asia Pacific made. According to Empire Oil and Gas NL, Asia Pacific entered into a farmin agreement to earn 20% interest in part of a permit identified as EP-435 by funding 40% of the cost of the drilling of one exploration well, named Dune-1, which turned out to be a dry hole (the "**Empire Oil Investment**");

- Gahunia received payments of US $328,914 and $19,673 through his company, Netgrowth Enterprise. Evidence showed that these payments were primarily made in connection with his sales of Asia Pacific shares to investors;

- Toussaint received US $90,142 and $13,612 from accounts held by 1666475 paid through Titan VC. Evidence showed that these payments were primarily made in connection with his sales of Asia Pacific shares to investors;

- Jiwani received US $110,686 and $20,746 from these accounts. Evidence showed that Jiwani got a salary in connection with his management role with GPC and Asia Pacific and also received a 5% commission on sales of Asia Pacific shares plus additional override payments related to sales of Asia Pacific shares to investors;

- Payments of $302,576, including direct payments to credit cards, or indirect transfers of funds to other accounts held by Pan, were used to pay off at least nine credit cards held by Pan and related entities (the "**Pan Credit Cards**"). Expenditures on these credit cards largely included personal

charges such as airline tickets to numerous locations, hotel stays, restaurants, and purchases from various stores (Toys R Us, Winners, Shoppers Drug Mart, Lexus of Richmond Hill, Club Monaco, Gucci, Royal De Versailles, Rogers, Blue Mountain, Sassafraz, Sony Store, Eastbiz.com, HQ Global Workplaces, the Keg, etc.). Expenditures also included payments for telephone and courier services. We also note that Cheung was a secondary card holder for some of the Pan Credit Cards;

- Funds were also used to pay expenses related to the activities of the investment scheme: $193,198 in rent; $51,015 for courier and utilities expenses; US $30,460 to purchase lead lists; and $71,389 for IT services;

- A US $25,000 refund was made to one investor to rectify a double payment; and

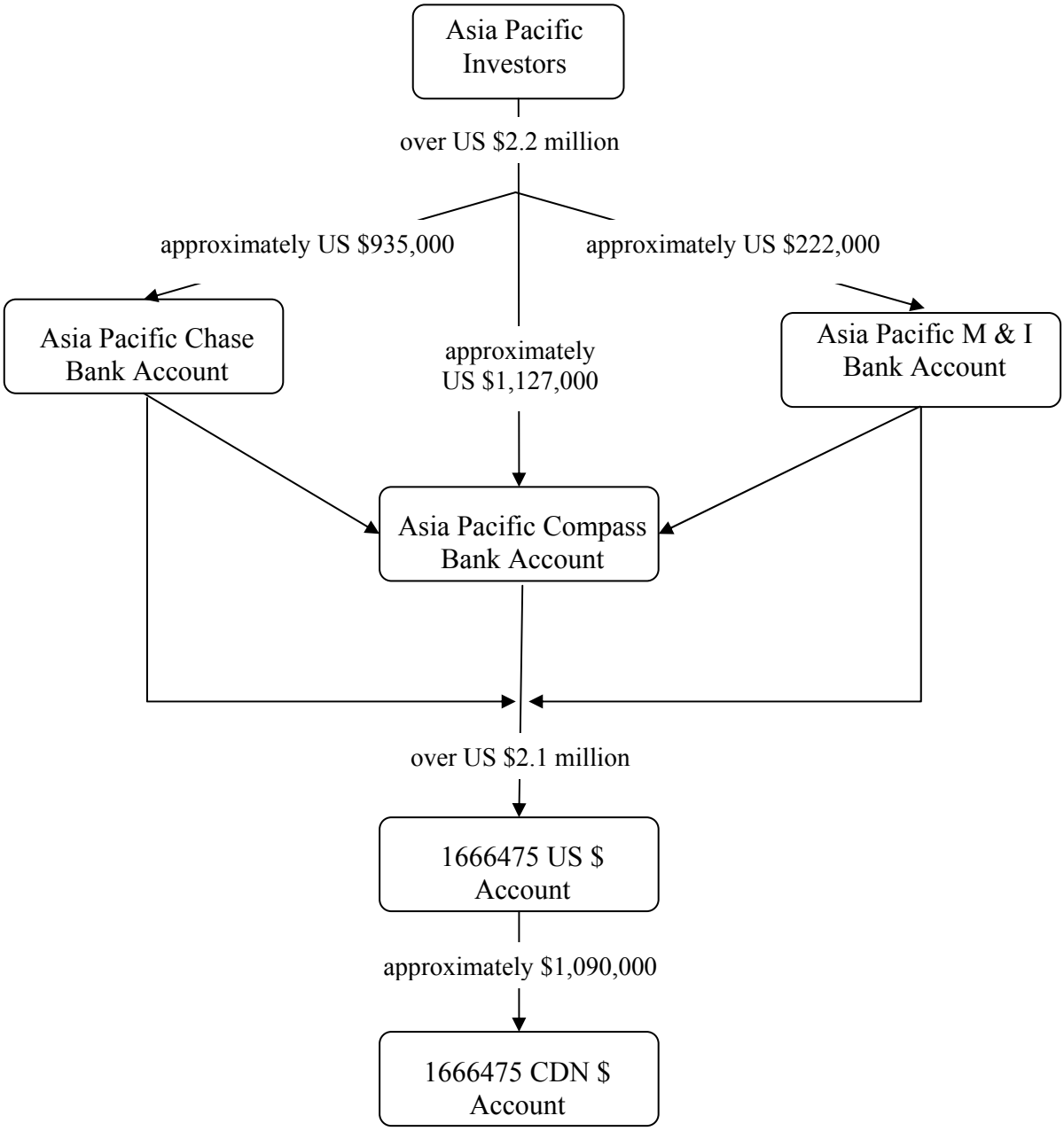
- The remaining investor funds transferred to the 1666475 Bank Accounts are not accounted for.

[94] Pidgeon also received a total of US $92,972, directly from the US Bank Accounts.

[95] With the exception of the Empire Oil Investment, we were not presented with evidence of any legitimate business expenses relating to any of Asia Pacific's purported business activities.

[96] The flow of investors' funds through the bank accounts held by Asia Pacific and 1666475 and the disbursements from the 1666475 Bank Accounts are illustrated in the two charts on the following pages:

FLOW OF INVESTOR FUNDS IN THE INVESTMENT SCHEME



DISBURSEMENTS FROM 1666475 BANK ACCOUNTS		
Recipient	**US $**	**CDN $**
Gahunia (via Netgrowth Enterprises)	US $328,914	$19,673
Toussaint (via Titan VC)	US $90,142	$13,612
Jiwani	US $110,686	$20,746
Pan Credit Cards		$302,576
Operating Expenses	US $30,460 – Purchase of lead lists	$193,198 – Rent $ 51,015 – Courier, Utilities $ 71,389 – IT services $315,602
Other	US $400,000 – Empire Oil Investment US $25,000 – Investor Refund	

VI. ANALYSIS

A. DID THE RESPONDENTS TRADE IN SECURITIES CONTRARY TO SUBSECTIONS 25(1)(A)?

[97] Staff submits that the Respondents traded in securities without being registered and without having issued a prospectus or preliminary prospectus.

1. The Law

[98] Subsection 25(1)(a) of the Act prohibits trading in securities without being registered:

> **25. (1) Registration for trading –** No person or company shall,
>
> (a) trade in a security or act as an underwriter unless the person or company is registered as a dealer, or is registered as a salesperson or as a partner or as an officer of a registered dealer and is acting on behalf of the dealer;
>
> …

[99] Past decisions of the Commission have established that the registration requirements under section 25 are an essential element of the Commission's regulatory framework (*Re Limelight Entertainment Inc.* (2008), 31 O.S.C.B. 1727 (*"**Limelight**"*); *Re First Global Ventures S.A.* (2007), 30 O.S.C.B. 10473). They impose requirements of proficiency, good character and ethical standards on the individuals and companies trading in and advising on securities. Registration serves an important gatekeeping purpose, ensuring that only those who are properly qualified and suitable trade on behalf of the public:

> Through the registration process, the Commission attempts to ensure that those who trade in securities meet the applicable proficiency requirements, are of good character, satisfy the appropriate ethical standards and comply with the Act.
>
> (*Limelight, supra* at para. 135)

[100] For a breach of subsection 25(1)(a) there must be a trade in securities. The Act defines "trade" in subsection 1(1):

> **"trade"** or **"trading"** includes,
>
> (a) any sale or disposition of a security for valuable consideration whether the terms of payment be on margin, instalment or otherwise …;
>
> …
>
> (e) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of the foregoing.

[101] To satisfy the requirements for a trade under the Act, any act in furtherance of a trade is sufficient to trigger a breach of subsection 25(1)(a) (*Re Lett, supra* at para. 64). The Commission has previously determined that there is no bright line test for what constitutes an act in furtherance of a trade. When assessing whether a particular activity was in furtherance of a trade, the Panel should determine whether the activity in each case had a sufficiently proximate connection to an actual trade (*Re Costello* (2003), 26 O.S.C.B. 1617 at para. 47).

[102] The Commission has found that the absence of solicitation or direct contact with investors is not determinative of whether an act in furtherance of a trade has occurred (*Re Lett, supra* at para. 51).

[103] Acts that the Commission has determined to be in furtherance of trades include:

- preparing a market or accepting funds for the purpose of an investment (*Re Allen* (2005), 28 O.S.C.B. 8541 at para. 85);
- accepting investment funds from investors (*Re Lett, supra* at para. 49);
- providing subscription agreements for signature to investors, conducting information sessions with groups of investors, and accepting money (*Re Momentas Corp.* (2006), 29 O.S.C.B. 7408 at para. 80); and

- setting up a website that offers securities to investors over the internet (*Re First Federal Capital (Canada) Corp.* (2004), 27 O.S.C.B. 1603 at para 45).

[104] Other Canadian securities regulators have similarly found the following to be acts in furtherance of trades:

- providing a website with content that is designed to excite the reader about the company's prospects or where the material on the website is considered an advertisement or solicitation for investors to purchase shares (*Re American Technology Exploration Corp.* (1998), L.N.B.C.S.C. 1);

- issuing and signing share certificates (*Del Bianco v. Alberta (Securities Commission)*, [2004] A.J. No. 1222 (C.A.) at para. 9); and

- instructing solicitors in connection with the issuance and exchange of shares (*Del Bianco v. Alberta (Securities Commission)*, *supra* at para. 9).

[105] The primary focus of a consideration of whether a respondent's conduct amounts to an act in furtherance of a trade should be the effect of the conduct on investors and potential investors. The Commission should adopt a contextual approach, assessing the totality of the conduct and the setting in which the conduct occurred (*Re Momentas Corp., supra* at para. 77).

2. Analysis

[106] The following are our findings regarding breaches of subsection 25(1)(a) of the Act based on the evidence presented at the hearing.

[107] None of the Respondents was ever registered with the Commission in any capacity, and as discussed starting at paragraph 175, no registration exemptions were available to the Respondents.

(a) GPC

[108] We find that GPC traded in securities of Asia Pacific contrary to subsection 25(1)(a).

[109] Potential investors were solicited during the Material Time by GPC representatives via telephone and emails. During its investigation, Staff obtained sales lists from the GPC offices listing investor names, salesmen, qualifiers (GPC employees who made the initial calls soliciting investors), and amounts invested.

[110] Staff investigators also found copies of call scripts for Asia Pacific. Additional copies of sales scripts, along with closing pitch information were included in the documents Jiwani and Cheung voluntarily provided to Staff. After an introduction that includes introducing oneself as the senior portfolio manager for GPC, the script directs the caller to say the following to potential investors:

> … We're doing the next **PRE IPO** called ASIA PACIFIC ENERGY at 1 DOLLAR a share. You know the NASDAQ. ASIA PACIFIC is going to be a blockbuster and it's on the ground floor at 1 DOLLAR a share. I said the ground floor level and the news isn't even public knowledge yet. …
>
> [emphasis in original]

[111] At the hearing, we heard from investors who were solicited by employees or representatives of GPC. For example, Investor 1 testified that he was contacted by Steve Smith, Director of the Equity Finance Division of GPC, and by "Miller". Investor 1 invested on two occasions for a total investment of US $20,000.

[112] Investors received account application and agreement forms, subscription agreements, letters of intent and wiring instructions from GPC representatives.

[113] In their compelled examinations, GPC employees provided evidence to Staff that GPC made trades in securities and acted in furtherance of trades:

- MacIntosh, a qualifier, told Staff he made between 200 and 350 calls per day marketing the Asia Pacific stock at $1.00 per share. He would tell people they were trying to make Asia Pacific go public and testified that he thought he got one or two bonuses from investor leads that he generated.

- Rotondo stated that she would send out packages of documents to investors, changing the number of shares, the client name and the amount invested. These information packages were sent by e-mail, fax and mail to GPC investors.

- Manriquez informed Staff that she would create invoices for shares to be sent to GPC clients.

- McQuarrie, who was another qualifier, told Staff that he received two bonuses for leads that turned into sales for GPC. He also told Staff that there would be contact sheets for potential clients on his desk when he arrived each morning. He said he would call people about Asia Pacific and offer to send them more information on the stock that sold at $1.00 per share.

[114] In addition to the above, there was also evidence of GPC's trades and acts in furtherance of trades made through its management and employees, Cheung, Gahunia, Toussaint, and Jiwani, described in detail below.

[115] Based on the evidence presented, we conclude that GPC traded in securities of Asia Pacific during the Material Time, contrary to subsection 25(1)(a) of the Act. GPC and its representatives were not registered in any capacity with the Commission, and no registration exemptions were available.

(b) Asia Pacific

[116] We find that Asia Pacific traded in its securities contrary to subsection 25(1)(a) of the Act.

[117] Pan and Cheung admit that Asia Pacific securities were sold to over 110 investors and that Asia Pacific received over US $2.2 million of investor funds.

[118] Pan and Cheung also admit that investors received subscription agreements from Asia Pacific that set out the quantity, unit price and total amount of the investment. They also admit that investors were instructed to send the agreements to an address for Asia Pacific in Dallas with either a cheque payable to Asia Pacific or a wire transfer of the funds. This is corroborated by copies of cheques, wire transfer documentation and subscription agreements that were provided by investors and entered in evidence.

[119] Investors who were sold shares in Asia Pacific sent the funds for their purchases of securities to the US Bank Accounts held in Asia Pacific's name.

[120] Pan and Cheung further admit that investors received share certificates signed by Cheung for their investment in common shares of Asia Pacific. During the hearing, copies of Asia Pacific share certificates held by over 15 investors were entered into evidence, and investor witnesses confirmed that these certificates had been sent to them for their investment in Asia Pacific.

[121] Pan and Cheung also made admissions regarding Asia Pacific's participation in the trades. They admit that the Dallas office of the company was a virtual office and that over US $2 million was transferred from the US Bank Accounts to the 1666475 US$ Account.

[122] A form letter, purportedly sent by Travis Armstrong, the Vice President of Investor Relations for Asia Pacific, was sent to investors once their funds were received by Asia Pacific. The letter thanks the investor for the share purchase and verifies that investors will be contacted once Asia Pacific goes public. It confirms that if Asia Pacific's IPO opening price is less than US $1.50 per share, investors will have the option of redeeming their shares at US $1.25 per share.

[123] Various Asia Pacific marketing and sales materials were entered into evidence. They contained information to excite, solicit and induce investors. For example:

- Potential investors were sent an Asia Pacific Investor Portfolio brochure and were referred to the Asia Pacific website, both of which portrayed Asia Pacific very positively as a company with great opportunities for investors. For example, they state:

    - We are currently focusing our efforts in two major projects, thereby creating a unique synergy in vital areas such as; strong company alliances, collective research and development strategy, and a forcast [*sic*] for **optimum drilling results**.

    - … our primary goal is to provide anticipated above average returns for qualified investors' participation.

    - By focusing on cutting-edge technology, we thereby expedite the process of ensuring a highly profitable end-product. This revolutionary breakthrough translates into a timely and potentially very lucrative opportunity for our investers [*sic*].

    - **Our strategically researched properties have an estimated Seventeen Million Barrels of recoverable reserves – ready to be drilled.**

      [emphasis in original]

- Asia Pacific sales scripts that were used by qualifiers and agents when marketing the investment over the telephone submitted in evidence state the following:

    - Currently I have an excellent opportunity with an American Oil & Gas company called Asia Pacific Energy, and **I believe that this project will do even better than Energy Finders did.**

      [emphasis in original]

[124] Investors provided Staff with copies of Asia Pacific subscription agreements that were sent to them for varying amounts of money between $2,000 and $59,000 per investment. Many of these investors invested in Asia Pacific on more than one occasion, and those who testified at the hearing confirmed that they subscribed for the number of shares listed in the agreements.

[125] Two investors who testified at the hearing, received an email from Pidgeon, as the President of Asia Pacific confirming a new trading symbol for the company had been approved and granted. This email states that new share certificates will be forwarded to the investor.

[126] Based on the evidence presented, we conclude that Asia Pacific traded in its securities during the Material Time, contrary to subsection 25(1)(a) of the Act. Asia Pacific and its representatives were not registered with the Commission in any capacity, and no registration exemptions were available.

(c) 1666475

[127] We find that 1666475 traded in securities of Asia Pacific in breach of subsection 25(1)(a) of the Act.

[128] We were presented with evidence that over US $2.1 million of Asia Pacific investor funds were transferred from the US Bank Accounts to the 1666475 US$ Account. Pan and Cheung also admitted that during the Material Time, over US $2,000,000 was transferred from the US Bank Accounts to a 1666475 U.S. dollar bank account in Canada.

[129] In addition to the connection to investors' funds, 1666475 was also involved in the investment scheme. It leased the office premises at 11 Sims Crescent in Richmond Hill, which was used by GPC, and which appears to have been used solely for the purposes of marketing and selling shares in Asia Pacific.

[130] 1666475 used investor funds to pay commissions for the sales of Asia Pacific shares, rent for the GPC premises, courier services, and other charges related to the investment scheme.

[131] GPC employees were also paid from 1666475 Bank Accounts. McQuarrie told Staff during his compelled examination that he was paid for his work at GPC from a TD Canada Trust account in the name of Asian Pacific Energy, the name that 1666475 operated as.

[132] Based on the evidence presented, we conclude that 1666475 traded in Asia Pacific securities during the Material Time, contrary to subsection 25(1)(a) of the Act. 1666475 was not registered with the Commission in any capacity and no registration exemptions were available.

(d) Pidgeon

[133] We find that Pidgeon traded in securities of Asia Pacific in breach of subsection 25(1)(a) of the Act.

[134] Pidgeon opened accounts for Asia Pacific at three different banks in the United States:

- M & I Bank Account, opened on February 14, 2007: bank documents show an Asia Pacific address in Las Vegas, Nevada and list Pidgeon as the President of Asia Pacific.

- Compass Bank Account, opened on February 23, 2007: bank documents show Asia Pacific's address in Cove Creek, Phoenix, Arizona (the same address as Pidgeon's residence), and list Pidgeon as the Secretary of Asia Pacific.

- Chase Bank Account, opened on February 18, 2006: banking registration documents show an address for Asia Pacific in Las Vegas, Nevada and list Pidgeon as "Member" of Asia Pacific.

[135] Pidgeon was the sole signatory on all three US Bank Accounts into which all investor funds were deposited and authorized the disbursement of investor funds to the 1666475 US$ Account.

[136] In an email to Staff, Pidgeon denied that he was a director of Asia Pacific, stating: "I am NOT president or a director of any company named Asia Pacific Energy or any variation of that name in any jurisdiction in any country." He did, however, admit to involvement in Asia Pacific's banking. Pidgeon claimed that, on instruction from Pan, he wired funds to a TD account in Ontario and made a few other transfers and bill payments, as directed by Pan. Contrary to the evidence above, Pidgeon states in the email that his sole duty at Asia Pacific was to manage the bank accounts, and that he never spoke with any customers, but did everything on instruction from Pan: "My sole job duty was to manage the bank account."

[137] Pidgeon received US $92,972 of investor funds from the US Bank Accounts.

[138] Based on the evidence presented, we conclude that Pidgeon traded in Asia Pacific securities during the Material Time, contrary to subsection 25(1)(a) of the Act. He was not registered with the Commission in any capacity, and no exemptions were available.

(e) Pan

[139] We find that Pan traded in securities of Asia Pacific in breach of subsection 25(1)(a) of the Act.

[140] Pan opened the two 1666475 Bank Accounts, which received investor funds. She was also the sole signatory on these accounts.

[141] Pan admitted at the hearing that Asia Pacific securities were sold to over 110 investors for over US $2.2 million. Pan also admitted that she was the sole signatory on the 1666475 US$ Account that received more than US $2 million from the US Bank Accounts into which investors' funds were deposited.

[142] Of this, $302,576 were used by Pan to pay the Pan Credit Cards, which included personal expenses and payments for GPC and Asia Pacific expenses such as telephones and mailbox rentals related to the investment scheme. Pan admits only to $150,000 being used to pay credit card bills.

[143] Pan signed the lease agreement for the GPC office premises on behalf of 1666475.

[144] Pan also held and paid for a number of phone numbers, one of which was the phone number used by Asia Pacific on its letterhead.

[145] Evidence of email correspondence between Pan and GPC employees discussing administrative issues for GPC and Asia Pacific was also submitted. They include emails between Pan and Jiwani regarding issues with getting money from clients after the subscription agreements had been sent out, an email originally from Miller forwarded by Jiwani to Pan listing share sales, and an email from Jiwani to Pan regarding the mailing of issued certificates.

[146] Based on the evidence presented, we conclude that Pan traded in Asia Pacific securities during the Material Time, contrary to subsection 25(1)(a) of the Act. She was not registered with the Commission in any capacity and no registration exemptions were available.

(f) Cheung

[147] We find that Cheung traded in Asia Pacific securities in breach of subsection 25(1)(a) of the Act.

[148] Cheung admitted that over 110 investors were sold shares in Asia Pacific and that he signed the share certificates issued to investor for their investment in shares of Asia Pacific.

[149] During his compelled examination, Cheung stated that he hired an individual named John to design the website for GPC, he was involved in paying for the design and maintenance of the website and he arranged for equipment contracts (phone system, internet services, etc.) used in the investment scheme at the Toronto GPC premises.

[150] Based on the evidence presented, we conclude that Cheung traded in securities of Asia Pacific during the Material Time, contrary to subsection 25(1)(a) of the Act. He was not registered with the Commission in any capacity and no registration exemptions were available.

(g) Gahunia

[151] We find that Gahunia traded in Asia Pacific securities in breach of subsection 25(1)(a) of the Act.

[152] Gahunia solicited investors in Asia Pacific securities using the alias Miller. Specifically:

- Investor 1 testified that “Miller” was very persuasive and wanted him to buy more shares, sending him a request for additional participation in August of 2007. He testified that after to his first investment of US $10,000, he made a further investment of US $10,000;

- Subscription agreements and letters of intent were sent by “Miller” to several investors including Investor 1, and two other investors who did not testify at the hearing;

- Investor 2 testified that "Miller" told him that there would be a guaranteed payout of $9 to $11 per share. He testified that "… He [Miller] seemed very honest and took the time to talk with me and assured me things were right and legitimate. So we decided to go with it". After his initial purchase of 20,000 shares, Investor 2 together with his wife purchased 50,000 more shares of Asia Pacific for US $50,000;

- "Miller" sent an Asia Pacific information package to Investor 10; and

- "Miller" sent an Asia Pacific press release to at least one investor.

[153] A copy of a GPC telephone sales script for Miller was submitted in evidence. The script identifies the caller as Miller and it is clear from the language of the script that it was used for soliciting additional investments from existing Asia Pacific investors.

[154] Evidence was also presented of email correspondence from "Miller" to Jiwani listing sales of Asia Pacific shares.

[155] During Gahunia's compelled examination by Staff, he stated that his job was initially sales and then branched off into supervision and management. He told Staff that he provided training to the qualifiers, ensuring that they learned and followed the sales script verbatim. Gahunia also testified that he believed that he called individuals who had previously invested when numbers were low, and believed these people to be accredited investors.

[156] Gahunia, through his company Netgrowth Enterprises, received US $328,914 and $19,673 of investor funds. Evidence shows that these payments were primarily commission payments for his sales of Asia Pacific shares.

[157] Having previously concluded that Miller was an alias for Gahunia, and based on the evidence presented, we conclude that Gahunia traded in securities of Asia Pacific during the Material Time, contrary to subsection 25(1)(a). Gahunia was not registered in any capacity with the Commission, and no registration exemptions were available.

(h) Toussaint

[158] We find that Toussaint traded in Asia Pacific securities in breach of subsection 25(1)(a) of the Act.

[159] Toussaint solicited Asia Pacific investors using the alias Beckford. Specifically:

- Investor 4 testified that in September 2007, "Beckford" convinced him to buy an additional 40,000 shares of Asia Pacific for US $40,000 on top of his initial investment of US $60,000 in May 2007;

- Subscription agreements, letters of intent, and wiring instructions were sent by "Beckford" to Investor 5 and Investor 10;

- Investor 6 testified that "Beckford" called her and offered her an investment opportunity for a minimum investment of 2,000 shares at US $1.00 per share and that she would receive US $1.25 per share no matter when she sold the shares. Investor 6 invested $2,000 in Asia Pacific shares; and

- Investor 7 testified that after her initial purchase of 2,000 shares of Asia Pacific, she did not receive her share certificate. She called her contact on and off requesting the documents. She eventually spoke with "Beckford" on the phone, who convinced her to purchase another 2,000 shares in Asia Pacific. She testified that:

    … And when I called again, I got Mr. Beckford. …

    So he also was very progressive in encouraging me to invest, and he said I would not lose. … He asked me if I was going to invest any more. I said, well, yes, I think I will invest another 2,000. And he said, well, when I send it, they will send me the package of paper all in one.

    So I sent it. I sent another 2,000. …

    (Hearing Transcript, June 2, 2009 at pp. 25-26.)

[160] Toussaint, through his company, Titan VC, received payments totalling US $90,142 and $13,612 of investor funds. Documents submitted in evidence show that these payments were primarily commission payments for his sales of Asia Pacific shares.

[161] Having previously concluded that Beckford was an alias for Toussaint, and based on the evidence presented, we find that Toussaint traded in securities of Asia Pacific during the Material Time, contrary to subsection 25(1)(a) of the Act. Toussaint was not registered with the Commission in any capacity and no registration exemptions were available.

(i) Jiwani

[162] We find that Jiwani traded in Asia Pacific securities in breach of subsection 25(1)(a) of the Act.

[163] Evidence shows email correspondence from Jiwani to Pan and Cheung regarding receiving money from clients, share sales, and issuing share certificates. Jiwani's involvement in the day to day management of GPC is established through these emails. For example:

- In an email dated November 17, 2006, Jiwani writes to Pan

    I've put ads. in the Star (Sat. and Tues.) again on the Visa Card for $622.00, OK ? We need 5 more Salesmen to be full again.

    In spite of all the problems we've had we are building a strong team and I am very optimistic about next year

    Monday we start loading!

- In an email dated November 30, 2006, he writes to Pan regarding subscribing to Canada News Wire:

> Christine, please call Mike and let him explain in detail why we need to subscribe to this news service for our press releases with a cost of about $150 on our Credit Card. It is more than well worth it !

[164] Additionally, in his voluntary examination by Staff, Jiwani stated that he was running the GPC offices during the Material Time and that his job with GPC could be characterized as a coordinator.

[165] In the compelled portion of his examination by Staff, Jiwani provided the following information:

- Jiwani directed someone to create a brochure and assisted in the creation of GPC's website;
- He told Pan in an email dated November 17, 2006 that they would start "loading" the following week. Jiwani explained to Staff that "loading" referred to any sales to an investor beyond the first sale to him or her;
- If share certificates had not been sent out by four to six weeks after an investment was made, Jiwani would notify Pan, reminding her to send them out; and
- Jiwani was paid 5 percent commission on all sales, and an override payment based on 25% of total sales less the total commissions paid out on sales of Asia Pacific shares.

[166] Jiwani received US $110,686 and CAN $20,746 of investor funds.

[167] Based on the evidence presented, we conclude that Jiwani traded in securities of Asia Pacific during the Material Time, contrary to subsection 25(1)(a) of the Act. He was not registered with the Commission in any capacity and no registration exemptions were available.

3. Findings

[168] Based on the evidence discussed above, we conclude that all of the Respondents breached subsection 25(1)(a) of the Act by trading in securities of Asia Pacific. None of the Respondents was registered and there were no registration exemptions available to them, as discussed starting at paragraph 175.

B. DID THE RESPONDENTS ENGAGE IN DISTRIBUTIONS OF SECURITIES WITHOUT A PROSPECTUS, CONTRARY TO SUBSECTIONS 53(1)?

1. The Law

[169] Subsection 53(1) of the Act prohibits distributions of securities where no prospectus has been filed. It states:

> **53. (1) Prospectus required –** No person or company shall trade in a security on his, her or its own account or on behalf of any other person or company if the trade would be a distribution of the security, unless a preliminary prospectus and a prospectus have been filed and receipts have been issued for them by the Director.

[170] Subsection 1(1) of the Act defines "distribution" as follows:

"distribution", where used in relation to trading in securities, means:

(a) a trade in securities of an issuer that have not been previously issued; …

Therefore, for a breach of subsection 53(1), there must be a trade in securities of an issuer that have not been previously issued, and no filing of the preliminary prospectus and prospectus with the Commission.

[171] The prospectus requirement is essential in protecting investors. In *Jones v. F.H. Deacon Hodgson Inc.* (1986), 9 O.S.C.B. 5579 (H.C.), the court stated: "There can be no question but that the filing of a prospectus and its acceptance by the Commission is fundamental to the protection of the investing public who are contemplating purchase of the shares". The prospectus requirement is integral to ensuring that prospective investors have sufficient information to ascertain the risk level of their investment and to make informed investment decisions (*First Global, supra* at para. 145).

2. Analysis & Findings

[172] We concluded in the previous section that all the Respondents traded in securities of Asia Pacific.

[173] No prospectus or preliminary prospectus was ever filed with the Commission by Asia Pacific. There is no evidence that any investors were provided with a copy of an Asia Pacific prospectus.

[174] All the Respondents traded in securities of Asia Pacific, which we find had not been previously issued. We therefore conclude that all the Respondents breached subsection 53(1).

C. WERE ANY REGISTRATION OR PROSPECTUS EXEMPTIONS AVAILABLE?

1. The Law

[175] National Instrument 45-106 – *Prospectus and Registration Exemptions* ("**NI 45-106**") provides exemptions to the registration and prospectus requirements of the Act if certain conditions are met.

[176] Section 2.3 of NI 45-106 provides an exemption to the subsection 25(1)(a) and subsection 53(1) requirements for trades in a security if the purchaser is an "accredited investor" and is purchasing the security as principal.

[177] "Accredited investor" is defined in section 1.1 of NI 45-106:

"accredited investor" means

…

(j) an individual who, either alone or with a spouse, beneficially owns, directly or indirectly, financial assets having an aggregate realizable value that before taxes, but net of any related liabilities, exceeds $1,000,000,

(k) an individual whose net income before taxes exceeded $200 000 in each of the 2 most recent calendar years or whose net income before taxes combined with that of a spouse exceeded $300 000 in each of the 2 most recent calendar years and who,

in either case, reasonably expects to exceed that net income level in the current calendar year,

(l) an individual who, either alone or with a spouse, has net assets of at least $5,000,000,

…

[178] The Commission noted in *Limelight, supra* at paragraph 142 that once Staff has shown that the respondents have traded without registration and distributed securities without a prospectus, the onus shifts to the Respondents to prove an exemption was available to them in the circumstances.

2. Analysis

[179] The Asia Pacific Lead Information form submitted in evidence has check-boxes for "accredited investor" and "non-accredited investor". However, the evidence does not show that investors were confirmed as being accredited before they invested in Asia Pacific. McQuarrie, a GPC qualifier, stated in his compelled examination that he never asked investors if they were accredited or not.

[180] We were presented with evidence that indicates that investors were not accredited investors. One Ontario investor in particular, Investor 6, told Staff in her examination that the subject never came up in her discussions with Asia Pacific representatives:

Q. Did Mr. Beckford or anyone from Asia Pacific ask you about your experience investing in the stock market?

A. Not that I can recall. Not that I can recall.

Q. Any questions about your personal income, your net worth?

A. No.

Q. Anything of that nature?

A. No.

(Examination of Investor 6 by Staff, April 11, 2008 at pp. 12-13.)

[181] We note that Investor 2 testified that his annual income at the time of the hearing was US $50,000, which includes income from his disability pension. Staff provided us with a letter sent from Investor 4 and his wife, in which they write the following:

> We have had to use equity loans and retirement money loans just to pay the interest on our $100,000.00 because we foolishly believed that we would be "very happy with our investment" any day now. Bottom line, we are pretty much broke now.

[182] The Respondents submitted no evidence and made no argument on the availability of the accredited investor exemption. We therefore find no reason to conclude that this exemption was available.

[183] Staff submits that even if Asia Pacific investors were accredited investors, the registration exemption would not be available because Asia Pacific was a "market intermediary".

[184] Pursuant to section 3.9 of NI 45-106, the accredited investor exemption is not available to market intermediaries:

> 3.9 (1) Subject to subsection (2), in Ontario and Newfoundland and Labrador, the exemptions from the dealer registration requirements under the following sections are not available for a market intermediary except for a trade in a securities with a registered dealer that is an affiliate of the market intermediary:
>
> …

[185] *Re Lett*, *supra* provides further guidance on this issue at paragraph 65:

> Having regard to section 206(1) of the Regulations, if we find that the Respondents were market intermediaries as defined in section 204(1) of the Regulations, the Respondents are not exempt from having to be registered. In order to make this finding, it is necessary for us to find that the Respondents were engaged in or held themselves out as engaging in Ontario in the business of trading in securities as principal or agent.

[186] Further, as stated in *Re Allen, supra* at paragraph 86:

> The registration requirements of the Act do not apply to a trade in a security if the purchaser is an accredited investor and purchases as principal through a person who is a registered market intermediary. Hence, an unregistered trader of securities cannot avoid the registration requirements simply by trading in securities to accredited investors …

[187] In *Re Momentas Corp.* (2006), 29 O.S.C.B. 1603 at paragraphs 61 and 62, the Commission noted that the following characteristics were indicative of being a market intermediary: the respondent had no other source of revenue other than the sale of its securities, and individual respondents received substantial compensation from the proceeds of the offering.

[188] In this case, virtually all the funds coming into Asia Pacific were from the sale of its securities, and the Respondents were substantially compensated from the proceeds of the sale of Asia Pacific securities. Asia Pacific was therefore a market intermediary, and as such the accredited investor exemption would not be available in the circumstances.

3. Findings

[189] Investors such as Investor 2, Investor 4, and Investor 6 are the type of investors the registration and prospectus requirements are meant to protect. Rather than having been provided with adequate disclosure through a prospectus, the Asia Pacific investors were given false and misleading information about what would be done with the funds they invested.

[190] Under section 6.1 of NI 45-106, issuers must file reports of any exempt distributions with the Commission within 10 days of the distribution. There is no evidence of any such filings in this case.

[191] Given the evidence, we find that the Respondents did not meet the burden of showing that the accredited investor exemption was available. In addition, we note that the exemption would not be applicable in this case, regardless, since Asia Pacific acted as a market intermediary.

[192] We conclude that no exemptions to the registration or prospectus requirements under Ontario securities law were available to the Respondents.

D. DID GAHUNIA AND TOUSSAINT MAKE PROHIBITED REPRESENTATIONS THAT SECURITIES WOULD BE REPURCHASED OR REFUNDED, CONTRARY TO SUBSECTION 38(1) OF THE ACT?

1. The Law

[193] Subsection 38(1) of the Act states:

> **38. (1) Representations prohibited –** No person or company, with the intention of effecting a trade in a security, other than a security that carries an obligation of the issuer to redeem or purchase, or a right of the owner to require redemption or purchase, shall make any representation, written or oral, that he, she or it or any person or company,
>
> (a) will resell or repurchase; or
>
> (b) will refund all or any of the purchase price of,
>
> such security.

[194] For a breach of subsection 38(1), the Panel must be satisfied on the evidence that Gahunia or Toussaint represented to investors that the shares sold to them would be repurchased or refunded for the purpose of effecting a trade in a security.

2. Analysis

[195] Staff submits that both Gahunia and Toussaint made representations to Asia Pacific investors that their shares would be repurchased if the share price did not reach a specific level.

[196] Documentary evidence and investor testimony confirm that investors were consistently told that Asia Pacific would repurchase all shares sold to the investor at a fixed price of US $1.25 per share if the initial listing price of Asia Pacific shares at the time of the IPO was less than US $1.50. Investor witnesses testified as to the representations made by Gahunia (as Miller) and Toussaint (as Beckford) that the investors could redeem Asia Pacific shares purchased if the share price did not reach a certain level at the time of its IPO.

[197] Given our analysis regarding breaches of subsections 25(1)(a) and 53(1), it is clear that all communications with potential investors and investors were for the explicit purpose of enticing them to invest or re-invest in Asia Pacific securities. We are satisfied that any representations given by Gahunia and Toussaint to investors were with the intention of effecting a trade in Asia Pacific shares.

(a) Gahunia

[198] Investor 4 provided a copy of a letter he received by fax from Asia Pacific dated May 16, 2007, which states:

> As per your phone conversation with Shawn Miller, I hereby confirm on behalf of the company that should our IPO's opening price be less than $1.50 per share, you will have the option to, instead of exchanging your share certificates, redeem all of your shares at a fixed rate of $1.25 per share. This option will be available to you until the end of the first trading day.
>
> This offer only applies to *60,000* shares.

[199] Investor 4 testified that "Miller" told him his shares could be redeemed for US $1.25 per share if Asia Pacific's IPO's opening price was less than US $1.50 per share:

> Q. Okay. And in the third paragraph, sir, the letter seems to set out that – reference a phone conversation you had with Shawn Miller?
>
> A. Yes, sir.
>
> Q. And it also says that you will have the option to redeem all of your shares at a fixed rate of $1.25 per share if the IPO's opening price is less than $1.50?
>
> A. That is correct.
>
> Q. And is that something you were told by Mr. Miller on the telephone?
>
> A. Yes, sir. We couldn't get it wrong. If the deal isn't made, it's still going to make $0.25 on every dollar that I put in.
>
> Q. And this letter refers to 60,000 shares?
>
> A. That's correct.
>
> Q. And at this point, you had agreed, I take it, to purchase 60,000 shares?
>
> A. Yes, sir.
>
> (Hearing Transcript, June 1, 2009 at p. 68)

Investor 4 purchased 60,000 shares of Asia Pacific at US $1.00 per share for US $60,000 on May 17, 2007.

[200] Similar representations, that shares could be redeemed for US $1.25 each if the opening IPO price was less than US $1.50 per share, were made to other investors.

- Investor 1 testified that "Miller" talked to him regarding Asia Pacific's IPO opening share price.

- In an email, "Miller" instructed Investor 8 to notify him if he wishes to redeem his shares at US $1.25.

- A letter from Asia Pacific to Investor 9 similarly confirms that "Miller" promised that investor that he could redeem his shares at US $1.25 at the time of the IPO.

(b) Toussaint

[201] Toussaint made similar representations to investors that their Asia Pacific shares could be redeemed for US $1.25 per share at the time of the IPO, if the opening price was less than US $1.50 per share.

[202] Investor 5 provided a copy of a letter he received from Asia Pacific, which confirmed that, as per his conversation with "Beckford", his Asia Pacific shares could be redeemed at a fixed rate of US $1.25 per share if the IPO's opening price was less than US $1.50 per share. At the hearing, Investor 5 confirmed that this letter accurately reflects what "Beckford" told him about his Asia Pacific shares.

[203] We were also presented with evidence that at least two additional investors received virtually identical letters, confirming that as per their conversations with "Beckford", their shares in Asia Pacific could be redeemed if the above conditions were met.

3. Findings

[204] We are satisfied on the evidence that Gahunia and Toussaint, using their aliases, made repeated representations to investor who purchased Asia Pacific shares at US $1.00 per share, that their shares would be repurchased by Asia Pacific at a fixed rate of US $1.25 per share if Asia Pacific's IPO's opening price was less than US $1.50 per share.

[205] The Asia Pacific securities sold to investors were common shares in Asia Pacific. Evidence shows that the shares did not carry any obligation on Asia Pacific to redeem or purchase these shares. They also did not provide a right for shareholders to require their redemption or purchase.

[206] We have no doubt that, in this context, these representations by Gahunia and Toussaint were purely for the purposes of effecting trades in Asia Pacific shares, contrary to subsection 38(1) of the Act.

[207] In our view, these representations, repeatedly made to investors by Gahunia and Toussaint, were purely made to entice investors to invest or re-invest, which we consider to be high pressure sales tactics. We find this to be contrary to the public interest.

E. DID GAHUNIA AND TOUSSAINT MAKE PROHIBITED UNDERTAKINGS REGARDING THE FUTURE VALUE OR PRICE OF SECURITIES, CONTRARY TO SUBSECTION 38(2) OF THE ACT?

1. The Law

[208] Subsection 38(2) of the Act states:

> **38. (2) Future value** – No person or company, with the intention of effecting a trade in a security, shall give any undertaking, written or oral, relating to the future value or price of such security.

[209] Unlike subsection 38(1) of the Act, subsection 38(2) requires that an undertaking be made relating to the future value or price of a security. A simple representation is not sufficient to trigger a violation of this subsection.

[210] The Commission addressed this issue in *Limelight*, relying on the decision in *Re National Gaming Corp.* (2000), 9 A.S.C.S. 3570 ("***National Gaming***"). The Alberta Securities Commission (the "**ASC**") stated:

> … an undertaking is a promise, assurance or guarantee of a future price or value of securities that can be reasonably interpreted as providing the purchaser with a contractual right against the person giving the undertaking it, for any reason, the value or price is not achieved.
>
> (*National Gaming, supra* at 16)

[211] In this decision, the ASC also stated:

> In interpreting subsection 70(3)(a), we are mindful of the fact that predictions relating to the future value or price of securities are commonplace in the securities industry, and are not prohibited by the Act. …
>
> (*National Gaming, supra* at 16)

[212] *Limelight* states that an undertaking is more than a "mere representation":

> In our view, a mere representation as to future value is not an "undertaking" within the meaning of subsection 38(2) of the Act. Prohibiting all representations as to the future value of securities would ignore the reality of the marketplace.
>
> (*Limelight, supra* at para. 170)

[213] The Commission has also found that an undertaking within the meaning of subsection 38(2) can be something less than a legally enforceable obligation. The Commission determined that it should not take an overly technical approach to the interpretation of subsection 38(2), and that it should consider all of the surrounding circumstances and the Commission's regulatory objectives in interpreting the meaning of that section (*Limelight, supra* at paras. 164, 167, and 169).

[214] Relying on the ASC's decision in *National Gaming*, the Commission specifically stated that "in determining whether a representation amounted to an undertaking, the context of the statement must be considered, and the "undertaking" must be given a "functional interpretation" in keeping with the objective of protecting investors" (*Limelight, supra* at para. 167). Accordingly, the Commission agreed with the ASC's decision on this point.

[215] In an earlier decision, the Commission found that assurances and guarantees regarding the future value or price of a security did constitute an undertaking for the purposes of subsection 38(2). In *Re Aatra Resources Ltd.,* the Commission found that the following express representations regarding the future price of shares were undertakings that breached the Act:

> I would assure you, I will practically guarantee you that within the week you will see the stock … anywhere from twenty cents ($0.20) to fifty cents ($0.50) higher.
>
> (*Re Aatra Resources Ltd.* (1990), 13 O.S.C.B. 5109 at para. 34).

[216] The primary purpose of section 38 of the Act is investor protection. Undertaking as to the future value or price of a security are often made to vulnerable and unsophisticated investors, and subsection 38(2) aims to prevent a trade in a security through assurances of future value or price of the security.

[217] To find that these respondents breached subsection 38(2), we must therefore be satisfied that they gave investors what would be understood to be promises, guarantees or assurances regarding the future value or price of Asia Pacific securities. In doing so, we must consider the surrounding circumstances and the context in which undertakings were made to investors or potential investors.

2. Analysis

[218] Staff submits that the evidence before the Panel establishes that Gahunia and Toussaint made prohibited undertakings regarding the future price of Asia Pacific shares. Staff submits that the clearest evidence of these undertakings are Gahunia's and Toussaint's communications to investors that they would be able to redeem their shares at US $1.25 if the IPO price was less than US $1.50.

(a) Gahunia

[219] Investor 1 testified that "Miller" made undertakings as to the future price of Asia Pacific shares. In his letter to Staff and during his testimony, Investor 1 stated that "Miller" told him that the initial opening price of Asia Pacific shares at the IPO would be $16 per share. According to Investor 1, "Miller" told him that in the worst case scenario, he would make $2,500 on a $10,000 investment based on the redemption of shares at US $1.25. Investor 1 testified that after investing $10,000 on December 12, 2006, he called Asia Pacific to follow up on his investment. In his letter to Staff, Investor 1 writes the following:

> Upon receiving the certificate for the first 10,000 shares I waited for follow-up status. … It was shortly after this going back and forth over several weeks that Shawn Miller called.
>
> Shawn was interested in making me feel comfortable with where things were at. Finally after several months [Shawn] called one day in May of 2007 to let me know that things were coming together and that the price being negotiated was at a level where investors stood to make a great deal of money since the price being asked per share was over $11 dollars and appeared that the initial opening per share for the IPO would be in the $16 dollar per share area. He went on to say that there were still some shares available at the initial investment amount of $1 per share and that he was calling initial shareholders to offer them the opportunity to purchase the remaining outstanding shares that needed to be sold at the initial price of $1 per share as that was the agreement that had been made for the share price for shares offered before the company took the IPO public.
>
> I indicated to Shawn that I was concerned and wanted to see some equity flowing back to me on the initial purchase of $10,000 before I made any additional investment. … Several months went by and I heard nothing. In early August I started calling since I began to wonder where things were at. It took about a week of my calling before I

> received a call back from Shawn. … He gave me an update and closed by asking whether I might be in a situation to follow through on the investment that he and I had talked about in June of 2007. I indicated that I was surprised that there were still shares available since I thought that in June things were just about wrapped up. … The other reason for his call was that he had received word that by the end of the week the deal would be finalized and that there still had a hold on the shares that we had discussed back in June of 2007. I told him again that I was concerned that I had not received any equity on the dollars that I had already invested. His response to me was that the, worse case scenario would be that I would make $.25 per share on my investment as outlined in the letters that I had received … Over the course of the next two days I ultimately decided to invest another $10,000 for 10,000 shares at $1 per share. In the process of making this decision, I spoke with Shawn several times and was assured that I would not be disappointed and that this was a very sound investment and that "worse case scenario" I would make $2,500 on a $10,000 investment in the next two weeks.

[220] Investor 1 also received a fax from Asia Pacific on June 26, 2007, which states:

> … As per your phone conversation with Shawn Miller, I hereby confirm on behalf of the company that should our IPO's opening price be less than $1.50 per share, you will have the option to, instead of exchanging your share certificates, redeem all of your shares at a fixed rate of $1.25 per share. This option will be available to you until the end of the first trading day.
>
> This offer only applies to the *10,000* shares.

[221] Based on these assurances, Investor 1 purchased a further 10,000 shares on June 26, 2007.

[222] Investor 9 also provided Staff with a copy of a similar letter from Asia Pacific dated November 10, 2006, confirming his phone conversation with "Miller" and offering assurances that his shares would be redeemed at US $1.25 per share if the IPO share price was below US $1.50. Investor 9 purchased 5,000 shares at US $1.00 per share on November 10, 2006 and a further 20,000 shares at the same price on March 19, 2007. On September 18, 2007, Investor 9 wrote an email to "Miller", which states:

> … I invested in Asia because of your recommendation. I felt skeptical about the investment and was about to back out of the deal. You assured me that my money was safe with Asia Pacific, You also promised me that my money was secured and I would receive at least all my money back, plus a minimum of 25 percent of the amount invested … I am 87 years ald [*sic*] and cannot afford to lose my investment, therefore I need some assurance that my money is secure and not scamed [*sic*] in some crooked deal.

[223] On the same day, "Miller" replied to Investor 9 via email, in which he provides the following assurances:

> … You have a very firm commitment that your investment is secure, not only with the $1.25 redemption feature backed by APEI, but also by our proven track record with the projects we've been involved in. I can assure you that this is no "scam or crooked deal" …

[224] Based on the evidence presented, we are convinced that Gahunia, using his alias, gave assurances to investors relating to the future value or price of Asia Pacific securities.

(b) Toussaint

[225] Investor 6, an Ontario resident also received a letter from Asia Pacific dated August 27, 2007, that was similar to the ones investors received regarding their conversations with "Miller". This letter confirms her phone conversation with "Beckford" and offers confirmation that Asia Pacific would redeem her shares at US $1.25 per share if the IPO's opening price was less than US $1.50. Investor 6 purchased 2,000 shares at US $1.00 per share on August 31, 2007 for $2,181 (or, US $2,000). Investor 6 also testified that "Beckford" assured her the future price would be US $1.25 per share, calling her investment in Asia Pacific a win-win situation:

> Q. So what else did you and Mr. Beckford discuss during that conversation?
>
> A. Briefly, he told me what my aunt said. You know, it had something to do with oil. You know, you had to buy a minimum of 2,000 shares. It would be $2,000. No matter when I sold it, I would make $1.25 per share on whatever I bought. And it was a win-win situation.
>
> (Hearing Transcript, June 2, 2009 at p. 9-10)

[226] Investor 5 provided a copy of a letter dated July 11, 2006 that he received from Asia Pacific which states:

> As per your phone conversation with Peter Beckford, I hereby confirm on behalf of the company that should our IPO's opening price be less than $1.50 per share, you will have the option to, instead of exchanging your share certificates, redeem all of your shares at a fixed rate of $1.25 per share. This option will be available to you until the end of the first trading day.
>
> This offer applies to the *15,000* shares purchased by Wednesday, July 12, 2006.

[227] Investor 5 made a second investment of 15,000 shares for US $15,000 on July 12, 2006.

[228] Based on the evidence presented, we are convinced that Toussaint, using his alias, gave assurances to investor relating to the future value or price of Asia Pacific securities.

3. Findings

[229] The evidence shows that both Gahunia and Toussaint made statements and provided assurances to investors that, in the worst case scenario, they could redeem their Asia Pacific shares at a fixed rate of US $1.25 per share, if the opening price of Asia Pacific's IPO was less than US $1.50 per share. These assurances were then confirmed by follow-up letters sent by Asia Pacific to investors.

[230] Gahunia and Toussaint basically guaranteed investors a minimum return on their investment of US $0.25 per share, or 25% on their investment in Asia Pacific at US $1.00 per share and evidence from investor testimony indicates that these undertakings were given to close the sale of Asia Pacific shares.

[231] We consider these guarantees to be assurances regarding the future value or price of the securities. Taking into consideration the context in which these assurances were given, we consider these assurances to be undertakings within the meaning of subsection 38(2) of the Act.

[232] We conclude that these undertakings given by Gahunia and Toussaint, using their aliases, were made purely for the purpose of effecting trades in Asia Pacific shares, and were therefore contrary to subsection 38(2) of the Act.

[233] In our view, these undertakings to investors regarding minimum, worst case scenario, future value or price of Asia Pacific securities, repeatedly made by Gahunia and Toussaint, were made to entice investors to invest or re-invest. We consider these undertakings to be high pressure sales tactics, which we find to be contrary to the public interest.

F. DID GAHUNIA AND TOUSSAINT MAKE PROHIBITED REPRESENTATIONS REGARDING THE FUTURE LISTING OF SECURITIES, CONTRARY TO SUBSECTION 38(3) OF THE ACT?

1. The Law

[234] Subsection 38(3) of the Act states:

> **38. (3) Listing –** Subject to the regulations, no person or company, with the intention of effecting a trade in a security, shall, except with the written permission of the Director, make any representation, written or oral, that such security will be listed on any stock exchange or quoted on any quotation and trade reporting system, or that application has been or will be made to list such security upon any stock exchange or quote such security on any quotation and trade reporting system, unless,
>
> (a) application has been made to list or quote the securities being traded, and securities of the same issuer are currently listed on any stock exchange or quoted on any quotation and trade reporting system; or
>
> (b) the stock exchange or quotation and trade reporting system has granted approval to the listing or quoting of the securities, conditional or otherwise, or has consented to, or indicated that it does not object to the representation.
>
> …

[235] For a breach of section 38(3), the Panel must be satisfied on the evidence that these respondents represented to investors that shares in Asia Pacific would be listed on a stock exchange for the purpose of effecting a trade in Asia Pacific shares.

2. Analysis and Finding

[236] Although investors were told that Asia Pacific was a pre-IPO opportunity, as evidenced by the excerpts from witness testimony and letters sent by Asia Pacific noted above, we did not see evidence that any specific representation was made to investors that Asia Pacific would be listed on an exchange.

[237] Based on the evidence before us, we are not satisfied on a balance of probabilities that Gahunia or Toussaint represented that Asia Pacific would be listed on a stock exchange.

G. DID THE RESPONDENTS ENGAGE IN ACTS, PRACTICES OR COURSES OF CONDUCT RELATING TO SECURITIES THAT THEY KNEW OR REASONABLY OUGHT TO HAVE KNOWN PERPETRATED A FRAUD, CONTRARY TO SECTION 126.1(B) OF THE ACT?

1. The Law

[238] The basis for an allegation of fraud involving securities is found under section 126.1(b) of the Act, which states:

> **126.1 Fraud and market manipulation** – A person or company shall not, directly or indirectly, engage or participate in any act, practice or course of conduct relating to securities or derivatives of securities that the person or company knows or reasonably ought to know,
>
> …
>
> (b) perpetrates a fraud on any person or company.

[239] "Fraud" is not a defined term in the Act, and due to the recent introduction of the fraud provision, there are few cases interpreting section 126.1(b). In *Re Al-Tar Energy Corp.* (2010), 33 O.S.C.B. 5535 ("***Al-Tar***"), the Commission adopted the British Columbia Court of Appeal's interpretation of the substantially identical fraud provision in the British Columbia *Securities Act*, R.S.B.C. 1996, c. 418, as amended in *Anderson v. British Columbia (Securities Commission)*, 2004 BCCA 7 ("***Anderson***"), leave to appeal denied by the Supreme Court ([2004] S.C.C.A. No. 81).

[240] The British Columbia Court of Appeal approach to the legal test for securities fraud as set out in *Anderson* was adopted in *Re Capital Alternatives Inc.*, 2007 ABASC 79, which was affirmed in *Alberta (Securities Commission) v. Brost,* [2008] A.J. No. 1071 (C.A.).

[241] The decision in *Anderson* reviews the legal test for criminal fraud found in *R. v. Théroux*, [1993] 2 S.C.R. 5 (*"**Théroux***"). In *Théroux*, Justice McLachlin (as she then was) summarized the elements of fraud at paragraph 27:

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

[242] The British Columbia Securities Act fraud provision is substantially similar to section 126.1(b) of the Act. The British Columbia Court of Appeal, in addressing the application of the fraud provision in *Anderson* at paragraph 26, states that:

> … s.57(b) does not dispense with proof of fraud, including proof of a guilty mind. … Section 57(b) simply widens the prohibition against participation in transactions to include participants who know or ought to know that a fraud is being perpetrated *by others*, as well as those who participate in perpetrating the fraud. It does not eliminate proof of fraud, including proof of subjective knowledge of the facts constituting the dishonest act, by someone involved in the transactions.

[243] The British Columbia Court of Appeal's decision in *Anderson* also addressed the standard of proof for securities fraud in the regulatory context:

> Fraud is a very serious allegation which carries a stigma and requires a high standard of proof. While proof in a civil or regulatory case does not have to meet the criminal law standard of proof beyond a reasonable doubt, it does require evidence that is clear and convincing proof of the elements of fraud, including the mental element.
>
> (*Anderson, supra* at paragraph 29.)

[244] Our interpretation of subsection 126.1(b) of the Act is consistent with the decisions referred to above and the Commission's decision in *Al-Tar*.

[245] For a corporation, it is sufficient to show that its directing minds knew that the acts of the corporation perpetrated a fraud to prove a breach of section 126.1(b).

2. Analysis

[246] Staff alleges that the Respondents participated in acts, practices or courses of conduct relating to Asia Pacific securities that they knew or reasonably ought to have known perpetrated a fraud on persons or companies, in breach of section 126.1(b) of the Act.

[247] We note that this is an early case on the application of section 126.1(b) by the Commission. Although we received submissions from Staff, the Respondents made no submissions on the interpretation of section 126.1, or their liability under the section.

[248] Fraud is "one of the most egregious securities regulatory violations" and is both "an affront to the individual investors directly targeted" and "decreases confidence in the fairness and efficiency of the entire capital market system" (*Re Capital Alternatives Inc.* (2007), A.B.A.S.C. 79 at para. 308 citing D. Johnston & K. D. Rockwell, *Canadian Securities Regulation*, 4th ed., Markham: LexisNexis, 2007 at 420).

(a) GPC

[249] We find that GPC engaged in acts of deceit, falsehood and other fraudulent conduct that deprived Asia Pacific investors of their funds.

[250] The GPC website, www.globalpartnerscapital.com, contained false and deceitful information that was intended to mislead investors into believing that GPC was a legitimate, established company. The GPC website claimed:

- Global Partners Capital specializes in investing in emerging energy companies, enterprise services, technology companies, and communications companies operating primarily in the U.S., Canada and China. We help shape the future of these emerging segments by investing in market-leading companies with world-class management teams.

  With offices in Dallas Texas, Toronto Canada and Beijing China, GPC currently manages over $340 million in capital ….

- GPC was founded in 1998 on the premise that the convergence of energy, communications, internet and media, in all its forms, would transform the market, feeding the entrepreneurial spirit and driving the creation of market leading companies. We have assembled an exceptional investment team with a unique combination of operating, financial and marketing expertise.

- Our investment team combines a range of disciplines including general management, marketing and corporate finance with extensive industry knowledge and private equity expertise.

- Our success is grounded in our ability to identify market trends and fast growing industry categories for compelling investment opportunities with outstanding management teams.

- Once targeted companies have been identified, we continue to evaluate and assess the investment opportunity. GPC's deal team is balanced by a review team, which acts as a counterpoint, questioning assumptions and addressing the major risks inherent in each potential investment. Each year we review over 500 deals. …

[251] In their investigation, Staff did not locate any evidence of assets, operations or investments to support GPC's claims made on its website.

[252] We find that the website contained information about GPC's business activities that was largely fabricated. We were not provided with any evidence to substantiate any of the claims on the GPC website. We are satisfied that the statements about GPC's activities were false and misleading:

- GPC did not invest in any of the sectors, industries or countries mentioned on the website.

- GPC did not have an office in Las Vegas, Beijing or Dallas.

- GPC did not manage any capital.

- There is no evidence to support the claim that GPC had an investment team with extensive industry knowledge and private equity expertise or a deal team. Evidence shows that almost all GPC employees were telemarketers (qualifiers and sales representatives) who were engaged in activities purely focused on selling Asia Pacific shares, which we found breached subsection 25(1)(a) of the Act, as set forth in our reasons, above.

- GPC was not founded in 1998 for the purposes described on the website. Rather, as Cheung stated in his interview with Staff, GPC was created only for the Asia Pacific project.

[253] The GPC website also made claims about the projects that Asia Pacific was involved in. In the section titled Portfolios (Investment _ Success _ Profits), it stated that Asia Pacific was concentrating on two oil and gas projects with drilling locations in Western Australia and that over 17 million barrels of reserves were ready to be drilled. This information was false and misleading. Asia Pacific was not involved in multiple oil and gas projects, as claimed on the website. Asia Pacific's only involvement in oil and gas projects was its failed Empire Oil Investment in one well. Cheung would have been aware of the fact that Asia Pacific was not involved in any oil and gas projects after the initial Empire Oil Investment in May 2006.

[254] Investors were told about the success of earlier pre-IPO investment opportunities by GPC representatives, as evidenced by sales scripts found in the GPC offices and testimony provided by investors. There was no evidence to support these claims. These claims of successful previous investments by GPC were false.

[255] Investors were misled as to the nature and location of GPC. For example:

- Versions of the website from July 20, 2007 and August 24, 2007 list different addresses for GPC, one in Las Vegas, Nevada, and the other in Richmond Hill, Ontario.

- Investor 1 testified that he was contacted by someone who identified himself as the Director of the Equity Finance division of GPC and who was calling from Las Vegas.

- GPC employees told Staff in their compelled examinations that they would tell people they were calling from Dallas, Texas, when they were in fact calling from Toronto.

- GPC used couriers to conceal the true location of their offices from investors. The courier accounts were used to move investor documents and cheques between the virtual office in Dallas, the office in Ontario and Pidgeon in Las Vegas, who deposited the cheques into Asia Pacific bank accounts in the U.S.

[256] GPC representatives used aliases when dealing with investors, as discussed earlier.

[257] Investor 11 was sent letters purportedly sent by John Thompson and Randolph Hastings Jr., as Senior Portfolio Manager and President of GPC that stated Asia Pacific would be listed on the NASDAQ on June 12, 2007 without fail, the minimum listing price would be US $3.00 and he could sell his shares for a minimum of $3.00 per share up to the listing date. There was no Thompson or Hastings working for GPC nor were there plans to list Asia Pacific shares on the NASDAQ.

[258] GPC is an unincorporated business that operated in Toronto, Ontario. It had no board of directors and no operating assets. GPC was held out to be a separate corporation that marketed pre-IPO investment opportunities to potential investors, but in reality it was merely an extension of the investment scheme, in our opinion, established to sell Asia Pacific securities.

[259] GPC engaged in fraudulent activities for the purposes of obtaining investment funds through the sale of Asia Pacific shares.

[260] Cheung and Pan were the directing minds of GPC. Both were aware of the fraudulent nature of the activities of GPC and, as discussed later, both also perpetrated a fraud on investors in Asia Pacific securities. Based on the evidence reviewed above, and on their admissions at the hearing, we find that they both knew that GPC was not engaged in any legitimate business and that it was created purely to support the investment scheme. They knew its business was dishonestly raising funds from investors through the sale of Asia Pacific shares. We have no doubt that Pan and Cheung were aware of the role of GPC in the investment scheme, the significant number of shares of Asia Pacific sold to investors by GPC representatives, and the related fraudulent activities that they knew would put investors' funds and pecuniary interests at risk. We are therefore convinced that GPC acted through Pan and Cheung, who were its directing minds.

[261] Investor testimony confirmed that investors relied on the false and fabricated information communicated to them when they were deciding whether to invest or re-invest in Asia Pacific securities.

[262] GPC's fraudulent acts, discussed above, deprived investors of the funds that they were induced by deceit to invest in the Asia Pacific securities. As a result of these acts, investors lost their investments of over US $2.2 million. Based on the evidence, we find that GPC's directing minds knew of the fraudulent nature of its actions.

[263] Accordingly, we conclude that GPC perpetrated a fraud on investors in Asia Pacific securities and contravened section 126.1(b) of the Act.

(b) Asia Pacific

[264] We find that Asia Pacific engaged in acts of deceit, falsehood and other fraudulent conduct that deprived investors of their funds.

[265] The Asia Pacific website, www.asiapacificenergyinc.com, contained false and deceitful information about the company, including:

- "**Asia Pacific Energy** is a privately held American Oil & Gas Exploration Company. We are currently focusing our efforts in two major projects, thereby creating a unique synergy in vital areas such as; strong company alliances, collective research and development strategy, and a forcast for optimum drilling results. Ultimately, our primary goal is to provide anticipated above average returns for our qualified investors' participation."

- "By focusing on cutting-edge drilling technology, we thereby expedite the process of ensuring a highly profitable end-product. … **Our strategically researched properties have an estimated Seventeen Million Barrels of recoverable reserves – ready to be drilled.**"

- A cached version of the website from August 2, 2007 claimed that Randolph Hastings Jr. and J. Allen White were the principals of Asia Pacific. The website states:

> Mr. Randolph Hastings, Jr., B.A., M.A., has more than 15 years of experience in overseeing successful oil & gas projects throughout North America and Australia. Mr. Hastings will focus on the overall management and implementation of the drilling operations

With respect to White, the website claims:

> Throughout his professional career of more than 25 years, Mr. white [*sic*] has been at the forefront of oil & gas exploration … Mr. White oversees and manages all activities of **Asia Pacific Energy Inc.** in the exploration for natural gas and oil.

- The website also provided detailed information under the heading "Projects" on two projects, The Carnarvon Basin Project EP-435 ("**EP-435**") and The Perth Basin Project EP-426 ("**EP-426**"). The information on these two Australian drilling projects located included details on regional geology, stratigraphy, geological maps, reservoir, hydrocarbon potential, seismic interpretation, and prospects for each project.

- For EP-426, the website states:

> The Moiary Prospect has 160 hectares of anticlinal closure with a vertical relief of 15 metres at the F Sand and 45 metres at the Top Coaly Unit. **Estimated recoverable reserves for the F, J and L Sands of the Cattamarra Coal Measures are a total of 7.5 million barrels of oil – ready to be drilled.**

- For EP-435, the website states that:

> **The main prospects in EP-435, the Pindan, Dune and Parror Hill East have total estimated recoverable reserves of 10 million barrels – ready to be drilled.**

[emphasis in original]

[266] In their investigation, Staff did not locate any evidence of assets, properties, or investments, with the exception of the failed Empire Oil Investment.

[267] We were not provided with any evidence that substantiated any of the claims on the Asia Pacific website. On the contrary, we find that the website investors were directed to, and which they relied on when making investments, contained false and deceitful statements so as to mislead investors about Asia Pacific and its business, management, assets and investments:

- Through their investigation, Staff did not find any evidence of Asia Pacific focusing on cutting-edge drilling technology, and no research was generated by Asia Pacific with respect to any properties.

- There was no evidence to support the claim that Randolph Hasting Jr. or J. Allen White were involved in Asia Pacific operations in any capacity

- There is also no evidence that Asia Pacific was involved in the EP-426 project. Evidence shows that the description of this project on the Asia Pacific website was identical to excerpts from a report written for the Empire Oil Company (WA) Limited in August 2005.

- Asia Pacific had a limited short-term involvement in the drilling of one exploration well for the EP-435 project, but had no other involvement in that project.

[268] The Empire Oil Investment was Asia Pacific's only investment. It involved the drilling of one exploration well that turned out to be dry. Empire Oil & Gas NL had the following to say in a letter sent to Staff investigators:

> The Empire Oil & Gas N.L. Farmin transaction with Asia Pacific Energy Inc. have been [*sic*] disclosed to the ASX [Australian Stock Exchange] regarding Asia Pacific's involvement in drilling Dune-1 in EP 435 … Asia Pacific Energy Inc. contributed to the cost of drilling one exploration well, Dune-1 in EP 435. Such Dune-1 Farmin has been completely disclosed to the ASX.
>
> Subsequent to the drilling of Dune-1, a dry hole, Asia Pacific chose not to participate of the EP 435 Joint Venture and consequently has no interest in EP 435. Asia Pacific Energy Inc. did not participate in the next well drilled in the EP 435 Permit, Parrot Hill-2. Asia Pacific currently has no interests in any of Empire's petroleum permits. To date there have not been any further business transactions between Empire Oil & Gas N.L. and Asia Pacific Energy Inc.

[269] A stock exchange release by Empire Oil & Gas NL indicates that Asia Pacific entered into a farmin agreement with them on May 9, 2006, and that disclosure to the ASX regarding the drilling of a Dune-1 well was made on June 9, 2006. In an ASX announcement dated June 16, 2006, another investor in EP-435 announced that Dune-1 drilling was completed on June 12, 2006 with no commercial hydrocarbons present in the well – in other words, the well was a dry hole. Cheung, a directing mind of Asia Pacific, confirmed this in his compelled examination, where he told Staff that Asia Pacific only participated in one project in Australia: "… we were not really happy … because we got nothing … We lost 400,000". There is no evidence that this information was shared with investors in Asia Pacific nor that Asia Pacific's involvement in this project only lasted about two months.

[270] Asia Pacific's press releases, purportedly issued by Asia Pacific through Canada Newswire were provided to numerous investors. These press releases also contained false and deceitful statements about the company. For example:

- A press release dated Dallas, July 17, [2006] purportedly signed by Randolph Hastings, Jr., Director, on behalf of the Board, included the following false statements:

    - "Asia Pacific Energy Inc. (the "Company") is pleased to report that as of July 1, 2006 the Company has successfully concluded an Agency Agreement with Canton Oil Transporter Inc. (COTI) on its Pindan and Parrot Hill East prospect wells in EP-435 Carnavon Basin Project.

      Canton Oil Transporter Inc. is a wholly owned subsidiary of China Oil and Gas Inc."

    - "Under the terms of the contract China Oil & Gas Inc. (COGI) will purchase all existing and forth coming inventory at the specified prospect well sites in year one of the term & will be subject to an agreed royalty payment in years two, three, four and five of the contract for the distribution which will give Asia Pacific Energy Inc. (APEI) a small fiduciary interest in Canton Oil Transporter Inc. (COTI). In addition, Asia

Pacific Energy Inc. gives COGI the option to purchase its Dune Well contract within a two year period expiring on July 1, 2008."

- "This Agency Agreement with China Oil & Gas Inc. (COGI) allows Asia Pacific Energy Inc. (APEI) the ability to advance its efforts in moving forward with the exploration & development of its current and future acquisitions."

- "Mr. Hastings, Director of Asia Pacific Energy Inc. extends his thanks to the Management team of Global Partners Capital (GPC) and China Oil & Gas Inc. (COGI) for their cooperation & professionalism in the preparation of the Agreements."

- A press release dated Perth, Australia, November 14, 2006 and purportedly signed by Randolph Hastings, Jr. included the following false statements:

  - "Asia Pacific Energy Inc. (APEI) announced that it has received a friendly offer for the company (APEI) and their properties under development in the Carnavon Basin area of Western Australia. The offer, by an established Oil & Gas producer based in Australia, represents a significant premium over the previous offer of $ 5.50/share. Asia Pacific Energy Inc. (APEI) current offering price is now under final evaluation."

  - "An agreement has been reached to settle the outstanding native land claim. This settlement outlines the payment of 1-2% royalty of petroleum produced at the wellhead, for a period of not less than 15 years from the start of production on the 6,716,000 acres in the Carnavon Basin."

  - "Asia Pacific Energy Inc. (APEI) has entered into a Farmin Agreement with Australian-Canadian Oil Royalties Ltd (ACOR) for the development of an additional site under permit # ATP-582-P."

- A press release dated January 22, 2007 at Perth, Australia and Dallas, Texas included the following false statements:

  - "Asia Pacific Energy Inc.(APEI) announced that it has received a friendly offer for the company (APEI) and their properties under development in the Carnarvon and the Perth Basin area of Queensland, West Australia. The offer, by an established Oil & Gas producer based in Australia, represents a significant premium over the previous offer of $ 1.75 / share (Nov. 14,2007). Asia Pacific Energy Inc. (APEI) current offering price is now under final evaluation."

  - "Mr. Randolph Hastings, Jr., President of Asia Pacific Energy Inc.(APEI) extends his thanks to the management team of Global Partners Capital (GPC) and China Oil & Gas …"

  - The press release also gives statement with respect to ACOR, COTI and native land claims, similar to ones described in the previous paragraphs.

[271] All of the transactions mentioned in Asia Pacific's press releases were fabrications. There were no agency agreements, friendly offers, or outstanding native land claims as described in the releases. Asia

Pacific did not own any properties under development or prospect wells. It was not involved with Randolph Hastings, Jr. Further, it appears that these releases were purported to be issued from Dallas and Perth, in an attempt to mislead investors about the scope of Asia Pacific's business activities.

[272] The press releases of November 14, 2006 and January 22, 2007 both deceptively reference Asia Pacific's properties under development in the EP-435 Carnarvon Basin and EP-426 Perth Basin projects. This information was fabricated so as to deceive Asia Pacific investors. As discussed above, the only investment that Asia Pacific made was an exploration well that was found to be dry just over a month after Asia Pacific entered into a farmin agreement on May 9, 2006.

[273] With respect to the November 14, 2006 press release about a farmin agreement with ACOR, ACOR, which is a company based in Texas, informed Staff via email that, "A Farmin Agreement was made with Asia Pacific, only to be dropped due to their lack of funding. We have not heard from them since". It would appear that investors were not advised of this.

[274] In addition to these press releases, investors were provided with an elaborately prepared colour brochure entitled Asia Pacific Energy Investor Portfolio, which contained false information that was very similar to what was posted on the Asia Pacific website.

[275] Investors were also provided letters and emails, sent by Asia Pacific. These communications also contained false information, including, for example:

- A letter sent by Asia Pacific to Investor 12 stating that its last private placement went from $0.50 per share to $11 per share and that it is more confident about the next projects it is involved in.

- Investors were sent correspondence supposedly from Travis Armstrong, who was an executive at Asia Pacific, promising them that there would be an IPO and they would have the option to redeem their shares at a fixed price. Rotondo told Staff in her compelled interview that she would send out a letter from Travis Armstrong to investors, although she did not know who Travis Armstrong was.

- Letters confirming assurances of share redemption at a fixed price at the Asia Pacific IPO, as discussed in our analysis above.

[276] Reviewing Asia Pacific's business activities as a whole, we find that the following evidence also confirms that Asia Pacific had no legitimate business purpose, and that the company's only purpose was to dishonestly raise funds from investors:

- Asia Pacific representatives used aliases when dealing with investors.

- The US Bank Accounts were open only for a short time. Investor funds were deposited into these accounts and within a few days of this deposit, almost all these funds were transferred out to 1666475 in Ontario. 1666475, which was controlled by Pan, did not have any legitimate business reasons for receiving these investor funds from Asia Pacific.

- The address of a virtual office was listed as an Asia Pacific office location. Asia Pacific used a virtual office address, phone lines and couriers to depict it as a Texas-based organisation to investors who were mostly U.S. residents.

- Asia Pacific had no operating assets.

- Asia Pacific did not maintain a shareholder list, its shares did not have a CUSIP number, and it did not have a transfer agent.

[277] Investors were influenced by the false and deceitful information provided to them via the Asia Pacific website, press releases, promotional materials, and other communications when they made their decisions to invest in Asia Pacific shares. We are convinced that investors relied on this information and were misled as to the nature of their investment in Asia Pacific securities. For example:

- Investor 2 testified that his research on Randolph Hastings Jr. and the projects Asia Pacific claimed to be involved in played a role in his decision to invest in Asia Pacific:

> Q. And you told us you went and looked at the web site. What were you looking for when you went and looked at their web site, sir?
>
> A. Well, I wanted to see if it was real, and in the web site, they had mentioned Randolph Hastings Jr. And I did a search on him, and he was a very clean guy and honest and seemed like he was on the ball with this kind of stuff, and I searched out the Perth Basin and the companies that were involved in it, and it was pretty much exactly as they said.
>
> (Hearing Transcript, June 1, 2009 at pp. 39-40.)

- Investor 5 testified that he was told at one point that Beckford was in Australia because they were expanding their involvement to a second oil field there:

> They did tell me the investment was expanding to a wider oil field, and that is why Mr. Beckford was in Australia. There was a second oil field that was found next to the one they were drilling on or exploring on, and Asia Pacific was in the process of trying to obtain that land.
>
> (Hearing Transcript, June 1, 2009 at p. 94.)

[278] We also note that the evidence shows that Asia Pacific was involved in a reverse merger with China Bio Life Enterprises, Inc., executed on October 29, 2007 (the "**Merger Agreement**"). As a result of this merger, there was a 200 to 1 reverse stock split. A representative of the transfer agent for the new corporation advised Staff that he had received no instructions with regard to changing share certificates. Staff's review of the shareholders list for the newly merged entity found that the new shareholder list did not include any of the shareholders that were sold securities of Asia Pacific during the Material Time. As a result, all Asia Pacific investors lost any claim to the corporate entity.

[279] Cheung was a directing mind of Asia Pacific. As stated in our analysis of GPC's fraudulent conduct, Cheung was aware of the fraudulent activities of the entire investment scheme. Based on the evidence reviewed above, we find that Cheung knew that Asia Pacific was not engaged in a legitimate business as described on its website, in its press releases and in its promotional material. He knew that Asia Pacific was fraudulently selling its shares. The fraudulent acts appear to be the only business purpose of Asia Pacific.

[280] Pidgeon played an important role in the investment scheme selling Asia Pacific securities. Specifically, he was listed as a director and officer of Asia Pacific in the corporate filings, and he set up the US Bank Accounts, which made it possible for Asia Pacific to accept and transfer investment funds. As sole signatory on the US Bank Accounts, he authorized the transfer of Asia Pacific funds from investors to 1666475 accounts, when there was no legitimate business reason for these transfers. Pidgeon also signed the Merger Agreement as President, Director of Asia Pacific. We therefore find that Pidgeon was a directing mind of Asia Pacific and knew or reasonably ought to have known that Asia Pacific was perpetrating a fraud in relation to the Asia Pacific securities.

[281] Cheung knew of and Pidgeon knew or ought to have known of these fraudulent activities that they both would have known would put investors' funds and pecuniary interests at risk.

[282] We therefore conclude that Asia Pacific acted through Cheung and Pidgeon, who were its directing minds.

[283] We are convinced that investors relied on the false and deceitful information communicated to them about Asia Pacific's business activities on its website, in press releases, in other promotional material and through its representatives when they were deciding to invest or re-invest in Asia Pacific securities. Except for the Empire Oil Investment, the investor funds were not utilised for any expenses relating to the activities Asia Pacific investors were led to believe the company was engaged in.

[284] Asia Pacific's fraudulent acts, discussed above, deprived investors of the funds that they were induced by deceit to invest in Asia Pacific securities. As a result of these acts, investors lost their investments of over US $2.2 million. Based on the evidence, we find that Asia Pacific's directing minds knew or reasonably ought to have known of the fraudulent nature of its actions.

[285] Accordingly, we conclude that Asia Pacific perpetrated a fraud on investors in Asia Pacific securities and contravened section 126.1(b) of the Act.

(c) 1666475

[286] We find that 1666475 engaged in acts of deceit, falsehood and other fraudulent conduct that deprived Asia Pacific investors of their funds.

[287] The evidence shows that 1666475 had a significant role in the investment scheme and the resulting fraud on Asia Pacific investors.

[288] Over US $2.1 million of Asia Pacific investor funds were transferred from the US Bank Accounts to the 1666475 US$ Account during the Material Time. The 1666475 Bank Accounts were then used to channel investor funds through the investment scheme, as described at paragraphs 92 and 93. For example, the following payments were made:

- the Empire Oil Investment of $400,000;
- sales commission and/or salary payments made directly or indirectly to GPC employees, including Gahunia, Toussaint, and Jiwani;
- payments on the Pan Credit Cards, which included significant personal expenses; and

- expenses related to the investment scheme, including rent, IT, courier and utilities payments.

[289] Evidence submitted indicates that of the over US $2.1 million of investor funds transferred to 1666475, over US $985,000 and over $670,000 were used to make the payments described in the paragraph above. Of these payments, over half were used to pay Individual Respondents and to make payments to the Pan Credit Cards. The remaining investor funds transferred into the 1666475 Bank Accounts have not been accounted for.

[290] Pan had knowledge of all the activities of 1666475. She incorporated 1666475 and was its sole director. She opened the 1666475 Bank Accounts, and was the sole signatory on these accounts. She was aware of the investor funds being transferred from the US Bank Accounts to the 1666475 US$ Account. All payments made from the 1666475 Bank Accounts were authorized by her. Pan was the directing mind of 1666475.

[291] Based on the evidence and on Pan's admissions at the hearing, we are convinced that Pan was aware of the role of 1666475 in the investment scheme, that 1666475 was not engaged in any legitimate business, and of the fact that 1666475 was a party to the fraudulent acts that would put the Asia Pacific investors' funds and pecuniary interests at risk. Pan knew or reasonably ought to have known that much of these funds were not being used for the business purposes that were communicated to investors

[292] We conclude that 1666475 acted through Pan, its directing mind.

[293] 1666475's fraudulent acts, discussed above, deprived investors of the funds that they were induced by deceit to invest in the Asia Pacific securities. As a result of these acts, investors lost their investments of over US $2.2 million. Based on the evidence, we find that 1666475's directing mind knew of the fraudulent nature of its actions.

[294] Accordingly, we conclude that 1666475 perpetrated a fraud on investors in Asia Pacific securities and contravened section 126.1(b) of the Act.

(d) Pidgeon

[295] We find that Pidgeon engaged in acts of deceit, falsehood and other fraudulent conduct that deprived Asia Pacific investors of their funds.

[296] Staff submits that despite their efforts, they have not been able to examine Pidgeon, a resident of the U.S. However, on February 14, 2009, Staff received an email from Pidgeon, in which he made the following statements:

- It has come to my attention that you have me listed as President and Director of this company. I am NOT president or a director of any company named Asia Pacific Energy or any variation of that name in any jurisdiction in any country.

- In February of 2006 I was hired … to be the Manager of Asia Pacific Energy Inc. of Nevada. My sole job duty was to manage the bank account. …

- Other than make deposits and withdrawals to pay some bills I was instructed to send wires from the Company account to the company bank account in the Province of Ontario, a TD account.

- I was paid a starting amount of $500 a month for most months with an increase in the last 4-5 months due to the increase in work.

- I never spoke with any customers. I do not remember ever signing any documents other than the initial bank account forms or wire transfer requests …

[297] However, we were presented with evidence contrary to these statements. As set out at paragraphs 399 to 401, Pidgeon was listed as President and Secretary of Asia Pacific in different corporate filings made with the State of Nevada. He is also alternatively listed as President, Secretary, Member and/or Director of Asia Pacific in various banking documents that he signed.

[298] Although Pidgeon's role differed from the other Individual Respondents, we find that he certainly played an important role in the investment scheme. Pidgeon opened the US Bank Accounts and was the sole signatory on those accounts.

[299] It appears that Pidgeon mainly dealt with investor funds that were deposited into the US Bank Accounts. As a sole signatory on the US Bank Accounts, he authorized, on a consistent and regular basis during the Material Time, transfers of investor funds from the US Bank Accounts to an account held by 1666475 in Canada, which total over US $2.1 million. We find there was no legitimate business reason for these transfers of investor funds.

[300] We note that Pidgeon also signed the Merger Agreement on behalf of Asia Pacific, as discussed at paragraph 278. This indicates he had signing authority for Asia Pacific that extended beyond the US Bank Accounts.

[301] Evidence also shows Pidgeon authorized significantly higher payments to himself from Asia Pacific than he indicated in his email to Staff. Evidence shows withdrawals by Pidgeon from the US Bank Accounts, into which investor funds were deposited, totalled US $92,972.

[302] Pidgeon knew or reasonably ought to have known that setting up the three different US Bank Accounts; the transfers of funds deposited into the US Bank Accounts to the 1666475 US$ Account in Canada within a few days of the funds being deposited by investors; and the courier arrangements for transferring documents to and from Toronto were all done in an effort to facilitate the deception of investors, so that they would believe they were dealing with a legitimate business based in the U.S. In fact, investors testified that they thought they were dealing with an oil and gas business out of Dallas, Texas.

[303] We are convinced that Pidgeon knew or reasonably ought to have known that over US $2.2 million of investor funds raised by Asia Pacific were not being used for legitimate business purposes, or in the manner in which investors were led to believe they would be used.

[304] Based on the evidence, we are also convinced that Pidgeon was aware of the fact that Asia Pacific was engaging in fraudulent acts that would put the Asia Pacific investors' funds and pecuniary interests at risk and deprive the investors.

[305] Pidgeon's fraudulent acts, discussed above, deprived investors of the funds that they were induced by deceit to invest in Asia Pacific securities. As a result of these acts, investors lost their investments of

over US $2.2 million. Based on the evidence, we find that Pidgeon knew or reasonably ought to have known of the fraudulent nature of his actions.

[306] Accordingly, we conclude that Pidgeon perpetrated a fraud on investors in Asia Pacific securities and contravened section 126.1(b) of the Act.

(e) Pan

[307] We find that Pan engaged in acts of deceit, falsehood, and other fraudulent conduct that deprived Asia Pacific investors of their funds.

[308] Pan made the following admissions, as detailed at paragraph 59, above:

- Asia Pacific securities were sold to over 110 investors, and those investors sent over US $2,200,000 to Asia Pacific.

- Asia Pacific investors were instructed to send subscription agreements and cheques to a virtual office in Dallas, Texas. Some investors were instructed to send their funds by wire transfers, and did so.

- Between and including March 2006 and October 2007, over US $2 million was transferred from the Asia Pacific US Bank Accounts, which investor funds were deposited to a U.S. dollar bank account in Canada, held by 1666475. Over US $1 million was transferred from the 1666475 U.S. dollar account to a Canadian dollar account in Canada held by 1666475. Pan was the sole signatory on both the 1666475 bank accounts.

- $150,000 of investor funds was used to pay credit card bills for Pan from the 1666475 Canadian account. However, Pan and Cheung claim this money was used for expenses relating to the business activities of the corporate entities.

[309] Pan played a key role in providing the infrastructure for the investment scheme, as set out at paragraphs 140 to 144.

[310] Pan, as the sole director of 1666475 and the sole signatory on its bank accounts, authorized the payments from those accounts that were made using Asia Pacific investor funds. As noted at paragraph 93 some of the investor funds transferred into the 1666475 Bank Accounts have not been accounted for.

[311] Funds from the 1666475 Bank Accounts were also used to pay charges totalling $302,576 on the Pan Credit Cards. Pan admits to only $150,000 being used for payments to the Pan Credit Cards. However, based on the evidence, we find that $302,576 from the 1666475 Bank Accounts were used for payments on the Pan Credit Cards. Pan further claims that the credit card expenses related to business operations, but, as noted at paragraph 93, many of these credit card expenditures were for personal expenses.

[312] We have established that Pan was a directing mind of GPC and the directing mind of 1666475, and that she admitted to key facts about the investment scheme. Pan knew that investor funds were not being used for legitimate business purposes, as investors thought they would be when they purchased Asia Pacific securities. On the contrary, Pan used some of their funds to pay for personal expenses. Her

use of investor funds for what cannot be described as legitimate business purposes amounts to fraudulent conduct. We are convinced that Pan was aware that her acts would put Asia Pacific investors' funds and pecuniary interests at risk and would deprive these investors.

[313] Based on the evidence, we are convinced that Pan was aware of the fact that GPC and 1666475 were engaging in fraudulent acts that would put the Asia Pacific investors' funds and pecuniary interests at risk and deprive the investors.

[314] Pan's fraudulent acts, discussed above, deprived investors of the funds that they were induced by deceit to invest in the Asia Pacific securities. As a result of these acts, investors lost their investments of over US $2.2 million. Based on the evidence, we find that Pan knew of the fraudulent nature of her actions.

[315] Accordingly, we conclude that Pan perpetrated a fraud on investors in Asia Pacific securities and contravened section 126.1(b) of the Act.

(f) Cheung

[316] We find that Cheung engaged in acts of deceit, falsehood and other fraudulent conduct that deprived Asia Pacific investors of their funds.

[317] Cheung also made the admissions noted at paragraph 59. These admissions, together with the evidence reviewed above, confirms that he was aware of key elements of the investment scheme.

[318] As set out in paragraph 149, Cheung also played an integral role in setting up the infrastructure for the Asia Pacific investment scheme.

[319] Staff provided evidence that Cheung was aware that fraudulent information was being provided to investors. Staff's investigation turned up a website for Vaulkan Resources registered to Tony Cheung (an alias) that had virtually identical content to the Asia Pacific website, including details of the projects it was purportedly involved in.

[320] Cheung also provided evidence of his involvement in the investment scheme and his awareness of the fraudulent nature of the scheme in his compelled examination by Staff:

- he admitted that Randolph Hastings Jr. and J. Allen White were not the principles of Asia Pacific, contrary to information provided to investors and to the public;

- he told Staff that he tried to hire Randolph Hastings Jr., but that he would have nothing to do Asia Pacific. He admitted that Randolph Hastings Jr. was never employed by Asia Pacific, nor was he a director;

- he admitted that he left information on the website that indicated that they were involved in ongoing exploration activity in Australia to make the existing clients happier, because he did not want them asking for their money back;

- he stated that Asia Pacific only participated in one project in Australia, the Empire Oil Investment, in which they invested US $400,000.

- he also admitted that the phone number on the Asia Pacific letterhead had a Dallas area code so that people would believe GPC represented Asia Pacific.

- he said that GPC was only created for this investment scheme;

- he stated that he ordered a package of share certificates from a business agent so he could sign them himself and sell shares to investors; and

- he said that he purchased lead lists.

[321] We have established that Cheung was a directing mind of GPC and Asia Pacific, and based on the evidence, we are convinced that Cheung was aware of the fact that GPC and Asia Pacific were engaging in fraudulent acts. Cheung also admitted to key facts about the investment scheme and, based on the evidence, we are convinced that Cheung was aware of the fraudulent nature of his acts relating to the investment scheme. He would have known that his actions would put Asia Pacific investors' funds and pecuniary interests at risk and deprive the investors.

[322] Cheung's fraudulent acts, discussed above, deprived investors of the funds that they were induced by deceit to invest in the Asia Pacific securities. As a result of these acts, investors lost their investments of over US $2.2 million. Based on the evidence, we find that Cheung knew of the fraudulent nature of his actions.

[323] Accordingly, we conclude that Cheung perpetrated a fraud on investors in Asia Pacific securities and contravened section 126.1(b) of the Act.

(g) Gahunia

[324] We find that Gahunia engaged in acts of deceit, falsehood and other fraudulent conduct that deprived Asia Pacific investors of their funds.

[325] As set forth in paragraph 152, Gahunia played an integral role in soliciting investors in Asia Pacific securities. As part of the scheme to solicit investors, Gahunia used the alias Miller (as described in paragraphs 76 to 79. He deceived investors about his identity.

[326] Gahunia described his role at GPC to Staff as initially being in sales, and then branching off into management. Copies of documentation provided by investors whose correspondence from "Miller" identifies him as holding different offices, including:

- Senior Vice President, Corporate Relations, GPC;

- Senior Executive, Corporate Accounts, GPC;

- Senior Executive, Corporate Accounts, Asia Pacific; and

- Investor Relations, Senior Executive, Asia Pacific.

[327] We conclude that the evidence shows that Gahunia, using the alias Miller, held himself out to investors as holding different positions within GPC and Asia Pacific. We consider this was to deceive investors as to his true role in the scheme to sell Asia Pacific securities.

[328] Letters to investors which identified Miller as holding the above titles are purported to be sent from an address in Dallas, Texas. As stated above, the Texas address was used to deceive investors about the actual location of the Asia Pacific and GPC business.

[329] Investors testified at the hearing as to the information they received from Gahunia, acting under the alias Miller:

- Investor 4 testified that "Miller" told him in May 2007 that there were two wells that were being drilled:

    Q. And can you tell us about your first telephone conversation with Mr. Miller? What was he telling you?

    A. Once again, it was about the old basins river, the Persian [Perthian] oil basins, how they had two wells and that they were getting close to starting to drill on them, and once they did start drilling, they would be able to get the deal rolling, and then we'll get a great return on our investment

    (Hearing Transcript, June 1, 2009 at 67)

- An email from "Miller" dated September 13, 2007 to Investor 4 assures the investor that he is well protected and that, with a further investment, he has poised himself for an optimum position to profit immediately.

- An email from "Miller" dated September 19, 2006 to Investor 8 attaches a press release dated July 17th announcing Asia Pacific's alleged agency agreement with Canton Oil and calling it crucial information.

[330] As established above, Gahunia made representations to Asia Pacific investors that they would have an option to redeem their shares at a fixed price and provided undertakings about the future value of Asia Pacific shares in a worst case scenario. In our view, we consider these actions to be fraudulent in nature and acts of deceit made to mislead investors and entice them to purchase Asia Pacific securities.

[331] Evidence shows that in general the information conveyed to investors by Gahunia was false and deceitful. We find that investors relied on this information about GPC, Asia Pacific and its business activities when they decided to invest or re-invest in Asia Pacific securities.

[332] As a result of his conduct and his role in the investment scheme, Gahunia received US $328,914 and $19,673 of investor funds.

[333] Based on the evidence, we are convinced that Gahunia was aware of the fact that the information, representations and undertakings he was providing to investors were false and deceitful. He reasonably ought to have known that his actions would put Asia Pacific investors' funds and pecuniary interests at risk and deprive the investors.

[334] Gahunia's fraudulent acts, discussed above, deprived investors of the funds that they were induced by deceit to invest in the Asia Pacific securities. As a result of these acts, investors lost their investments of over US $2.2 million. Based on the evidence, we find that Gahunia knew or reasonably ought to have known of the fraudulent nature of his actions.

[335] Accordingly, we conclude that Gahunia perpetrated a fraud on investors in Asia Pacific securities and contravened section 126.1(b) of the Act.

(h) Toussaint

[336] We find that Toussaint engaged in acts of deceit, falsehood and other fraudulent conduct that deprived Asia Pacific investors of their funds.

[337] As set forth in paragraph 159, Toussaint played an integral role in soliciting investors in Asia Pacific securities. As part of the scheme to solicit investors, Toussaint used the alias Beckford (as described in paragraphs 80 to 82. He deceived investors about his identity in communications with Asia Pacific investors.

[338] Toussaint told Staff that his job at GPC involved a bit of qualifying, introducing people to the product and helping to run the GPC office, but that he did not sell securities. Copies of documentation provided by investors whose correspondence from "Beckford" identifies him as holding different offices, including:

- Senior Portfolio Manager, GPC;
- Senior Executive, Asia Pacific; and
- Vice President, Investor Allocations, Asia Pacific.

[339] We conclude that the evidence shows that Toussaint, using the alias Beckford, held himself out as holding different positions within GPC and Asia Pacific. We consider this was to deceive investors as to his true role in the scheme to sell Asia Pacific securities.

[340] Letters which identified Beckford as holding the above titles are purported to be sent from an address in Dallas, Texas. As stated above, the Texas address was provided to investors in an effort to deceive them about the actual location of the Asia Pacific and GPC business.

[341] Investors testified about the information they received from Toussaint, under the alias Beckford, that have since been shown to be false and deceitful:

- Investor 2 stated at the hearing that he was told that Beckford handled the finances for Asia Pacific after Miller left. He testified that "Beckford" told him that Asia Pacific was being bought out by China Oil and claimed to be was located in Dallas.
- Investor 4, testified that "Beckford" convinced him to invest an additional US $40,000 so that he would be a top priority for repayment.

[342] Beckford is listed as the Asia Pacific representative to be contacted in a project update sent to Investor 13. The press release sent with this update claims that a friendly offer had been received for the company for over $5.50 per share, that an agreement over an outstanding native land claim had been reached, and that Asia Pacific was developing land with significant reserves.

[343] As established above, Toussaint made representations to Asia Pacific investors that they would have an option to redeem their shares at a fixed price and provided undertakings about the future value of Asia Pacific shares in a worst case scenario. In our view, we consider these actions to be fraudulent in nature and acts of deceit made to mislead investors and entice them to purchase Asia Pacific securities.

[344] Evidence shows that in general the information conveyed to investors by Toussaint was false and deceitful. We find that investors relied on this information about GPC, Asia Pacific and its business activities when they decided to invest or re-invest in Asia Pacific securities.

[345] As a result of his conduct and his role in the investment scheme, Toussaint received US $132,380 and $14,917 of investor funds.

[346] Based on the evidence, we are convinced that Toussaint was aware of the fact that the information, representations and undertakings he was providing to investors were false and deceitful. He reasonably ought to have known that his actions would put Asia Pacific investors' funds and pecuniary interests at risk and deprive the investors.

[347] Toussaint's fraudulent acts, discussed above, deprived investors of the funds that they were induced by deceit to invest in the Asia Pacific securities. As a result of these acts, investors lost their investments of over US $2.2 million. Based on the evidence, we find that Toussaint knew or reasonably ought to have known of the fraudulent nature of his actions.

[348] Accordingly, we conclude that Toussaint perpetrated a fraud on investors in Asia Pacific securities and contravened section 126.1(b) of the Act.

(i) Jiwani

[349] We find that Jiwani engaged in acts of deceit, falsehood and other fraudulent conduct that deprived Asia Pacific investors of their funds.

[350] Although Jiwani's role differed from the other Individual Respondents, we find that he was certainly involved in the investment scheme.

[351] In what began as a voluntary examination by Staff, Jiwani described his contribution to the set-up of the investment scheme:

- He [Cheung] says, "… you set up the system for me and I'll give you 5 percent of the whole thing."

  So it was set up that I was – it was like a franchise except it was going to be a brandchise. Basically a franchise consultant, that was my expertise.

  …

So I called the chaps up and I got them 500 bucks a week … I said, "This is great, I've got a team put together …"

(Examination of Jiwani by Staff, May 21, 2008 at p. 19)

- And he [Cheung] had all kinds of projects he was looking at. I was particularly interested in the oil and gas projects because that's what these chaps have done before and I thought this would be easy for them to sell.

  (Examination of Jiwani by Staff, May 21, 2008 at p. 21)

- So from my phone showing that I'm busy that I'm trying to, you know, coordinate things over here. I called up people to sort of do the various functions. We need a qualifier, so we got a chap to do – well, one of my friends was basically getting in touch with the people, the staff. … The two things that were happening at that point was they were preparing, we had to prepare a very good brochure. You know, we had to do a web site and a brochure.

  (Examination of Jiwani by Staff, May 21, 2008 at p. 22)

- And I went through this whole process over the month from my computer, looking at charts they'd drum up, the picture that they were going to put on the front of the brochure, the contents of the whole brochure.

  (Examination of Jiwani by Staff, May 21, 2008 at p. 23)

[352] Jiwani also stated that he directed employees to perform various functions to get the operations rolling:

- Since I've given them all 500 a week you know, again, there was no work being done. I told the other guy, "Look, unless you're helping out and doing, you know, the qualifying on the phone et cetera, I am not going to pay you …"

  (Examination of Jiwani by Staff, May 21, 2008 at pp. 25-26)

- I said to Mike, "You know, here's the situation, I want you to develop a system" … I explained to him how franchising and brandchising work. That he would take care of the hiring, training et cetera, et cetera, put together what needs to be put together, Only what needed to be done because by this time we had the web site ready, we had the brochures ready. I had gone to the printer, you know made sure that all the printing was right.

  (Examination of Jiwani by Staff, May 21, 2008 at p. 26-27)

[353] In describing his role, Jiwani stated:

Q. Can you describe your role in one word?

A. One word. Coordinator, I guess.

Q. Coordinator?

A. I think manager – you know, people said I was the manager. If anything, I may have been an office manager.

(Examination of Jiwani by Staff, May 21, 2008 at p. 24)

[354] When questioned about the sales done by GPC, Jiwani told Staff during the compelled portion of his examination:

> Initially it was about, I think we did about [$]60- to 70,000 a month initially, something like that. Gradually, you know, as the people got more and more experience after, the sales went up. … I asked for updates on what sales were written up, what invoices were – this, I worked out of my home, you know. I wanted an update everyday at the end of the day to see who wrote up what sales, when was the money coming in. At the end of the week, you know, I had access to the bank account, which I sent you. I looked at the money that had come in. I called up and I said, "Okay, here's the payroll we have for this week." I did the summation of who had sales come in so that payments were taken care of.
>
> (Examination of Jiwani by Staff, May 21, 2008 at p. 55-56)

[355] We were presented further evidence of Jiwani's day-to-day role in the operation of the investment scheme in a December 6, 2006 email, where he writes to Pan:

> We need to cancel the [Investor X] by keep the [Investor Y] on as Mike assures me he will come in with the balance in Jan. But, no Certificate for him till it's all paid.
>
> Also, Mike has spoken to [Investor Z] re having the funds in account for the cheque written and been assured the money will be there. Besides, Mike has another client's cheque for $10K received in Dallas and more monies due in over the next few days.
>
> …
>
> We need 50 more Canada Post US Envelopes as we only have 5 left
>
> …
>
> We also have "Loads" of another $30,000 being held back till the clients can see the press release we sent them in a proper publication such as the one we requested to you. This publication has nothing to do with any regulatory board and acts simply as a News Service.
>
> …
>
> We have 8 sales people and 13 qualifiers currently. We'll be advertising for Sales people 1st week of January to take that number up to 16 in Sales.

[356] Jiwani explained loading in his compelled examination:

> … to the best of my understanding, loading is when somebody has bought shares. When they receive the certificate and they feel comfortable about the whole thing, they check the company out, you know, they've done their due diligence, we are still in touch with them, it is building up, it is a second sale. It's a second sale.
>
> (Examination of Jiwani by Staff, May 21, 2008 at p. 70-71)

[357] Jiwani played an integral role in the fraudulent investment scheme, as discussed in the analysis above and at paragraphs 163 to 165.

[358] Jiwani acknowledged his involvement in setting up the investment scheme. Furthermore, he was involved on a daily basis getting updates on sales. This and his access to bank account information indicates that he must also have been aware of the scale and materiality of the funds being raised from investors.

[359] Jiwani knew or ought to have known that designing the promotional brochures, which were false and fabricated, publishing false press releases and holding back "loads" until a press release was properly published all deceived investors and enticed them to invest or re-invest in Asia Pacific securities. He reasonably ought to have known that his actions would put Asia Pacific investors' funds and pecuniary interests at risk and deprive the investors.

[360] As a result of his conduct and his role in the investment scheme, Jiwani received US $110,380 and $14,917 of investor funds, which included 5% of all sales of Asia Pacific shares.

[361] Jiwani's fraudulent acts, discussed above, deprived investors of the funds that they were induced by deceit to invest in the Asia Pacific securities. As a result of these acts, investors lost their investments of over US $2.2 million. Based on the evidence, we find that Jiwani knew or reasonably ought to have known of the fraudulent nature of his actions.

[362] Accordingly, we conclude that Jiwani perpetrated a fraud on investors in Asia Pacific securities and contravened section 126.1(b) of the Act.

3. Finding

[363] We find that Asia Pacific, GPC and 1666475 were solely created to defraud investors in Asia Pacific securities. We also find that the Respondents knew or reasonably ought to have known of this given the nature of their roles as integral players in the fraudulent investment scheme. The scale and magnitude of the impact on investors was significant at over US $2.2 million. We find that investors were deceived by the Respondents about the true nature of the investment they were making and as a result they have been deprived of the funds they invested in the scheme.

[364] We conclude that the Respondents perpetrated a fraud and breached section 126.1(b) of the Act.

H. DID THE INDIVIDUAL RESPONDENTS, AS DIRECTORS AND/OR OFFICERS OF THE CORPORATE RESPONDENTS AUTHORIZE, PERMIT OR ACQUIESCE IN THE BREACHES OF ONTARIO SECURITIES LAW BY THE CORPORATE RESPONDENTS, CONTRARY TO SUBSECTION 122(3) OF THE ACT?

1. The Law

[365] Subsection 122(3) of the Act assigns liability to directors or officers who authorize, permit or acquiesce in commission of an offence by a company under subsection 122(1)(c).

[366] Subsection 122(3) of the Act states:

> **122. (3) Directors and officers –** Every director or officer of a company or of a person other than an individual who authorizes, permits or acquiesces in the commission of an offence under subsection (1) by the company or person, whether or not a charge has been laid or a finding of guilt has been made against the company or person in respect of the offence under subsection (1), is guilty of an offence and is liable on conviction to a fine of not more than $5 million or to imprisonment for a term of not more than five years less a day, or to both.

[367] Directors and officers are defined in the Act under subsection 1(1) as follows:

> **"director"** means a director of a company or an individual performing a similar function or occupying a similar position for any person;
>
> …
>
> **"officer"**, with respect to an issuer or a registrant, means
>
> (a) a chair or vice-chair of the board of directors, a chief executive officer, a chief operating officer, a chief financial officer, a president, a vice-president, a secretary, an assistant secretary, a treasurer, an assistant treasurer and a general manager,
>
> (b) every individual who is designated as an officer under a by-law or similar authority of the registrant or issuer, and
>
> (c) every individual who performs functions similar to those normally performed by an individual referred to in clause (a) or (b); …

[368] The language of subsection 122(3) requires that the officer or director "authorize", "permit" or acquiesce" in the commission of the offence. "Acquiesce" means to agree or consent quietly without protest. "Authorize" means to give official approval or permission, to give power or authority or to give justification. "Permit" means to allow, consent, tolerate, give permission or authorize permission particularly in writing.

[369] Individuals who are not directors or officers of a corporation, but are *de facto* directors or officers of an entity, performing functions similar to the functions of officers and/or directors as contemplated in the definitions found in subsection 1(1), can nonetheless be found liable for breaches of securities law they permitted, authorized or acquiesced in under subsection 122(3).

2. Analysis

[370] In addition to their breaches of Ontario securities law in their individual capacities, Staff alleges that, pursuant to subsection 122(3), the Individual Respondents are liable for breaches of securities laws by the Corporate Respondents in their capacity as directors and/or officers of the Corporate Respondents.

i. GPC

[371] Staff alleges that during the Material Time, Pan, Cheung, Gahunia, Toussaint and Jiwani, being directors or officers of GPC, authorized, permitted or acquiesced in the commission of violations of the Act by GPC which constitute offences under subsection 122(1)(c) of the Act, contrary to section 122(3) of the Act and contrary to the public interest.

[372] We have already established that GPC contravened subsections 25(1)(a), 53(1) and 126.1(b) of the Act.

[373] Given that GPC is an unincorporated entity, Staff submits that Pan, Cheung, Gahunia, Toussaint and Jiwani are liable for GPC's breaches of securities laws, since they were *de facto* directors and officers of GPC and authorized, permitted or acquiesced in its breaches of Ontario securities law.

(a) Pan

[374] We find that Pan authorized, permitted or acquiesced in GPC's breaches of Ontario securities law.

[375] Evidence shows that Pan acted in a capacity as a director or officer of GPC. For example,

- she was responsible for paying individual respondents, GPC employees and others with funds from the 1666475 Bank Accounts, over which she had sole signing authority;
- she signed the lease agreement for the GPC premises on behalf of 1666475;
- she admitted to arranging for the payment of GPC operating expenses through the Pan Credit Cards; and
- she set up courier accounts to facilitate moving investor documents and cheques to and from the GPC premises.

[376] Evidence of email correspondence between Pan and Jiwani show she was aware of the investment scheme and directly involved in the fraudulent business of GPC that resulted in its breaches of Ontario securities law:

- she corresponded with Jiwani regarding difficulties with receiving money from investors after they had sent in signed subscription agreements;
- she received an email from Jiwani that listed sales in Asia Pacific securities; and
- she corresponded with Jiwani regarding mailing issued share certificates to investors.

[377] We find that Pan was a *de facto* director or officer of GPC and that she authorized, permitted or acquiesced in GPC's contraventions of Ontario securities law.

(b) Cheung

[378] We find that Cheung authorized, permitted or acquiesced in GPC's breaches of Ontario securities law.

[379] Cheung was a directing mind of the Asia Pacific investment scheme. In this context, he determined the distribution plan for the proceeds of sales of Asia Pacific shares sold through GPC, and told Staff in his compelled examination that 30% was to be allocated for sales commissions, 10 to 20% went to running the company, and the remainder of the funds raised (about 50%) went to Asia Pacific.

[380] Cheung told Staff that GPC was only created for the Asia Pacific project. This confirms that Cheung knew about the full extent of GPC's activities and its role in the investment scheme, and that he had a central role in the fraudulent distribution of Asia Pacific securities facilitated by GPC.

[381] Evidence shows he was aware of the investment scheme and directly involved in the fraudulent business of GPC that resulted in its breaches of Ontario securities law:

- he was responsible for the creation and maintenance of the website;
- he arranged for equipment contracts for the Toronto premises for GPC;
- he was copied on emails regarding administrative issues within the structure; and
- along long with Pan, he was the contact person for Jiwani regarding issues with receiving investment funds from investors after GPC had sold them Asia Pacific shares.

[382] We find that Cheung was a *de facto* director or officer of GPC and that he authorized, permitted or acquiesced in GPC's contraventions of Ontario securities law.

(c) Gahunia

[383] Evidence indicates that Gahunia was a sales agent and office manager at GPC:

- Rotondo told Staff that Gahunia and Toussaint managed the office and that Gahunia told him that the Texas phone number was part of the company and she should answer those calls.
- Gahunia claims he was hired initially to do sales, and then branched off into a more supervisory and management position, and that he and Toussaint managed the office after Jiwani left.
- Gard testified that during Staff's inspection of the GPC premises, he was advised that Toussaint and Gahunia were the bosses.

[384] Based on the evidence presented by Staff, we are not satisfied that Gahunia was a *de facto* director or officer of GPC.

(d) Toussaint

[385] Evidence that indicates that Toussaint was a sales agent and manager at the GPC office:

- MacIntosh told Staff that Toussaint was the manager and a boss.
- Rotondo said Toussaint and Gahunia were in charge of the office.
- Manriquez stated Toussaint ran the York St. office and hired her.
- McQuarrie also said Toussaint was in charge of the office.
- as mentioned above, Gard testified that he was advised that Toussaint and Gahunia were the bosses at the GPC office.
- Toussaint claimed in his interview that he was hired as a consultant to market Asia Pacific and make sure the paperwork came in and identified himself to Staff as the person looking after the premises during their on-site investigation.

[386] Based on the evidence presented by Staff, we are not satisfied that Toussaint was a *de facto* director or officer of GPC.

(e) Jiwani

[387] We find that Jiwani authorized, permitted or acquiesced in GPC's breaches of Ontario securities law.

[388] Jiwani played an integral role in the fraudulent investment scheme facilitated through GPC, as described above in section G of the Analysis. For example, paragraph 351 details Jiwani's contribution to setting up the scheme.

[389] Jiwani also played a significant operational role at GPC. For example:

- Paragraph 352 describes how he directed employees at GPC to perform various functions.
- Paragraphs 354 and 355 detail his role at GPC and his day-to-day responsibilities, including receiving daily sales review updates listing trades in Asia Pacific shares.

[390] Jiwani describes his function at GPC as a coordinator or office manager.

[391] Staff provided copies of email correspondence between Jiwani, Pan and Cheung regarding administrative and management issues surrounding the sale of Asia Pacific shares at GPC.

[392] Jiwani received 5% of all GPC sales of Asia Pacific shares, plus an override payment, based on excess commissions not paid out to salespeople. The evidence indicates that Jiwani had a senior role at GPC.

[393] We find that Jiwani was a *de facto* director or officer of GPC and that he authorized, permitted or acquiesced in GPC's contraventions of Ontario securities law.

ii. Asia Pacific

[394] Staff alleges that Pidgeon and Cheung, being directors or officers of Asia Pacific, authorized, permitted or acquiesced in the commission of the violations of the Act by Asia Pacific which constitute offences under subsection 122(1)(c) of the Act, contrary to subsection 122(3) of the Act and contrary to the public interest.

[395] We have already established that Asia Pacific contravened subsections 25(1)(a), 53(1) and 126.1(b) of the Act.

[396] Pidgeon and Cheung were at different times directors and officers of Asia Pacific.

(a) Pidgeon

[397] We find that Pidgeon authorized, permitted or acquiesced in Asia Pacific's breaches of Ontario securities law.

[398] In his email to Staff, Pidgeon claimed that he was not the president or director of Asia Pacific, and that his only role on behalf of the corporation was to follow banking instructions from Pan and to sign the original bank account forms. However, the evidence indicates otherwise.

[399] Pidgeon is listed as holding director and officer positions in the Annual List of Directors and Officers filed in June 2007. Filings with the Secretary of State, State of Nevada made by Asia Pacific and/or its agent that show that as of February 21, 2007, Pidgeon was Asia Pacific's Secretary and as of June 19, 2007, Pidgeon was Asia Pacific's President.

[400] He signed and executed the Merger Agreement on October 29, 2007, where he is identified as the President and Director of Asia Pacific.

[401] Pidgeon signed the M & I Bank Account forms as President, the Compass Bank Account forms as Secretary, and the Chase Bank Account forms as Member of Asia Pacific. Pidgeon was the sole signatory on the US Bank Accounts. In this capacity, he authorized the transfers of investor funds from these accounts to 1666475.

[402] As a director and officer of the corporation, Pidgeon is assumed to know the general business of Asia Pacific. We were not presented with any evidence to contradict this assumption. Asia Pacific's entire operation was fraudulent and breached Ontario securities laws. We have established that Pidgeon played an important role in the investment scheme.

[403] Through his involvement as a director and officer of Asia Pacific we conclude that Pidgeon authorized, permitted or acquiesced in Asia Pacific's contraventions of Ontario securities law.

(b) Cheung

[404] We find that Cheung authorized, permitted or acquiesced in Asia Pacific's breaches of Ontario securities law.

[405] The Annual List of Directors and Officers listed Cheung as Asia Pacific's President, Secretary, Treasurer, and Director in May 2006 and February 2007. Cheung incorporated Asia Pacific as a Nevada corporation and confirmed with Staff that he was the President of Asia Pacific from February 2006 to March 2007.

[406] The evidence of Cheung's involvement in the sales of Asia Pacific shares is described in detail in the preceding sections. The evidence indicates that Cheung was aware at a management/officer level of the sales of Asia Pacific shares made by GPC employees and that he was, in fact, a directing mind of the entire fraudulent investment scheme.

[407] As a director and officer of Asia Pacific, we find that Cheung authorized, permitted or acquiesced in Asia Pacific's contraventions of Ontario securities law.

iii. 1666475

[408] Staff alleges that Pan, being a director and officer of 1666475, authorized, permitted and acquiesced in the commission of the violations of the Act by 1666475 which constitute offences under subsection 122(1)(c) of the Act, contrary to subsection 122(3) of the Act and contrary to the public interest.

[409] We have already established that 1666475 contravened subsections 25(1)(a), 53(1) and 126.1(b) of the Act.

(a) Pan

[410] We find that Pan authorized, permitted or acquiesced in 1666475's breaches of Ontario securities law.

[411] Pan was the sole director and officer of 1666475 and was the sole signatory on both the 1666475 Bank Accounts.

[412] We were presented with evidence of Pan's involvement in sales of Asia Pacific securities through her role as director of 1666475. She signed the lease of the GPC premises on behalf of 1666475. Additionally, over US $2.1 million of investors' funds were transferred from the US Bank Accounts to the 1666475 US$ Account. Individual Respondents, GPC employees and others were paid from the 1666475 Bank Accounts and funds from these accounts were also used to make payments on the Pan Credit Cards.

[413] As a director and officer of 1666475, we find that Pan authorized, permitted or acquiesced in 1666475's contraventions of Ontario securities law.

3. Finding

[414] In their capacities as *de facto* directors or officers of GPC, Pan, Cheung and Jiwani authorized, permitted or acquiesced in GPC's breaches of Ontario securities law and accordingly, they are liable for the contraventions by GPC, pursuant to subsection 122(3) of the Act.

[415] As directors and officers of Asia Pacific, Pan and Pidgeon authorized, permitted or acquiesced in Asia Pacific's breaches of Ontario securities law and accordingly, they are liable for the contraventions by Asia Pacific, pursuant to subsection 122(3) of the Act.

[416] As a director and officer of 1666475, Pan authorized, permitted or acquiesced in 1666475's breaches of securities law and accordingly, she is liable for the contraventions by 1666475, pursuant to subsection 122(3) of the Act.

I. DID GAHUNIA AND TOUSSAINT MAKE STATEMENTS TO STAFF DURING THEIR INVESTIGATION THAT WERE MATERIALLY MISLEADING OR UNTRUE?

1. The Law

[417] Subsection 122(1)(a) of the Act states:

> **122. (1) Offences, general –** Every person or company that,
>
> (a) makes a statement in any material, evidence or information submitted to the Commission, a Director, any person acting under the authority of the Commission or the Executive Director or any person appointed to make an investigation or examination under this Act that, in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement not misleading;
>
> …
>
> is guilty of an offence ...

2. Analysis

[418] Staff alleges that both Gahunia and Toussaint made statements during compelled examinations conducted by Staff that were misleading or untrue in a material respect, and amounted to an offence contrary to subsection 122(1)(a).

(a) Gahunia

[419] Staff alleges that Gahunia used the alias Miller to sell securities in Asia Pacific, and materially misled investigative Staff when he told them that he never used this name at GPC. Gahunia told Staff in his compelled examination that he never used the name Miller, or any name other than Michael Gahunia, at the GPC office.

[420] We have established, as set out at paragraphs 76 to 79,that Gahunia did use the alias Miller at GPC when selling Asia Pacific securities.

(b) Toussaint

[421] Staff alleges that Toussaint contravened subsection 122(1)(a) of the Act by stating in his compelled examination that he did not sell Asia Pacific securities, but merely introduced people to the

product. Staff submits that Toussaint used the alias Beckford and sold securities of Asia Pacific to investors.

[422] We have established that Toussaint used the alias Beckford, as set out in paragraphs 80 to 82, and using this alias sold Asia Pacific securities, as described at paragraph 159.

3. Finding

We therefore conclude that both Gahunia and Toussaint made misleading and untrue statements to Staff in an effort to hide their violations of Ontario securities law, contrary to subsection 122(1)(a).

J. WAS THE CONDUCT OF THE RESPONDENTS CONTRARY TO THE PUBLIC INTEREST?

1. The Law

[423] Section 1.1 of the Act states that the Commission's mandate is to:

(a) provide protection to investors from unfair, improper or fraudulent practices; and

(b) foster fair and efficient capital markets and confidence in those capital markets.

[424] Section 2.1 of the Act states that the Commission must consider fundamental principles in pursuing these purposes. The relevant parts of section 2.1 of the Act state:

i. requirements for timely, accurate and efficient disclosure of information;

ii. restrictions on fraudulent and unfair market practices and procedures; and

iii. requirements for the maintenance of high standards of fairness and business conduct to ensure honest and responsible conduct by market participants.

2. Analysis

[425] Staff alleges that the conduct of the Respondents is contrary to the public interest.

[426] The Respondents breached key provisions of Ontario securities law which are intended to protect investors. All Respondents traded in securities without registration (contrary to subsection 25(1)(a)) and engaged in distribution of securities without satisfying the distribution requirements under the Act (contrary to subsection 53(1)). The Respondents actions with respect to these breaches were contrary to the public interest because registration and distribution requirements are essential to protect investors and ensure the integrity of the capital markets. Through their conduct, the Respondents failed to maintain the required high standards of fairness and business conduct.

[427] The investment scheme was characterized by high pressure sales tactics. In *Re First Global Ventures S.A., supra* at paragraph 158, the Commission made the following comment with respect to high pressure sales tactics:

> High pressure sales tactics encompass a broad range of activity that has the effect of persuading individuals to invest inappropriately. A key characteristic of high pressure sales tactics is that these tactics put individuals in a position where they are pressured to

> make a decision quickly because the investment opportunity may disappear. High pressure sales tactics include, but are not limited to, selling tactics designed to induce, and having the effect of inducing, clients to purchase securities inappropriate to their situation on the basis of inadequate investment information and/or misinformation as to the issuers of the securities, the value of the securities, and the prospects of the issuer and the securities. Comments that give the impression that shares are attractive and quick action is needed because an investment opportunity will expire in a short time frame and repeatedly calling investors to get them to make an investment decision quickly based on misleading information also qualify as high pressure sales tactics.

[428] These high pressure sales tactics were used in this case. Investors were called (often by individuals using aliases) to invest in Asia Pacific. Undertakings regarding the future value of securities and representations that the securities would be repurchased were made to entice them to invest or re-invest. Investors testified that they were influenced by such statements when making their decision to invest in Asia Pacific. We find that these kinds of high pressure sales tactics are improper and unacceptable and contrary to the public interest.

[429] In addition, through aliases assumed for their trading activities in the investment scheme, Gahunia and Toussaint repeatedly made prohibited representations that securities could be redeemed or repurchased and gave undertakings regarding the future value or price of Asia Pacific securities. These representations and undertakings were purely given to entice investors to invest or re-invest in Asia Pacific securities. This egregious conduct was also contrary to the public interest.

[430] Gahunia and Toussaint also misled Staff during their investigation, by making misleading and untrue statements in an attempt to hide their involvement in the sale of Asia Pacific securities. This conduct was contrary to the public interest.

[431] All of the Respondents also engaged in fraud, in breach of section 126.1(b) of the Act.

[432] The investment scheme as a whole was fraudulent.

[433] Based on the evidence, it does not appear that Asia Pacific and GPC carried on a legitimate business, as communicated to investors. Their promotional material, websites and press releases contained false and misleading information about fictitious activities.

[434] The purpose of these fraudulent activities was to deceive and mislead investors in Asia Pacific securities into believing they were dealing with an established, reputable, U.S.-based company, to give the investment scheme legitimacy and to entice investors to invest or re-invest. A virtual office was established and several addresses were provided to investors to give the appearance that they were investing in a legitimate U.S-based business.

[435] Over US $2.2 million was raised from investors who deposited their funds into the US Bank Accounts. Investor funds were transferred to the 1666475 Bank Accounts and used to pay Individual Respondents significant commissions and to pay for credit card expenses, many of which were of a personal nature. The Respondents received the following:

- Pidgeon received US $92,972 from the US Bank Accounts;

- Pan's credit cards were paid off using $302,576 from the 1666475 Bank Accounts;

- Gahunia received US $328,914 and $19,673 from the 1666475 Bank Accounts, paid through his company;

- Toussaint received US $90,142 and $13,612 from the 1666475 Bank Accounts, paid through his company; and

- Jiwani received US $110,686 and $20,746 from the 1666475 Bank Accounts.

[436] This matter deals with egregious conduct involving significant contraventions of the Act, including fraud. The fraudulent activities of the Respondents caused significant harm to investors and investors were deprived of their funds, which amounted to over US $2.2 million.

3. Finding

[437] The Commission's mandate is to protect investors from improper and fraudulent practices. As we described above, this matter involved several serious contraventions of the Act on a repeated basis, including fraud. We find that the investment scheme was created to perpetrate a fraud and misappropriate investor funds in an egregious manner. In this regard, the investment scheme and the conduct of the Respondents undermine the integrity of and the confidence in the Ontario capital markets, which is contrary to the public interest.

[438] We therefore conclude that all the Respondents engaged in conduct contrary to the public interest.

VII. CONCLUSION

[439] In conclusion, we make the following findings against the Respondents.

- GPC breached subsections 25(1)(a), 53(1) and 126.1(b) of the Act and acted contrary to the public interest.

- Asia Pacific breached subsections 25(1)(a), 53(1) and 126.1(b) of the Act and acted contrary to the public interest.

- 1666475 breached subsections 25(1)(a), 53(1) and 126.1(b) of the Act and acted contrary to the public interest.

- Pidgeon breached subsections 25(1)(a), 53(1) and 126.1(b) of the Act and acted contrary to the public interest. Additionally, as a director and officer of Asia Pacific, he authorized, permitted and acquiesced in Asia Pacific's breaches of subsections 25(1)(a), 53(1) and 126.1(a), contrary to subsection 122(3) of the Act.

- Cheung breached subsections 25(1)(a), 53(1) and 126.1(b) of the Act and acted contrary to the public interest. Additionally, as a *de facto* director and officer of GPC he authorized, permitted and acquiesced in GPC's breaches of subsections 25(1)(a), 53(1) and 126.1(a) of the Act, contrary to subsection 122(3) of the Act. As a director and officer of Asia Pacific, he authorized, permitted

and acquiesced in Asia Pacific's breaches of subsections 25(1)(a), 53(1) and 126.1(a) of the Act, contrary to subsection 122(3) of the Act.

- Pan breached subsections 25(1)(a), 53(1) and 126.1(b) of the Act and acted contrary to the public interest. Additionally, as a *de facto* director and officer of GPC she authorized, permitted and acquiesced in GPC's of subsections 25(1)(a), 53(1) and 126.1(a) of the Act, contrary to subsection 122(3) of the Act. As a director and officer of 1666475, she authorized, permitted and acquiesced in 1666475's breaches of subsections 25(1)(a), 53(1) and 126.1(a) of the Act, contrary to subsection 122(3) of the Act.

- Gahunia breached subsections 25(1)(a), 53(1), 38(1), 38(2), 126.1(b) and 122(1)(a) of the Act and acted contrary to the public interest.

- Toussaint breached subsections 25(1)(a), 53(1), 38(1), 38(2), 126.1(b) and 122(1)(a) of the Act and acted contrary to the public interest.

- Jiwani breached subsections 25(1)(a), 53(1) and 126.1(b) of the Act and acted contrary to the public interest. Additionally, as a *de facto* director and officer of GPC he authorized, permitted and acquiesced in GPC's breaches of subsections 25(1)(a), 53(1) and 126.1(a) of the Act, contrary to subsection 122(3) of the Act.

[440] To protect the personal information of all investors, we have required that Staff provide a redacted version of the record.

[441] The parties are directed to contact the Office of the Secretary within 20 days to set a date for a sanctions and costs hearing, failing which a date will be set by the Office of the Secretary.

DATED at Toronto on the 31st day of August, 2010.

"Suresh Thakrar"	*"Paulette L. Kennedy"*
Suresh Thakrar	Paulette L. Kennedy