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

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

- AND -

IN THE MATTER OF MAPLE LEAF INVESTMENT FUND CORP., JOE HENRY CHAU (aka: HENRY JOE CHAU, SHUNG KAI CHOW and HENRY SHUNG KAI CHOW), TULSIANI INVESTMENTS INC., SUNIL TULSIANI and RAVINDER TULSIANI

REASONS AND DECISION

Hearing dates:	January 10, 12-14, and 17-19, 2011	
Decision:	November 9, 2011	
Panel:	Christopher Portner	- Commissioner and Chair of the Panel
	Paulette L. Kennedy	- Commissioner
Appearances:	Anna Perschy Carlo Rossi	- For the Ontario Securities Commission
	Alistair Crawley (Crawley Meredith Brush LLP) - attended on January 10, 2011	- For Tulsiani Investments Inc. and Sunil Tulsiani
	No one appeared for the Respondents:	- Joe Henry Chau - Maple Leaf Investment Fund Corp.

TABLE OF CONTENTS

REASONS AND DECISION

I. INTRODUCTION

A. Background

[1] This was a hearing before the Ontario Securities Commission (the "**Commission**") pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**"), to consider whether Maple Leaf Investment Fund Corp. ("**MLIF**"), Joe Henry Chau (also known as Henry Joe Chau, Shung Kai Chow and Henry Shung Kai Chow, referred to herein as "**Chau**"), Tulsiani Investments Inc. ("**Tulsiani Investments**") and Sunil Tulsiani ("**Tulsiani**") (collectively, the "**Respondents**") breached provisions of the Act and/or acted contrary to the public interest.

[2] Ravinder Tulsiani ("**Ravinder**"), who is referred to in the style of cause of the two Statements of Allegations issued in this matter, entered into a settlement agreement with Staff of the Commission ("**Staff**") that was approved by a Commission panel on December 21, 2010. In December 2008, Ravinder was the chief executive officer and a director of Tulsiani Investments. Ravinder is a former registrant in various capacities whose registration with the Commission ended on April 25, 2006.

[3] A Statement of Allegations was filed by Staff on February 12, 2010 in connection with a Notice of Hearing issued by the Commission on the same day. An Amended Statement of Allegations was filed by Staff on October 29, 2010. This proceeding relates to the sale of securities of MLIF to over 80 investors. Staff alleges that securities of MLIF were sold to investors in breach of the Act and in a manner that was contrary to the public interest.

[4] Staff alleges that the conduct at issue transpired during the period from June 2007 to and including April 2009 (the "**Material Time**"). The allegations are set out below at paragraphs 21 to 26.

[5] Staff alleges that, from June 2007 to and including January 2009, Chau and MLIF sold four series of MLIF bonds to the public, namely, the MLIF 100, 200, 300 and 400 series of bonds (referred to herein, collectively, as the "**MLIF bonds**" or, individually, as the "**100, 200, 300 or 400 series of bonds**", as applicable). The proceeds derived from the sale of the MLIF bonds were alleged to have been used, directly or indirectly, to fund, or facilitate the funding of, a hotel, casino and condominium project in Curacao in the Netherlands Antilles (the "**Project**"). In particular, Chau and MLIF are alleged to have:

(a) Maintained a website for MLIF promoting the Project and the MLIF bonds;

(b) Placed advertisements in newspapers promoting the MLIF bonds;

(c) Employed and/or contracted with telemarketers to promote and sell MLIF bonds;

(d) Conducted seminars and meetings and provided written materials to investors promoting the Project and the MLIF bonds;

(e) Accepted funds from investors for the purchase of the MLIF bonds;

(f) Drafted and provided forms to investors for the purchase of the MLIF bonds, including subscription agreements (the "**MLIF Forms**"); and/or

(g) Assisted and directed investors with respect to the completion of the MLIF Forms.

[6] Staff alleges that, from December 2008 to and including January 2009, Tulsiani and Tulsiani Investments sold the 400 series of bonds to the public, including, primarily, the members of an organization they operated known as the Private Investment Club ("**PIC**"). In particular, Tulsiani and/or Tulsiani Investments are alleged to have:

(a) Invited potential investors to attend meetings and/or seminars to learn about the MLIF bonds;

(b) Made representations to potential investors about the MLIF bonds at meetings, seminars and/or in email messages;

(c) Accepted funds from investors for the purchase of the MLIF bonds and delivered the funds to a lawyer to be placed in his trust account;

(d) Controlled the use of investor funds; and/or

(e) Assisted and directed investors with respect to the completion of the MLIF Forms.

[7] In addition, in selling the 400 series of bonds, at issue is whether Tulsiani and Tulsiani Investments provided advice to potential investors with regard to such bonds, including providing opinions with respect to the merits of investing in such bonds and their level of risk, and by expressly or impliedly recommending or endorsing them.

[8] Staff alleges that the Respondents raised over $4.5 million in the aggregate from the sale of the MLIF bonds to over 80 investors. Approximately $1.4 million of this amount was returned to investors as "interest" and/or by way of "redemptions".

[9] These are our reasons and decision (the "**Reasons and Decision**").

B. History of the Proceeding

[10] A temporary cease trade order was first issued against MLIF and Chau on May 5, 2009, and was subsequently extended on May 15, 2009, November 10, 2009, February 17, 2010 and February 25, 2010. A temporary cease trade order was first issued against Tulsiani and Tulsiani Investments on June 26, 2009, and was subsequently extended on July 9, 2009, August 18, 2009, December 9, 2009 and February 25, 2010. On April 21, 2010, the temporary cease trade orders were continued in respect of the Respondents "until a decision is rendered following a hearing on the merits in relation to the matters

raised in the Notice of Hearing issued on February 12, 2010 and the accompanying Statement of Allegations".

[11] Prior to the hearing on the merits, Chau made a preliminary motion for the hearing on the merits to be heard electronically which was dismissed by a different panel. At the commencement of the hearing on the merits, Chau made a further motion to be permitted to testify by telephone. The disposition of these motions is addressed below.

[12] We heard evidence on the merits in this matter on January 10, 12, 13, 14, 17, 18 and 19, 2011. Following the hearing on the merits, we received written submissions from Staff dated February 4, 2011, written submissions from Chau and MLIF dated February 11, 2011 and reply submissions from Staff dated February 17, 2011.

C. The Respondents

i. The Corporate Respondents

[13] MLIF is an Ontario company that was incorporated on January 11, 2007. MLIF, which purports to be an investment company, has never been a reporting issuer in Ontario and has never been registered with the Commission.

[14] Tulsiani Investments is an Ontario company incorporated on May 28, 2007. Tulsiani Investments is not a reporting issuer and has never been registered with the Commission.

[15] Tulsiani Investments purports to offer investors high-yield revenue properties that provide great potential for growth. During the period from at least December 2008 to and including January 2009, Tulsiani Investments operated PIC which provided investment opportunities to its members.

[16] MLIF and Tulsiani Investments will be referred to in these Reasons and Decision collectively as the "**Corporate Respondents**".

ii. The Individual Respondents

[17] Neither Chau nor Tulsiani was registered in any capacity with the Commission during the Material Time.

[18] Chau, a resident of Markham, Ontario during part of the Material Time, is the President, Chief Executive Officer and a director of MLIF.

[19] Tulsiani, a resident of Brampton, Ontario, is the President and a director of Tulsiani Investments.

[20] Chau and Tulsiani will be referred to in these Reasons and Decision collectively as the "**Individual Respondents**".

II. OVERVIEW OF THE ALLEGATIONS

A. Trading and Advising in Securities of MLIF

[21] Staff alleges in the Amended Statement of Allegations that, in relation to the conduct referred to above, Chau, MLIF, Tulsiani and Tulsiani Investments traded in securities of MLIF and that Tulsiani and Tulsiani Investments advised investors to invest in MLIF securities.

[22] Staff further alleges that the sale of the MLIF bonds referred to above constituted trades in securities not previously issued, and that the activities of Chau and MLIF constituted distributions for which no preliminary prospectus or a prospectus had been filed with the Commission, and no prospectus receipt had ever been issued to qualify the sale of MLIF securities.

[23] During the Material Time, none of Chau, MLIF, Tulsiani or Tulsiani Investments was registered with the Commission to trade in securities, and neither Tulsiani nor Tulsiani Investments was registered with the Commission to provide advice with respect to securities.

B. Prohibited Representations

[24] Staff alleges that Chau and MLIF made prohibited representations to investors, with the intention of effecting a trade in securities of MLIF or shares of other companies represented to be associated with MLIF, that such securities would be listed on a stock exchange. In particular, Staff alleges that Chau and MLIF represented to potential investors in the MLIF bonds that the bonds were convertible into MLIF founder shares or other MLIF shares, which shares would be listed on the Toronto Stock Exchange ("**TSX**") or TSX Venture Exchange. Staff also alleges that Chau and MLIF represented to potential investors in MLIF founder shares or other MLIF shares or the shares of other companies represented to be associated with MLIF that MLIF expected that these shares would be listed on the TSX or TSX Venture Exchange.

C. Fraudulent Conduct

[25] Staff alleges that Chau and MLIF engaged in acts, practices or courses of conduct relating to securities that they knew or reasonably ought to have known perpetrated a fraud on investors and that were contrary to the public interest by:

(a) Making representations to investors in the 100 or 200 series of bonds which they knew or reasonably ought to have known were false, inaccurate and misleading, that:

(i) investor funds would be placed in a Guaranteed Investment Certificate ("**GIC**") at The Toronto-Dominion Bank ("**TD Bank**") or another bank, where they would remain for a two-year term;

(ii) investor funds would be placed in a GIC at TD Bank or another bank until needed to pay for the purchase of land for the Project;

(iii) investor funds were to be used as collateral to assist MLIF in obtaining a construction loan for the Project;

(iv) investors would be paid interest on their bonds, partly from the GIC at TD Bank or another bank and partly by MLIF; and/or

(v) their principal and at least part of the interest on their bonds was guaranteed and/or at very little or no risk;

(b) Failing to maintain investor funds in the 100 and/or 200 series of bonds in GICs as represented to investors and cashing the GICs shortly after purchasing them;

(c) Paying amounts purporting to be interest to investors in the 100, 200, 300 and/or 400 series of bonds in the absence of any revenue, profit or retained earnings by MLIF;

(d) Making interest payments or redeeming bonds acquired by earlier investors with funds received from new investors;

(e) Using investor funds, in part, for Chau's personal purposes and for purposes unrelated to the Project; and/or

(f) Failing to disclose to investors and potential investors relevant information about MLIF, the Project and/or the MLIF bonds.

D. Conduct Contrary to Ontario Securities Law and Contrary to the Public Interest

[26] The specific allegations made by Staff which are referred to in the Amended Statement of Allegations are as follows:

(a) From June 2007 to January 2009, Chau and MLIF traded in securities of MLIF without being registered to trade in securities and in circumstances where no exemption was available to them, contrary to subsection 25(1)(a) of the Act;

(b) From December 2008 to January 2009, Tulsiani and Tulsiani Investments acted, solicited, negotiated or otherwise conducted themselves in a manner that constituted the furtherance of trading securities without being registered to trade in securities and in circumstances where no exemption was available to them, contrary to subsection 25(1)(a) of the Act.

(c) Tulsiani and Tulsiani Investments provided advice with respect to investing in MLIF securities without being registered to advise in securities, contrary to subsection 25(1)(c) of the Act;

(d) Chau and MLIF made representations without the written permission of the Director under the Act (the "**Director**"), with the intention of effecting a trade in securities of MLIF that such securities would be listed on a stock

exchange or quoted on a quotation and trade reporting system, contrary to subsection 38(3) of the Act;

(e) The activities of Chau and MLIF constituted distributions of securities of MLIF for which no preliminary prospectus had been filed and no receipt had been issued by the Director, contrary to subsection 53(1) of the Act;

(f) Chau and MLIF engaged or participated in acts, practices or courses of conduct relating to the securities of MLIF and the business of MLIF which they knew or reasonably ought to have known would perpetrate a fraud on investors, contrary to subsection 126.1(b) of the Act;

(g) Chau and Tulsiani, in their capacity as directors and officers of the Corporate Respondents, namely, MLIF and Tulsiani Investments, respectively, authorized, permitted or acquiesced in the Corporate Respondents' non-compliance with Ontario securities law, and accordingly, are deemed to have failed to comply with Ontario securities law, pursuant to section 129.2 of the Act; and

(h) The Respondents' conduct was contrary to the public interest and harmful to the integrity of Ontario's capital markets.

III. OVERVIEW OF SUBMISSIONS BY CHAU AND MLIF

[27] Although Chau decided not to appear at the hearing, Chau and MLIF filed written submissions dated February 11, 2011 in response to Staff's written submissions.

[28] In his submissions, Chau provided a background to the facts at issue. We have reproduced this background in part as follows:

> In the summer of 2007, we started the investment operation of Maple Leaf Investment Corp in Markham, Ontario. It was the business of the company to develop real estate and market condominiums. The history of our company is short while my personal experience in development is considerably long. Our Certificate of Incorporation was hung right at the entrance. I do not believe anyone would be confused by this fact. It is puzzling to see that the OSC staff tried so hard to emphasis that we were a start up company because we clearly demonstrated our business registration to the public. The only project we had at the time was the Curacao hotel condominium project. In fact, that was our only asset. If anyone confused our then status with our past projects (it was labeled clearly as our Past Projects on our website), it is regrettable. After deciding on Curacao as our project site, we proceeded to arranging financing. The consideration was whether to go to the bank or to the public. We chose the latter, believing that we were bringing a good viable investment for the public accredited investors to participate in. Retaining a reputable law firm, Henderson Laffere [*sic*] in Ottawa, we prepared the Bond Offerings. We were advised to offer these bonds only to Accredited Investors and have them sign Accredited Investors Declarations before we do business with them. We advertised and marketed accordingly. We were not told by the lawyers that we also had to file for exemption. In fact, when we were approached by the OSC in 2008 and called the law firm, they were still uncertain whether we had to file for this exemption. If we did anything crossing the line, we were badly advised by the lawyers. It was not intentional.
>
> …

The practices of the Company were nothing unconventional, including: borrowing (bonds or loans), financing, refinancing, paying out loans (redeeming bonds), shares held by companies, investment through related companies, loans to related or unrelated companies, director's accounts, receivables, fixed deposit account (GIC) when the funds were not being used, bank loans against collaterals (GIC etc), transfer of funds through lawyer accounts, commissions paid to agencies etc. The OSC staff is trying to paint a dark picture of our Company and myself by describing these business activities with undertones. Trying to reveal facts is one thing but witch hunting is another. Many of the facts were partial and twisted with inaccurate timing or situations. For example, the OSC staff is emphasizing that we redeemed some bonds and paid interest on them even though the Company was not making a profit. This was so misleading to the public making people think that we were operating like a scam. In fact, we were just trying to fulfill our obligation to pay interest as we promised and redeem these bonds, which were loans, when they were due. There were mentioning of funds going into my personal account but without mentioning of the funds I injected into the Company account. There were many entries of funds going in from my personal account, from companies I controlled indirectly and the St. Martinus University International Admissions Ltd. The amounts of credit and debit should almost even out. When there was no mentioning of my getting the minimum pay as the CEO, there was mentioning of me buying a bath tub as if it was a yacht. I believe pursuing the truth is not the same as smearing the respondent by presenting half truths and selected evidences.

...

C. The status of MLIF in the late 2008

MLIF was in the pre-construction stage at that time. We retained project managers, architects, engineers and designers to do the design and application work in Curacao. We did the planning and marketing in Markham, Ontario. In October, 2008, we succeeded in getting a Preliminary Financing Offer of $14 millions from the Royal Bank in Curacao. To increase our liquid cash, we offered a 400 series bond. Unfortunately, the financial crisis blew up in November, 2008 caused our construction plan to derail. The Royal Bank withdrew their offer. The OSC investigation that followed made sure that we could not refinance our project. We tried to use the St. Martinus University to help with financing and that was why we offered it to investors as collateral. Our last effort did not pay out though.

OSC staff tried to paint a picture that MLIF was in dire financial position at that time. We do not deny that the Company needed financing during that period. Why was it a point to make while so many thousands of companies were in the same position at that time? Even some giants including many banks, fell in that financial crisis. In hind sight, we could have been more conservative in our approach. Any misfortune the Company and our investors suffer was not pre-meditated. I personally made some wrong decisions but all of them were made with the best of intentions.

Whether the projects were big successes or failures depend on many circumstantial factors. We should not judge a project or its organizer by the end result. A project is independent of its past projects whether they are successes or not. Any hinting of their relationship is preposterous and misleading. By the same token, a difficult time of the Company at a certain time does not mean that the project is a bad project. There are too many cases of people or companies turning around after suffering recessions.

We might have talked about the past but it was for the customers to make their own decisions based on the present project itself.

[29] Further, in his written submissions, Chau provided an explanation about the status of MLIF in late 2008. The submissions by Chau and MLIF also address the following subjects: (a) The Intended Purpose of TD GIC; (b) The Accredited Investor's Declaration; (c) The Status of MLIF in Late 2008 (set out above); (d) The Use of Funds; (e) The Related or Unrelated Projects; (f) The Alleged Misuse of Funds by H. Chau; and (g) The Alleged Fraudulent Conduct of Respondents. We have considered these various submissions below, as appropriate, when relevant to our determination of the issues.

IV. PRELIMINARY ISSUES

A. The Failure of the Respondents to Appear at the Hearing

[30] With the exception of the first day of the hearing, none of the Respondents was represented or appeared at the hearing. Subsection 7(1) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended (the "**SPPA**") provides that:

> 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.

[31] The Commission has previously exercised its jurisdiction to proceed in the absence of a party when it is satisfied that a respondent was provided with adequate notice of the hearing (See *Re Sunwide Finance Inc.* (2009), 32 O.S.C.B. 4671 ("***Sunwide***") at para. 18; and *Re First Global Ventures, S.A.* (2007), 30 O.S.C.B. 10473 ("***First Global***") at paras. 110-112).

[32] In this matter, counsel for Tulsiani and Tulsiani Investments only attended in person on the morning of the first day of the hearing. Chau and MLIF participated on the morning of the first day of the hearing by telephone for the purpose of having their motion to testify by telephone heard. After their motion was denied, we reiterated to Chau and MLIF that they would be welcome to attend in person at any time; however, they chose not do so.

[33] We are satisfied that Staff took all reasonable steps available to them to provide adequate notice of this proceeding to all of the Respondents and that we were entitled to proceed in their absence in accordance with subsection 7(1) of the SPPA.

[34] Although the Respondents did not attend the hearing, Chau filed written submissions on behalf of himself and MLIF. Tulsiani and Tulsiani Investments, through their counsel, made the admissions set out below at paragraphs 48 to 52 for us to rely upon when determining whether they were involved in breaches of the Act and/or conduct contrary to the public interest.

B. Motions by Chau

i. Motion for the Hearing to be Conducted Electronically by Video-Conference

[35] On August 12, 2010, Chau brought a motion for an order that the hearing on the merits in this matter be conducted electronically by video conference. Staff contested

Chau's motion for an electronic hearing. None of the other Respondents took a position with respect to the motion.

[36] Chau, who was in China at the time of the motion (and participated in the hearing by telephone conference call from China), moved for an electronic hearing on the grounds that he was unable for financial reasons to travel to Ontario for an oral hearing or to retain counsel to represent him.

[37] On August 13, 2010, an order was issued dismissing the motion, and on October 12, 2010, written reasons for denying Chau's motion for an electronic hearing were issued. In considering the motion, the Panel stated the following factors as relevant to the decision to dismiss the motion (*Re Maple Leaf Investment Fund Corp.* (2010), 33 O.S.C.B. 9851 at para. 18):

(a) The matters involved in this matter are serious and Chau had put Staff's conduct in issue;

(b) Conducting a fifteen-day hearing on the merits by video conference would present many challenges. It would be more difficult (i) for Staff to conduct any cross-examination of Chau, if Chau decided to testify, and to submit documents to him; (ii) for the hearing Panel to assess Chau's credibility; and (iii) for the hearing Panel to appropriately manage the hearing process and ensure that any party outside the hearing room that was participating by video conference was acting appropriately and followed the accepted rules of procedure before the Commission;

(c) No matter what arrangements were made for a video conference hearing, there would be a significant risk that the hearing would be disrupted or delayed by the failure of the electronic arrangements;

(d) The rules of natural justice do not require that the hearing on the merits in this matter be conducted electronically. Chau had the opportunity to attend the hearing on the merits in person or by counsel and to make full answer and defence. Regardless of the outcome of the motion, Staff would continue to provide Chau with notice of this proceeding and Chau would be able to obtain transcripts of the testimony given at the hearing on the merits and to arrange to obtain documents and other materials tendered in evidence;

(e) Chau's conduct that would be the subject matter of the hearing on the merits took place in Ontario at a time when Chau was a resident of Ontario. He left the jurisdiction after he was interviewed by Staff as part of the investigation that gave rise to this proceeding. That is not to suggest that there was necessarily any connection between those two events; only to note that Chau voluntarily left the jurisdiction knowing that a Commission investigation was on-going that could lead to a proceeding before the Commission;

(f) Chau submitted that he was not able or prepared to contribute to the costs of conducting the hearing electronically. That is certainly not a determining factor, but it is a consideration. In effect, the Commission was being requested to conduct a hearing on the merits in a manner that may create disruption, delay and a less efficient and fair process while incurring substantial costs in doing so; and

(g) Staff objected to an electronic hearing on the merits on the basis that, in all of the circumstances, Staff would be significantly prejudiced by such a hearing.

[38] The Panel which ruled on the motion addressed in paragraph 35 did not address the question of whether Chau should be permitted to testify electronically at the hearing on the merits, leaving this issue for us to decide should Chau decide to pursue his request to testify at the hearing by telephone.

ii. Motion to be Permitted to Testify Electronically at the Hearing

[39] On the first day of the hearing, Chau attended by telephone to present a motion seeking an order permitting him to have his testimony heard by telephone. Chau argued that he should be given the opportunity to testify by telephone as he was unable to attend in person and was not financially able to retain counsel to represent him at the hearing. He further argued that the Commission bear some responsibility for the losses suffered by investors including MLIF. Finally, Chau argued that, if not allowed to testify by telephone, the fairness and completeness of the hearing would be jeopardized as a number of the allegations made by Staff were not totally true or were totally false.

[40] After a careful review of the motion materials and Chau's arguments, we denied his request on the basis that there would be significant prejudice to Staff to proceed in the manner he proposed, but encouraged him to attend the hearing in person; however, Chau did not re-attend. Our ruling was as follows:

> CHAIR: The panel has heard your arguments and staff's response. We are satisfied that there would be significant prejudice to the staff to proceed in the manner that you have suggested. We believe the principles articulated in Vice-Chairman Turner's comments on the prior hearing are equally applicable to today's hearing.
>
> As a consequence, we do not accept and cannot accept your motion. But we do invite you, as has been indicated by staff, to participate in the hearing. There is enough time for you to make arrangements to be in Toronto to participate, and we invite you and encourage you to do so. But to accommodate the request that you have made, we do not believe would be appropriate.
>
> We will provide more detailed reasons in our eventual decision. But we are going to proceed today without your participation by telephone. And to repeat, we encourage you to participate in the process and to be in touch with the secretary's office to do so if you are prepared to attend in person and to participate in the manner set out in prior communication to you from the Commission.
>
> (Hearing Transcript dated January 10, 2011 at p. 47)

[41] Although the motion Panel deferred to the hearing Panel the question of whether Chau should be authorized to testify by telephone, we were of the view that the factors articulated by the motion Panel in the reasons for denying Chau's motion dated October 12, 2010 were equally relevant to Chau's request to testify by telephone and endorsed them. In particular, we found the factors cited in paragraph 37(b) of these Reasons and Decision to be compelling and, accordingly, dismissed Chau's request to testify by telephone.

C. The Appropriate Standard of Proof

[42] The standard of proof applicable in Commission proceedings is the civil standard of the balance of probabilities. In *F.H. v. McDougall*, [2008] 3 S.C.R. 41 ("***McDougall***"), the Supreme Court of Canada stated that different approaches had been taken by courts and administrative tribunals in evaluating evidence on this standard, and heightened standards had often been applied when allegations against a defendant were particularly serious, including in cases of professional misconduct and fraud (*McDougall*, *supra*, at paras. 26-39).

[43] The Supreme Court of Canada made it clear that there is only one civil standard of proof for all allegations, namely, that we must decide this matter on the balance of probabilities. In doing so, we must scrutinize the evidence before us "with care" and be satisfied "whether it is more likely than not that an alleged event occurred" *(McDougall*, *supra*, at para. 49). We are satisfied that the events described in these Reasons and Decision are more likely than not to have occurred.

[44] This standard of proof also applies to the allegations of fraud, including breaches of subsection 126.1(b) of the Act.

D. The Use of Hearsay

[45] Some of the evidence introduced was in the nature of hearsay. Subsection 15(1) of the SPPA governs the use of hearsay evidence in Commission proceedings:

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

[46] Although hearsay evidence is admissible under the SPPA, we must determine the appropriate weight to be given to that evidence. A careful approach must be taken to avoid placing undue reliance on uncorroborated evidence that lacks sufficient indicia of reliability (See *Starson v. Swayze*, [2003] 1 S.C.R. 722 at para. 115; and *Sunwide*, *supra*, at para. 22).

[47] Further, while documentary evidence adduced by Staff to prove the allegations against the Respondents constituted hearsay evidence, we find that this evidence was also

corroborated by or was consistent with other documentary evidence. Such documentary evidence included:

(a) Banking documents;

(b) The MLIF Forms, including the subscription agreements, and other legal documents;

(c) Lists of investors and other documents provided to Staff by certain Respondents;

(d) Copies of letters and email messages from certain Respondents to or from other Respondents or third parties; and

(e) Copies of legal documents referring to transactions between certain of the Respondents and third parties.

E. Admissions

i. Admissions by Tulsiani and Tulsiani Investments

[48] Counsel for Tulsiani and Tulsiani Investments, Alistair Crawley ("**Crawley**"), attended at the commencement of the hearing to make certain admissions on behalf of his clients. Through their counsel, Tulsiani and Tulsiani Investments admitted that:

(a) They had sold and assisted in the selling of securities, namely, the 400 series of bonds, to members of the public;

(b) Those securities had not been qualified by a prospectus under the Act;

(c) They breached subsection 25(1)(a) of the Act and acted contrary to the public interest.

[49] Tulsiani further admitted that he authorized, permitted or acquiesced in the actions of Tulsiani Investments.

[50] With respect to the allegation of providing advice, Tulsiani and Tulsiani Investments admitted that they had promoted the sale of the 400 series of bonds, and that they had recommended these bonds to members of the public.

[51] Crawley also indicated that he would return for the sanctions hearing. He acknowledged on behalf of his clients their understanding that Staff would call evidence at the hearing relating to their conduct which would be taken into account by us in determining the matter on the merits and in any hearing regarding the imposition of appropriate sanctions.

[52] Crawley stated on the record:

MR. CRAWLEY:

In this particular proceeding, *Mr. Tulsiani admits that he was engaged in the distribution of securities as is alleged in the amended statement of allegations*. And Ms. Perschy is going to be providing you with an overview during her opening statement.

But the allegation which is really set out at paragraph 11 of the statement of allegations – that is, the sale of the Maple Leaf 400 bond series to members of the public – it's admitted by Mr. Tulsiani that the Maple Leaf bond –

…

So it's acknowledged by Sunil Tulsiani that the – his actions in selling and assisting in the sale of the Maple Leaf 400 series bonds to members of the public. *He was engaged in the sale of securities. Those securities had not been qualified by a prospectus under the Act*.

And therefore, he admits that he has breached section 25(1)(a) of the Securities Act. And I think it logically follows that that conduct would be found to be contrary to the public interest. So Mr. Tulsiani acknowledges that his conduct in this regard is contrary to the Act.

Due to Mr. Tulsiani's current financial circumstances, the extent of my retainer has been quite narrow. I did not have a mandate to be able to fully review all of the disclosure made by staff and, accordingly, haven't been in a position to come here and make more detailed factual admissions.

So the position of Mr. Tulsiani is that he wants to make it clear that he acknowledges that he's breached the Act. *He's engaged in trades without being registered in securities that have not been qualified by a prospectus*.

He acknowledges and accepts that he will be subject to sanctions by this Commission, and his current intention will be to attend the sanctions hearing, at the very least, as it pertains to himself as he has, of course, acknowledged being in breach of the Act.

Due to Mr. Tulsiani's financial circumstances, he is not in a position to have myself as counsel attend the hearing on the merits to review and perhaps challenge the evidence of staff. However, based on the fact that he is admitting the breaches that have been alleged, he's made the decision to have me attend at the outset to advise you of his position and status and by way of explanation for neither himself nor myself attending the hearing on the merits.

The only allegation as it pertains to Mr. Tulsiani where I don't have instructions to make a specific admission is with respect to the allegation that he was advising with respect to the sale of this series of bonds. It is – *Mr. Tulsiani does acknowledge that he was promoting the sale of the bond. He was recommending these bonds to members of the public. So those admissions, he can make*.

And then, of course, the Commission is more than capable of making the determination as to what the legal consequence of that conduct is as it pertains to the allegation of advising. *However, he has already admitted to being in breach of section 25 of the Act in relation to subsection (1)(a).*

So with the leave of the Commission, at this juncture, without intending any disrespect to the Commission or this process, I would ask that I be able to absent myself at this juncture. And Mr. Tulsiani would appear when the hearing is convened to order sanctions.

…

CHAIR: Thank you. And I take it, Mr. Crawley, that is understood by both – by your clients, being both corporate and individual, that we can make whatever findings based on whatever evidence is led by staff during his or your absence.

MR. CRAWLEY: That is correct. And I can confirm – I should have mentioned that the admissions pertain to Tulsiani Investments and, in particular, that *Sunil Tulsiani does also admit that he authorized, permitted, or acquiesced in the actions –*

…

MR. CRAWLEY: – on behalf of Tulsiani Investments, so just to close that loop. He, of course, does appreciate that evidence is going to be called. Some of that evidence is going to pertain to his conduct in respect of this matter and, of course, will be taken into account by this Commission in making its findings on the merits and, ultimately, in ordering sanctions, and that is understood.

(Emphasis added)

(Admissions of Tulsiani in Hearing Transcript dated January 10, 2011 at pp. 8-12 and 14)

ii. Admissions by Chau and MLIF

[53] Chau also made the following factual admissions:

(a) MLIF is an Ontario company incorporated on January 11, 2007;

(b) MLIF purports to be an investment company;

(c) During the Material Time, MLIF represented to investors that it was going to construct and operate the Project;

(d) MLIF never filed a preliminary prospectus or a prospectus with the Commission, and no prospectus receipt was ever issued to qualify the sale of the MLIF bonds;

(e) MLIF was not registered with the Commission in any capacity during the Material Time;

(f) Chau was a resident of Markham, Ontario, during part of the Material Time and is the president, chief executive officer and director of MLIF;

(g) Chau was not registered with the Commission in any capacity during the Material Time;

(h) From 2007 to and including January 2009, MLIF and Chau sold four series of MLIF bonds to the public, namely the 100, 200, 300 and 400 series of bonds;

(i) In total, Chau, MLIF, Tulsiani, Ravinder and Tulsiani Investments raised over $4.5 million from the sale of MLIF bonds to over 80 investors;

(j) Approximately $1.4 million of this amount was returned to investors as alleged interest and/or the proceeds of redemption;

(k) Chau and MLIF represented to potential investors in MLIF bonds that the bonds were convertible into MLIF founder shares or other MLIF shares, which shares would be listed on the TSX or TSX Venture Exchange;

(l) Chau and MLIF represented to potential investors in MLIF founder shares or other MLIF shares or the shares of other companies represented to be associated with MLIF that MLIF expected that these shares would be listed on the TSX or TSX Venture Exchange;

(m) Chau and MLIF represented to investors that their funds would be placed in a GIC at TD Bank or another bank;

(n) Chau and MLIF represented to some investors that investor funds would remain in GICs until needed to pay for the purchase of land for the Project;

(o) Chau and MLIF represented to some investors that investor funds were to be used as collateral to assist MLIF in obtaining a construction loan for the Project; and

(p) Chau and MLIF represented to investors that they would be paid interest on their bonds partly from their GICs at TD Bank or another bank and partly by MLIF.

V. THE ISSUES

[54] This matter raises the following issues for our consideration:

(a) Did Chau, MLIF, Tulsiani and Tulsiani Investments trade in securities of MLIF without being registered to trade in securities, contrary to subsection 25(1)(a) of the Act?

(b) Did Tulsiani and Tulsiani Investments engage in advising with respect to investing in securities of MLIF without being registered to advise in securities, contrary to subsection 25(1)(c) of the Act?

(c) Did Chau and MLIF engage in distributions of securities of MLIF when a preliminary prospectus and a prospectus had not been filed and receipts had not been issued for them by the Director, contrary to subsection 53(1) of the Act?

(d) Did Chau and MLIF, with the intention of effecting a trade in securities of MLIF, make representations without the written permission of the Director that such securities would be listed on a stock exchange or quoted on a quotation and trade reporting system, contrary to subsection 38(3) of the Act?

(e) Did Chau and MLIF engage or participate in acts, practices or courses of conduct relating to MLIF securities that Chau and MLIF knew or

reasonably ought to have known perpetrated a fraud on persons or companies, contrary to subsection 126.1(b) of the Act?

(f) Did Chau, in his capacity as a director and officer of MLIF, authorize, permit or acquiesce in the commission of the violations of subsections 25(1)(a), 53(1), 38(3) and 126.1(b) of the Act set out above by MLIF?

(g) Did Tulsiani, in his capacity as a director of Tulsiani Investments, authorize, permit or acquiesce in the commission of the violations of subsections 25(1)(a) and 25(1)(c) of the Act set out above by Tulsiani Investments?

(h) Was the conduct of the Respondents contrary to the public interest?

VI. THE EVIDENCE

A. Description of the Evidence Presented

[55] Staff called 11 witnesses at the hearing. Nine were Ontario investors, whom we have identified as Investors One to Nine in these Reasons and Decision, and two were Staff investigators.

[56] To protect the privacy of all investor witnesses, we have referred to them anonymously rather than using their respective names. In addition, to protect the personal information of the investor witnesses in this matter, we have required that Staff provide a redacted version of the record.

[57] The two Staff investigators were Larry Masci ("**Masci**") and Indi Dhillon ("**Dhillon**").

[58] Staff adduced 140 exhibits at the hearing through their witnesses.

[59] None of the Respondents tendered any evidence at the hearing.

[60] At the commencement of the hearing, a number of admissions were also made on behalf of Tulsiani and Tulsiani Investments, by their counsel, to which we referred above at paragraphs 48 to 52.

B. Evidence of the Alleged Facts and Events

[61] For a greater understanding of the issues in this matter, we have prepared the following summary of the facts and events in evidence before us.

i. Promotion and Sale of the 100 and 200 Series of Bonds and other Securities

[62] From at least June 2007 to January 2009, Chau and MLIF sold four series of MLIF bonds to the public, namely, the 100, 200, 300 and 400 series of bonds. The Respondents raised a total of $4,475,000 from the sale of the MLIF bonds to over 80 investors.

[63] In order to promote the MLIF bonds, Chau and MLIF:

(a) Placed advertisements in newspapers and maintained a website for MLIF;

(b) Conducted seminars and meetings and provided written materials to potential investors; and

(c) Employed and/or contracted with people to promote and sell the MLIF bonds.

[64] The MLIF advertisements referred to a casino or a casino and hotel investment and indicated that bonds and/or founder shares were available to investors. The advertisements indicated that limited quantities were available or that it was a "Limited Time Opportunity". The advertisements promised "HIGH RETURN, LOW RISK" and "GUARANTEED Returns with Tremendous Upside Potential" (emphasis in the original). Copies of MLIF advertisements which ran from January to March 2008 in the *Toronto Star* and other media were obtained by Staff and Investor Two testified that he saw a similar MLIF advertisement in the fall of 2007.

[65] The MLIF website and three MLIF brochures provided information about MLIF and its prior and then current projects. Two of the MLIF brochures were very similar and concerned the 100 series of bonds and the 200 series of bonds, respectively. Various investors testified that they received one or more MLIF brochures at MLIF seminars in June/July and September/October 2007. Staff viewed and downloaded extracts from the MLIF website in January and March 2008 and again during the period from March to May 2009.

[66] The website and the brochures indicated that "Maple Leaf", "Maple Leaf Group", and/or "Maple Leaf Investment Group" had successfully developed dozens of projects around the world over the previous 20 years and provided details of such previous projects. One MLIF brochure entitled simply "Maple Leaf Investment Fund Corp." indicated for example that "Through its investment arm, the Maple Leaf Investment Fund has invested in golf courses in Jasper, Alberta, office buildings in Calgary, motels and housing subdivisions in Ontario, retail shops in Hong Kong and apartment buildings in Tai Shan, China". It went on to describe Chau as the CEO and Chairman who had "led the Company and the whole team of hard working professionals in developing profitable projects in several continents".

[67] The MLIF website and brochures described their projects as offering high returns at low risk. The MLIF brochures stated in part as follows:

> …the Maple Leaf Investment Fund has found a solution to your problem – projects that have extremely low risk while at the same time, pay huge dividends beyond your wildest dreams.

The MLIF website similarly stated in part:

> …we have found a solution to your problem – projects which are low risk and which pay handsome returns on your investment.

[68] The MLIF website and one of the MLIF brochures referred to the Project as the "Maple Leaf Condominium Hotel Project" or the "Maple Leaf Investment Fund Brionplein Square Plaza Project" which MLIF was seeking to finance in part through bond offerings. The Project was described as being comprised of three parts: (i) one or more four star hotels; (ii) one or more casinos; and (iii) condominiums. The MLIF brochures referred to a Howard Johnson Hotel which MLIF had purchased and planned to expand and renovate and another six storey hotel MLIF was to build after buying a lot adjacent to the Howard Johnson Hotel (the "**West-End Property**") to be known as the Maple Leaf Hotel and Casino. The MLIF brochures also referred to an existing casino at the Howard Johnson Hotel which MLIF planned to expand as well as adding a second floor and another casino at the new Maple Leaf Hotel. The MLIF brochures indicated that 78 condominiums would be built on the Howard Johnson site and 150 units would be built on the site of the Maple Leaf Hotel. The MLIF website referred only to the Maple Leaf Hotel, a six storey 150 unit condominium and one casino.

[69] Two very similar MLIF brochures described the 100 and 200 series of bonds, respectively, and the MLIF website downloaded in 2008 described both series. The 100 and 200 series of bonds were available for a two-year term at a price of $25,000 per unit. There were three different types of bonds for both the 100 and 200 series of bonds which offered the following returns:

(a) 101/201 series of bond: a 2-year debenture "guaranteed" 10% annual interest (partly a bank GIC referred interest (referred to as approximately at the time 4% or 4.5%) paid annually, and a company guarantee for the remainder of the interest paid quarterly (5.5% or 6%));

(b) 101/202 series of bond: a 2-year debenture, "Bank GIC guarantee" (referred to as approximately at the time 4% or 4.5%) paid annually plus a "Standard Company Dividend" paid annually; and

(c) 103/203 series of bond: a 2-year debenture "guaranteed" 7% annual interest (partly a bank GIC, referred to as approximately at the time 4% or 4.5%, paid annually and partly a company guarantee for the remainder of the interest paid quarterly), and a half of the "Standard Company Dividend" paid annually.

[70] The three types of 100 and 200 series of bonds also had different entitlements for the holders to convert their principal investment in MLIF bonds to shares at certain prices and to acquire additional shares. However, all three types of the 100 and 200 series of bonds were represented to have the following characteristics:

(a) The principal investment would be "deposited into a Bank GIC account immediately";

(b) "Minimum return guarantee: Bank GIC interest…paid annually";

(c) "Maturity date: Two years from subscription"; and

(d) They would be "convertible" to "Maple Leaf Preferred Shares" (in the brochures) or "Maple Leaf Common A Shares" (on the website) after the two years.

[71] Potential investors attended MLIF seminars at which Chau and other officers or employees of MLIF gave presentations regarding MLIF, the Project and the 100 or 200 series of bond offerings and at which Chau and MLIF made the following representations to investors:

(a) Investor funds would immediately be placed in a GIC at TD Bank or another bank; and

(b) Investors would be paid interest on their bonds, partly from a GIC issued by TD Bank or another bank and partly by MLIF.

[72] All 100 and 200 series of bonds investors who testified described in varying degrees of detail the Project and the 100 or 200 series of bonds as applicable in terms that were similar to those set out in the brochures or on the website.

[73] One investor witness, Investor Three, a retired principal of a Montessori school, who had no investment experience at the time, testified that Chau described the three types of 100 series of bonds during the presentation she attended as follows:

> A. Bond mean – there are three category. Number 1, it's very safe. If you want to buy one bond, it cost 25,000, and this first one, the percentage is 10 percent. So it's very safe.
>
> Okay. The second one you can buy, it's number 102 – 101, 102, 103. 101 is very conservative. 102 for people like more aggressive. You only get 4 percent guaranteed from TD Bank, okay, from the 25,000, and then after, on top of that, you get half percent, 50 percent from dividend of the Maple Leaf Investment Fund. That's a lot.
>
> So number 3 he say you can – number 3 he said 7 percent. This is for people like to play safe; 7 percent. Four percent you get the investment interest from the TD Bank and then 3 percent from the Maple Leaf Investment Fund. Total, 7 percent. This percentage you can get two years. Every year annually you get paid by bank and by Maple Leaf, and that this guarantee is two years. So 25,000 is our principal on top of 7 percent. This is safe put in the bank.
>
> (Testimony of Investor Three in Hearing Transcript dated January 12, 2011 at p. 20)

[74] Investor Three spoke to Chau who indicated that her money would be kept in a TD GIC for two years:

> Q. …Can you just explain what you understood at that time the reference to the bank?
>
> A. I understood because the money is going to the bank, TD Bank, its called, it stay [*sic*] there for two years as a GIC.
>
> Q. Okay. And who was saying that at that time?
>
> A. Joe, Henry Chau.
>
> …

Q. – was there any discussion of risk of the investment?

A. Not really.

(Testimony of Investor Three in Hearing Transcript dated January 12, 2011 at p. 24)

[75] When Investor Three raised questions about where the money would go, Chau offered to take her to the bank where he would deposit the funds; however, when they did go to the bank, he had already deposited her cheque and introduced her to the bank manager.

[76] After investing, Investor Three initially volunteered and was later paid to work for MLIF. While she was at MLIF, seminars were held twice a week, one in English, one in Mandarin or Cantonese. She testified that these other seminars were similar to the one that she had attended.

[77] Chau told one investor, Investor Four, at an initial meeting that she "[did] not need to worry about money because the money will [be] put into the TD Bank GIC account" (Testimony of Investor Four in Hearing Transcript dated January 12, 2011 at p. 110). She subsequently attended a sales meeting with other potential investors during which Chau indicated that their money would be put into a TD GIC. She understood from Chau's presentation that the money would be used as collateral to permit MLIF to borrow money from the bank. Chau and MLIF acknowledged representing to some investors that investor funds would be used as collateral to assist MLIF to obtain a construction loan for the Project.

[78] Investor Two attended a presentation at which Chau discussed the guarantees concerning the bonds:

Q. How much money was Mr. Chau and Maple Leaf – how much money were they looking to raise?

A. He said that this particular project was around, like, 12 to $15-million. And he had already raised 8 to $10-million.

Q. And what was to happen if he was unable to raise the monies that he was looking to raise?

A. Yeah, he said that at the worst case scenario, company may belly up. And as your money will be in GIC, you will get your money back. That's like a guaranteed thing.

(Testimony of Investor Two in Hearing Transcript dated January 10, 2011 at p. 129)

[79] Following the presentation, Investor Two raised questions with Chau and Chau gave him further assurances about the safety of his investment:

A. Chau said that, yes, this money will be in GIC. You don't have to worry about it. And as I said in the presentation, like, even in the worst case scenario, your investment will be safe because it is going to be in GIC.

(Testimony of Investor Two in Hearing Transcript dated January 10, 2011 at p. 139)

[80] Investor Two reviewed the MLIF brochure he received at the seminar with his wife following the seminar and decided to invest. He purchased a 203 series bond to have a safe investment on the basis of Chau's assurances:

> Q. If you could just summarize for the panel, why did you invest in this bond?
>
> A. From the assurance given by Mr. Chau, we thought that this is a very safe investment. According to him, like, our money will be in the bank in GIC. That's what my understanding is. Like, GIC is guaranteed, so at least I will get my principal back.
>
> (Testimony of Investor Two in Hearing Transcript dated January 10, 2011 at p. 154)

[81] Investor One, who could only understand simple communications in English, attended a seminar in Mandarin during which Chau used two words she did not know: "bond" and "GIC". Following the seminar, Vivian, an employee of MLIF, called repeatedly to tell Investor One what a great opportunity it was. At the urging of the MLIF employee, Investor One met with Raymond Tam, an officer of MLIF at the time ("**Tam**"), and raised concerns about the safety of the investment. Tam responded as follows:

> A. He said to me, first, my reputation is more important than your money. And the second thing he said to me was that the money we invested with them would be deposited into TD Bank, a two-year term deposit.
>
> And he pointed at a sample from TD Bank, a green kind of sample, saying that, after you invest with us, you will have the same thing. $25,000 investment, you would have something like this in your name. And he said, if you have concerns, you can go with us to deposit the money.
>
> Q. And what was he pointing to?
>
> A. TD Bank two-year term deposit letter kind of thing with green letters. There is a name, a customer's name. He said that person is one of their investors.
>
> …
>
> A. …So Mr. Tam told me that we invested money with the company, and the company would deposit the money into TD Bank for GIC for two-year term. And Mr. Tam said they really didn't need our money for their projects. They would put our money in the bank to prove that the company had money, and then they use it as a collateral to get loans from the bank to do their projects.
>
> …
>
> A. But I did believe that my money would be deposited into the bank in my name because that was the sample I was shown.
>
> (Testimony of Investor One in Hearing Transcript dated January 10, 2011 at pp. 84 and 87)

[82] Investor One invested her life savings of $50,000 in a 102 series of bond and a 103 series of bond with the understanding that she would receive her principal back in two years' time plus the interest. Chau received Investor One's money order and indicated that she did not need to go to the bank.

[83] Investor One became concerned when she received the GIC Confirmation of Investment (the "**GIC Certificates**") and did not see her name on it, unlike the sample Tam had shown her. Investor One raised her concern with Vivian and called Investor Three, an investor and MLIF employee. Chau called Investor One and explained that when MLIF had the clients' names on the GIC Certificates, the clients kept making inquiries at the bank which "caused a lot of inconvenience" (Testimony of Investor One in Hearing Transcript dated January 10, 2011 at p. 103); however, he reassured her that the Account Numbers on the GIC Certificates indicated that it was her investment. Investor Four raised the same issue with Chau and Chau provided a similar response.

[84] Staff obtained a number of MLIF bond certificates from investors and Chau. Each MLIF bond certificate had a separate Account Number. The investor lists provided by Chau from the 100 and 200 series of bond investors also set out Account Numbers for each MLIF bond held which matched the Account Numbers on the certificates for the MLIF bond. Staff also obtained a number of GIC Certificates from investors which set out in part on the left-hand side of the page the following:

> GUARANTEED INVESTMENT CERTIFICATE
>
> ISSUED BY TD MORTGAGE CORPORATION
>
> MAPLE LEAF INVESTMENT FUND CORP.
>
> FOR A/C …

[85] For each of the GIC Certificates, the number following the reference to "For A/C" matched MLIF's Account Number for that investor's MLIF bond set out on the bond certificates and the investor lists.

[86] All investors in the 100 and 200 series of bonds who testified confirmed that they invested $25,000 or more and were told by Chau and/or other MLIF employees and officers that:

(a) Their principal investment was being invested in a GIC, that it was guaranteed or safe or that they did not need to worry;

(b) Their interest would be paid in part annually from a bank GIC; and

(c) The term of the investment was two years, at the end of which term they could receive their principal back or convert to shares.

[87] In total, Chau and MLIF raised $975,000 from investors in the 100 and 200 series of bonds between June 2007 and March 2008. Chau signed the investors' subscription agreements on behalf of MLIF. Chau instructed the investors to make out their cheques to MLIF.

[88] Staff obtained signed subscription agreements for nearly all of the 100 and 200 series of bonds which reflected MLIF as the issuer of 100 or 200 series of bonds, as applicable (the "**Issuer**"). The agreements set out the type of bond being purchased (e.g. 101/201, 102/202 or 103/203), the amount, the two-year term to maturity from the date of the subscription, the applicable rates of return for the interest and the dividend. With respect to interest, the subscription agreements differentiated between the percentage "per

annum from GIC, payable annually" and the percentage if applicable "per annum from the Issuer, payable quarterly".

[89] Most investors in the 100 and 200 series of bonds received some interest statements and some payments until April 2009. The interest statements, which included the Account Number on the Bond Certificate, set out an amount for the "Guaranteed Interest Rate" comprised of the "G.I.C [*sic*] Interest Rate" and the "Company Guaranteed Rate". Some of the interest statements indicated that the "G.I.C [*sic*] Interest Rate" was being "Paid annually by bank" while the "Company Guaranteed Rate" was being "Paid quarterly by company".

[90] Payments of the annual interest and the quarterly interest were made by separate cheques. Investors received email updates from Larry He, an MLIF employee, which also distinguished between "Annual GIC" payments and "Quarterly" payments. Chau prepared most of the email updates.

ii. Actual Status of 100 and 200 of Bond Investors and Further Offerings of Securities

[91] Investor One, one of the investors in the 100 and 200 series of bonds, testified that she was provided with a "Subscriber's Declaration" form when she invested and indicated that she did not qualify according to the definitions in the form but was told to check it off anyway:

> Q. All right. And there's a tick mark on the first box. Just a moment. That first box indicates:
>
> "I hereby declare that I'm an accredited investor as set out by the Ontario Securities Commission. I alone or together with my spouse beneficially own assets that have an aggregate realizable value before taxes but net of liabilities exceeding $1-million Canadian."
>
> So can you tell me, how did that come to be checked off?
>
> A. So I remember this very clearly. I needed to check one box. And although my English was not good, but I went through the three boxes. And I said, oh, this one, you are required to have an asset exceeding $1-million. I don't have this. I can't buy this.
>
> And then I was told, it doesn't matter. Nobody has so much money. Just pick one and check. I said, which one should I check? And I was told to check the first one.
>
> (Testimony of Investor One in Hearing Transcript dated January 10, 2011 at pp. 93-94)

[92] Another investor, Investor Three, also indicated that she did not qualify when Chau gave her MLIF's "Subscriber's Declaration" form and Chau told her that it did not matter:

> Q. And who provided you with this form?
>
> A. Henry Chau.
>
> Q. And did Mr. Chau tell you anything about this form?

> A. I ask question, you know, what is a million dollar there for? I said, I don't have that kind of money, and he doesn't explain much. He said, well, don't worry about that. That is just like decoration. So just sign.
>
> (Testimony of Investor Three in Hearing Transcript dated January 12, 2011 at p. 46)

[93] Investor Three signed the "Subscriber's Declaration" form at the time of investment but did not check any of the statements as she understood from Chau that it did not matter, it did not mean anything and was just a "decoration" (Testimony of Investor Three in Hearing Transcript dated January 12, 2011 at p. 49).

[94] Other investors in the 100 and 200 series of bonds gave similar evidence:

> Q. …And sorry, you may have said this already, but can I just confirm, who provided you with this form?
>
> A. Mr. Henry Chau.
>
> Q. And did Mr. Chau tell you anything about this form?
>
> A. He just asked me to sign this, right. Then I look at the contents and I told him, I said, none of the descriptions really – how you say? – suited my situation. Then he said, don't worry. This is, like, just a formality.
>
> (Testimony of Investor Four in Hearing Transcript dated January 12, 2011 at p. 119)

[95] Investors in the 100 and 200 series of bonds who testified gave evidence as to their financial situation. At the time that they invested in the MLIF bonds, none of them:

(a) Earned $200,000 in net annual income before taxes or $300,000 in annual net income together with a spouse;

(b) Beneficially owned, alone or together with their spouse, financial assets net of liabilities that had an aggregate realizable value before taxes of $1 million; or

(c) Beneficially owned, alone or together with their spouse, assets (including financial assets and other property) net of liabilities that had an aggregate realizable value before taxes of $5 million.

[96] Staff conducted personal and telephone interviews of over 30 bond investors in the course of its investigation, including a number of 100 and 200 series of bond investors. Staff asked about the investors' financial circumstances and determined that they did not meet the requirements for an accredited investor pursuant to the Act.

[97] MLIF did not file an accredited investor exemption report with the Commission until May 2009 by which time Staff had obtained temporary orders against MLIF and Chau including orders to cease trading. In addition to being late, the report was significantly deficient, lacking many details including particulars about each distribution of securities, what the securities were and the identity of the purchasers. Given Staff's interviews of investors, Staff determined that the report was misleading in that it purported to rely on the accredited investor exemption when investors did not qualify.

iii. Commencement of MLIF Business

[98] While Chau and MLIF presented MLIF in their seminars as an established company which was part of a group which Chau had led to complete many successful projects over the last twenty years, MLIF was only incorporated on January 11, 2007 and Chau is the only shareholder. Chau opened MLIF's bank accounts first at TD Bank and subsequently at the Royal Bank of Canada ("**RBC**"). In May 2007, MLIF applied for an operating line of credit of $10,000 and TD Bank required that MLIF provide a GIC in the same amount as collateral. In August 2007, TD Bank declined MLIF's application for an increase in the operating line of credit to $235,000, stating as follows:

> Business owner/guarantor has a weak credit history
> Business owner/guarantor has limited credit history
> Insufficient Total Net Worth
> Derogatory information on the business owner's/guarantor's credit bureau report

[99] In February 2008, Chau opened an account for MLIF at RBC (the "**MLIF RBC Account**") and MLIF applied for an operating line of credit of $100,000. RBC required that MLIF purchase a GIC in an amount equivalent to the maximum that could be borrowed against the operating line of credit.

[100] Chau is the sole authorized signatory on MLIF's main operating account at TD Bank (the "**MLIF TD Account**") and the MLIF RBC Account. All cheques were signed by Chau and all deposits, transfers and payments were made by him.

[101] On June 20, 2007, when Chau deposited the first funds from a 100 series of bond investor in the MLIF TD Account, that account was in an overdraft position. Another TD Bank account in the name of MLIF had no balance available at the time and the account had no significant activity between April 2007 to May 2009.

iv. MLIF's Delayed Purchases of TD GICs

[102] Of the $975,000 raised from 100 and 200 series of bonds investors, Chau and MLIF deposited $950,000 in the MLIF TD Account, representing the primary source of funds for that account. Chau and MLIF also deposited $25,000 directly into the MLIF RBC Account on September 3, 2008.

[103] On February 19, 2008, Chau and MLIF transferred $100,000 from the MLIF TD Account to the MLIF RBC Account to purchase a GIC in the amount of $100,000 which MLIF used as collateral for its RBC operating line of credit. Chau and MLIF used the remaining $850,000 in the MLIF TD Account to purchase GICs at TD Bank.

[104] In seminars open to the public, Chau and MLIF represented to 100 and 200 series of bond investors that the funds derived from the sale of MLIF bonds would be used to purchase a GIC immediately; however, that is not what occurred. After redeeming her initial investment, Investor Three purchased a 100 series of bond on July 20, 2007; however, her GIC Certificate indicated that it was purchased "as of August 24, 2007". Similarly, Investor Four purchased a 100 series of bond on July 16, 2007 and her GIC Certificate indicated that it was purchased "as of July 26, 2007".

[105] Staff's analysis of the TD banking documents also indicated that there were delays in placing funds in GICs. For example, three MLIF bonds were purchased on June 20, 22 and 28, 2007; however, only one GIC was purchased on June 28, 2007 and the next two were purchased on July 3 and 19, 2007, respectively. Eighteen 100 series of bonds were purchased in July, the first being on July 4, 2007; however, only four further GICs were purchased in July. Chau and MLIF next purchased GICs on August 13, 2008 when they purchased five and then another ten GICs on August 24, 2007. However, there were still delays in purchasing GICs as at least three further bonds were purchased in early August 2007 but MLIF did not purchase any other GICs until mid-September 2007.

v. MLIF Cashed TD GICs

[106] The funds did not remain in the TD GICs for two years until maturity as represented by Chau. After Investor Three read an article about MLIF indicating that Chau was taking money from investors, she became concerned about her investment and went to TD Bank where she was shocked to learn that Chau had cashed the GIC with her account number referenced about a week after it was purchased.

[107] The 100 and 200 series of bond investors' GIC Certificates set out the investor's bond certificate number on the left and also a further Account Number on the right hand side of the document which corresponded to TD Bank's Account Number for the GIC. None of the GIC Certificates was issued in the names of the investors and, accordingly, the investors had no security for the repayment of the funds they invested notwithstanding the representations made by the Respondents that their funds were secured. For example, TD Bank's records confirmed that the GIC with Investor Three's account number referenced was cashed on August 30, 2007, six days after it was purchased.

[108] The GIC with Investor Four's account number referenced was purchased on July 26, 2007. While Chau and MLIF repurchased Investor Four's MLIF bond in June 2008, TD Bank's records indicated that GIC was in fact cashed on August 20, 2007, less than a month after it was purchased.

[109] Staff's analysis of the banking documents revealed that Chau and MLIF cashed the first TD GIC on July 19, 2007. Chau and MLIF cashed a further nine TD GICs on August 20, 2007 and another nine on August 30, 2007. In more than half the cases, MLIF held the TD GICs for a week or less. In all but two cases, the GICs were held for fewer than 35 days.

[110] Chau and MLIF continued to promote and sell the 100 and 200 series of bonds giving the same presentations and making the same types of representations as they had to earlier investors. For example, Investor Two attended a presentation in the fall of 2007 and purchased a 200 series of bond on November 30, 2007; however, as of November 30, 2007, Chau and MLIF had cashed most of the GICs. Chau and MLIF sold most of the 100 and 200 series of bonds after they had started cashing the TD GICs previously purchased with funds from prior 100 series of bond investors.

[111] Chau told some investors that their funds would be used to purchase a GIC and used as collateral for a loan. He also told some investors that the funds would remain

until needed to pay for the purchase of land for the Project. At best, MLIF only acquired an indirect interest in land in Curacao at the end of May 2008. However, of the $850,000 in TD GICs that MLIF had purchased with the funds from investors in the 100 and 200 series of bonds, $800,000 was cashed by the end of January 2008.

[112] As the GICs were cashed starting in July 2007, the money flowed back into the MLIF TD Account, MLIF's main operating account at TD.

vi. Other Misleading Statements and Omissions

[113] The MLIF brochures for the 100 and 200 series of bonds indicated that MLIF had purchased the Howard Johnson Hotel. They also indicated that the condominium sales were "expected to bring in a remarkable return" and that since "the two Brionplein residential blocks are built on the excessive land of the Howard Johnson Hotel, there is no land cost. It is a major contributor of [*sic*] the bottom line". Investor Two testified that Chau indicated in the fall of 2007 that the acquisition of the Howard Johnson Hotel was "half done" (Testimony of Investor Two in Hearing Transcript dated January 10, 2011 at p. 128). Chau admitted that MLIF discussed with the seller whether to buy the Howard Johnson Hotel or the West-End Property but did not acquire the Howard Johnson Hotel as it was sold to another party.

[114] The MLIF brochures indicated that the offering for each of the 100 and 200 series of bonds was up to a maximum of $28 million; however, Chau and MLIF raised only $775,000 and $200,000, respectively, from their sale.

[115] Investor Two testified that when Chau presented the Project to potential investors at a seminar in the fall of 2007, Chau stated that he had "already raised 8 to $10-million" (Testimony of Investor Two in Hearing Transcript dated January 10, 2011 at p. 129). Investor Three testified that in a subsequent seminar for investors in February or March 2008, Chau indicated that he had raised $15 million and patted his pocket saying "tonight in my pocket I have 15 million" and welcomed any investors who wished to do so to redeem their bonds (Testimony of Investor Three in Hearing Transcript dated January 12, 2011 at p. 89).

[116] Despite Chau's statement that he had $15 million in his pocket and was willing to redeem bonds, when investors sought to redeem their bonds, Chau discouraged them. One 100 series of bond investor, Investor Four, had several discussions with Chau beginning in February or March 2008 about redeeming as she had concerns that the hotel/condominium could not be built as promoted due to municipal planning restrictions as the area was designated as a heritage site. Chau admitted that he was waiting for funds from Curacao following the land closing and ultimately Investor Four only obtained an amount equivalent to her original $25,000 investment in June 2008. Investor Three, another 100 series of bond investor who also sought to redeem, was unable to get back her original investment.

[117] The last sale of a 200 series of bonds took place at the end of March 2008, at which time, the MLIF TD Account had a negative balance which continued until Chau and MLIF redeemed three TD GICs on November 10, 2008 to pay the overdraft.

vii. Sale of the 300 Series of Bonds and Use of Funds in the MLIF RBC Account

[118] Contrary to Chau's express written statement to Staff, Chau and MLIF started selling the 300 series of bonds in July 2008 without completing any listing process. Chau and MLIF raised $700,000 from the sales which were completed by October 7, 2008.

[119] Chau and MLIF deposited the $700,000 raised in the MLIF RBC Account.

[120] On June 12, 2008 and July 4, 2008, the Curacao-based notary representing Chau and MLIF, Andre Eshuis ("**Eshuis**"), transferred to the MLIF RBC Account $294,520 from the deposit fund relating to the sale of the condominiums. Some 100 series of bonds investors had been asking Chau to refund their investments since February or March 2008. In June 2008, after the initial funds were received from Curacao, Chau and MLIF provided refunds to two investors for the amounts paid for the purchase of their 100 series of bonds.

[121] In September 2008, Chau and MLIF transferred $208,820 (US$200,000) to Eshuis in Curacao. On a net basis, only approximately $85,000 was transferred from Curacao. The $700,000 raised from the sale of the 300 series of bonds was the most significant source of funds for that account in 2008.

[122] MLIF had one GIC in the amount of $100,000 at the MLIF RBC Account which was rolled over several times as it was the security for the operating line of credit. That GIC earned only $3,007 from the time it was purchased by MLIF.

[123] As there was insufficient money from the interest earned by the RBC GIC and Chau had already cashed nearly all of the TD GICs by the Spring of 2008, Chau caused MLIF to pay interest to investors in the 100, 200 and 300 series of bonds from the MLIF RBC Account. Between February 2008 and May 20, 2009, MLIF paid $50,608 in interest to investors in the 100, 200 and 300 series of bonds, including annual GIC interest.

[124] Chau was asked in July 2009 about the operations of the MLIF bank accounts and responded as follows:

> Q. 417 …So investors' funds would come in, these expenses would come out, correct?
>
> A. That's true.
>
> …
>
> Q. 447 Okay. So, in other words, the investors are put into a pool and you are paying interest from that pool; is that correct?
>
> A. Part of it would be.
>
> (Admissions of Chau in Hearing Transcript dated January 19, 2011 at pp. 171-172)

[125] In addition to paying interest to MLIF bond investors, Chau caused MLIF to pay the following from the funds in the MLIF RBC Account:

(a) $93,859 to Chau consisting almost entirely of net transfers to his personal RBC account and cash payments for salary or credit cards;

(b) $146,821 for various business expenses of MLIF, primarily office rent ($83,967) and salaries ($53,816), but not including $212,080 paid in commissions or fees; and

(c) $522,964 for or on behalf of other Chau-related entities.

viii. Sale and Promotion of the 400 Series of Bonds

[126] The Tulsiani Investments website and promotional materials relating to PIC and Tulsiani Investments indicated that Tulsiani was an Ontario Provincial Police ("**OPP**") officer for over 16 years and described him as "one of the most successful investors in the Toronto area".

[127] Ravinder was presented to investors at PIC meetings, on the Tulsiani Investments website and in promotional materials for PIC and Tulsiani Investments as a law graduate, as well as a former Financial Planner and Chief Compliance Officer for a large securities firm.

[128] The Tulsiani Investments website under the heading "Some of the many reasons for investing with Tulsiani Investments included:" was the statement, "We Do All the Work". On another page of the website, under the heading "We Do All the Work":

> When we bring an investor or partner into a deal, we handle the majority of the details. That is our job. Therefore, when an investor or partner works together with us, we take care of the details so you have a "stress free" and "hands off" investment.

The third point under the heading "Some examples of the details we look after are:" stated "Perform due diligence".

[129] Tulsiani and Tulsiani Investments commenced operating PIC in 2005.

[130] Tulsiani Investments and PIC shared the same office. Email messages were sent to investors from PIC email addresses on behalf of Tulsiani Investments.

[131] The investor witnesses understood Ravinder and Tulsiani to be the principals of PIC.

[132] A brochure provided to potential investors described PIC and Ravinder and Tulsiani's connections with PIC as follows:

> Private Investment Club (PIC) is a non-profit organization committed to providing real estate investment education to Canadians. PIC provides it's [*sic*] members with the opportunity to learn advanced real estate investment strategies to help them achieve financial freedom. The Club is designed to give it's [*sic*] members the knowledge and confidence to invest in real estate with little risk and no money down, right here in Canada.
>
> …
>
> Sunil and Ravinder Tulsiani are the visionaries who founded the Private Investment Club in January 2007. Sunil, a former Police Officer and Ravinder, previously a Chief

> Compliance Officer, decided to retire in order to become professional Real Estate Investors. They are two of the most successful real estate investors in Canada.

An article provided to potential investors entitled "Profiles of Success in Business: Creating Wealth Through Real Estate" stated:

> Our motto is put our money first and only then invite our investors to take advantage of any profitable deal.

[133] PIC held monthly meetings which had two parts. The first was open to the general public while the second was for members only. There was an opportunity to become a member between the public and members-only parts of the meetings. During the members-only portion of the meeting, Tulsiani presented an investment opportunity to PIC members.

[134] In the parts of the PIC meetings that were open to the public, Tulsiani presented himself as a former police officer who grew tired of the demands of the job and wanted to spend more time with his family. He explained that he went into real estate investing and described how he was able to use his police experience to investigate and negotiate transactions and complete the due diligence and how he became a millionaire.

[135] Tulsiani went on to say that he started PIC to give back to the community by providing training and education to people who wanted to make money, get out of the rat-race and have more time for their families.

[136] Tulsiani presented PIC as providing its members with the opportunity to participate in deals that in normal circumstances would not be available to the general public.

[137] In the public parts of the PIC meetings, Tulsiani indicated that he and Ravinder conducted the due diligence on, and invested in, every deal that they presented to PIC members.

[138] The article entitled "Profiles of Success in Business: Creating Wealth Through Real Estate" discussed at paragraph 132 above also stated:

> Since we do complete due diligence on all projects and invite our exclusive investors to participate in a turnkey franchise approach to real estate investing. All the homework is done for our investors as a result, our investors save time, resource and energy. Above all, we invest in every project with the client so we have a vested interest in the outcome.

[139] There was a fee to become a PIC member of approximately $700. However, various investor witnesses indicated that they obtained time-limited discounts and paid a lower fee ranging from $349 to $500 to join.

[140] One investor, Investor Five, testified that his PIC membership fee appeared on his credit card statement as a charge to "Tulsiani Investments Brampton ON".

[141] As part of their membership, PIC members were provided with mentorship sessions with Tulsiani. In addition to these mentorship sessions, PIC members could sign

up for a service known as Millionaire Training Camp ("**MTC**") which was a three-day training program on how to become a chapter leader of PIC including finding investors, controlling meetings and presenting deals.

[142] Starting in the spring of 2008, Tulsiani and Tulsiani Investments began promoting the sale of MLIF condominium units in Curacao to PIC members.

[143] In early December 2008, Tulsiani and Tulsiani Investments solicited PIC members to attend a meeting in December at which the 401 series of bonds were promoted and sold.

[144] Commencing on December 12, 2008, Tulsiani and other employees of Tulsiani Investments emailed, directly or through chapter leaders, and/or called PIC members about this investment opportunity. Several of the emails signed by Tulsiani as President of PIC had a subject line which stated:

> Make 20% in 10 days…risk free...

[145] The earliest email messages were addressed to "Dear VIP Investor" and indicated that the recipient was getting the first opportunity while subsequent messages were addressed to "Dear PIC Member". Both "VIP" investors and PIC members were advised that they were getting access to a "once in a lifetime commercial development opportunity". Some investors received several email messages from Tulsiani in this regard.

[146] The content of the email messages was very similar. The messages stated in bold text:

> **How would you like to earn 20% return in 10 days?**

[147] The message went on to indicate as follows:

> Here is a rare opportunity for you to make **20% in 10 days, without any risk**…the money stays in a trust account.
>
> (Emphasis in the original)

[148] The messages further indicated that the minimum investment was $50,000 though $25,000 may be considered and that the recipient was:

> …being notified prior to thousands of other investors. This will absolutely not last. Respond now.

[149] Tulsiani called Investor Nine on or about December 11, 2008 and told her about the investment opportunity: "you get 20 percent return in 10 days" (Testimony of Investor Nine in Hearing Transcript dated January 14, 2011 at p. 197). He then said that the time period was really short and it was already sold out but that he could place her name on a waiting list if she came to see him with the money so, "if someone cancel [*sic*], and you can jump in" (Testimony of Investor Nine in Hearing Transcript dated January 14, 2011 at p. 198). Other witnesses testified that Tulsiani would create a sense

of urgency so people "take action" (Testimony of Investor Six in Hearing Transcript dated January 13, 2011 at p. 130).

[150] Tulsiani instructed PIC members to attend the Tulsiani Investments/PIC office on various days in mid-December with a certified cheque made out to "Vijai Sookhai Law Firm in Trust".

[151] Potential investors attended the Tulsiani Investments/PIC office on or around December 17, 2008 and met with Tulsiani, Chau and/or Ravinder. Chau, Tulsiani and other employees of Tulsiani Investments represented to potential investors in the 401 series of bonds that their funds would be used as "show money" to demonstrate to the bank that was providing the construction loan for the Project that MLIF had a certain amount of equity (Testimony of Investor Seven in Hearing Transcript dated January 14, 2011 at p. 26). Investors understood that their funds would be deposited in the trust account of lawyer Vijai Sookhai ("**Sookhai**"), where they would remain.

[152] Tulsiani represented to investors that he had conducted due diligence on the 400 series of bonds.

[153] Investor Seven and her sister met with Tulsiani, Ravinder and Chau at which Tulsiani did most of the talking. At the meeting, Investor Seven told them that the money she was investing was borrowed money and that she "can't afford to lose this money" because she just went through a separation so she had to know that the investment was safe (Testimony of Investor Seven in Hearing Transcript dated January 14, 2011 at p. 26). Tulsiani responded by telling her that he and his father were invested in the Project and that it was a "very, very secure investment" (Testimony of Investor Seven in Hearing Transcript dated January 14, 2011 at p. 27). Investor Seven further testified that Tulsiani frequently referred to his father at PIC meetings as "always very, very cautious" and "averse to any risk at all" and so the fact that Tulsiani was saying that his father invested "was saying that it was like a super secure investment" (Testimony of Investor Seven in Hearing Transcript dated January 14, 2011 at pp. 27-28).

[154] Investor Seven and her sister brought two cheques to the meeting as they were not sure in advance how much to invest but decided to invest all of the money, namely, $150,000 obtained from a line of credit, because they were told by Tulsiani, Ravinder and Chau that it was a secure investment and as a result of Tulsiani's further assurances that the money was in trust, was safe and that she would see her money in 10 days. Tulsiani also told Investor Seven that "our lawyer", Sookhai, was reviewing documents and making sure that everything was in order (Testimony of Investor Seven in Hearing Transcript dated January 14, 2011 at p. 29).

[155] Other investors also invested using a line of credit.

[156] The investors signed a "Subscriber's Declaration" indicating that they alone or with their spouse beneficially owned assets that had an aggregate realizable value (before taxes but net of liabilities) exceeding $1 million. Investor Nine testified through an interpreter regarding the declaration that she told Tulsiani that she did not qualify and how he responded:

> Q. And what did Sunil say to you?
>
> A. Sunil say [*sic*] that this investment is really safe and you get your money back really soon, so do not worry about it. So he tell [*sic*] me to check on it. So the check, I put it myself.
>
> (Testimony of Investor Nine in Hearing Transcript dated January 14, 2011 at p. 203)

[157] Investor Seven also indicated at the meeting with Tulsiani, Chau and Ravinder that she did not qualify but Tulsiani told her that it was just a technicality and that she needed to pick one and "most people are ticking the first box" indicating that they beneficially owned net assets exceeding $1 million before taxes (Testimony of Investor Seven in Hearing Transcript dated January 14, 2011 at p. 32). Investor Five raised the same concern with Chau who also dismissed it as a technicality saying that "it's not whether you really can demonstrate that you have a million dollars in assets", his perception was sufficient (Testimony of Investor Five in Hearing Transcript dated January 13, 2011 at p. 22). Chau also indicated that this was in regard to all assets including houses and cars and not just financial assets. Other investors gave similar testimony.

[158] Investor Nine, a single mother of limited means, decided to invest $100,000 using her line of credit on the basis that Tulsiani was a former police officer and the investment was only for a short term.

[159] Based on the presentations given to them, the investors signed an acknowledgement which Tulsiani also signed on behalf of Tulsiani Investments. Some of the investors were not provided time to read all of the related documentation.

[160] The investors signed the investors' subscription agreements for the 401 series of bonds and Chau signed on behalf of MLIF. Investors in the 401 series of bonds, including those on the waiting list or "stand-by pool", provided their funds to Tulsiani and/or Tulsiani Investments.

[161] Tulsiani sent email updates to investors in the 401 series of bonds and individuals on the waiting list.

[162] The 10-day period passed but investors in the 401 series of bonds did not receive any interest payments and their principal investments were not returned.

[163] Tulsiani sent email updates to some investors in the 401 series of bonds and individuals on the waiting list indicating that the holidays had caused delays. Some investors learned that contrary to what they had been given to understand, the commencement date for the 401 series of bonds required a triggering event that had not yet occurred and that their investments were in suspense.

[164] Tulsiani invited 401 series of bond investors to meetings in January 2009 and advised some investors that they would be provided with information about their investments at the meeting. Others were told there would be information about a further investment opportunity, namely, the 402 series of bonds.

[165] There were several meetings in January 2009. One occurred on January 18, 2009. On January 22, 2009, there were at least two meetings scheduled at the Tulsiani Investments/PIC office, one at 6:00 p.m. and another at 7:00 p.m. Chau and Tulsiani attended all of the meetings which were quite similar.

[166] Investor Seven attended the January 18, 2009 meeting believing she would get an update on the status of the 401 series of bonds. She was surprised when the meeting commenced with Chau giving a presentation regarding St. Martinus University (the "**University**"). She was confused and asked another investor if they were in the right meeting. Chau explained that the University would be additional collateral for the 402 series of bonds. Chau provided promotional materials about its financial situation and expected growth and about how Maple Leaf Education Fund ("**MLEF**"), an affiliate of MLIF and the University's majority shareholder, was going public and would be traded on the TSX Venture Exchange.

[167] Within 20 minutes of the commencement of the meeting, Chau and Tulsiani provided investors with forms to invest in the 402 series of bonds and convert from the 401 series of bonds. Tulsiani and Chau provided a subscription agreement for the 402 series of bonds and a document entitled "CONSENT FORM" for investors in the 401 series of bonds to convert into 402 and 402A series of bonds which referred to "Mr. Vijai Sookhai, attorney at law, who is holding my funds in trust".

[168] Investors Five and Nine attended the 6:00 p.m. meeting on January 22, 2009. Chau gave a presentation to the group and discussed the University, indicated that the University was going public and also provided promotional materials. He pledged the University as security for the 402 series of bonds and painted the investment as "so rosy" that "risks never really came up" (Testimony of Investor Five in Hearing Transcript dated January 13, 2011 at p. 43).

[169] Chau and Tulsiani also asked the 401 series of bond investors who attended the January 22 6:00 p.m. meeting to convert their bonds into the 402 series of bonds and sign the consent and subscription agreements. Chau and Tulsiani told investors that the 402 series of bonds would mature in 60 days and would pay 60% interest on the principal invested.

[170] Tulsiani, who had encouraged Investor Nine to attend the earlier 6:00 p.m. meeting as she was still on the waiting list for the 401 series of bonds, told her that the 402 series of bonds was "the best investment that you can get" (Testimony of Investor Nine in Hearing Transcript dated January 14, 2011 at p. 221).

[171] When the 6:00 p.m. meeting concluded, Tulsiani and Chau told the 401 series of bond investors who were scheduled for the 7:00 p.m. meeting that the "60% in 60 days deal", also known as the 402 series of bonds, was sold out. However, after leaving to speak with Chau for a moment, Tulsiani returned and indicated that, despite not needing the money, Chau would give them the opportunity to convert their 401 series of bonds into the 402A series of bonds which had a 90-day maturity and would pay 60% interest on the principal invested.

> A. And then when our turn came, when the other people finished the meeting, Sunil came and said that, if I remember correctly, they were looking for $600,000 to get in this new arrangement, 60 days – 60 percent in 60 days, and that the $600,000 have already been accounted for by the people there, **so we really don't need your money.**
>
> Q. Okay. And when you say, "the people there", who are you referring to?
>
> A. The group who had the meeting before us.
>
> Q. Okay. And?
>
> A. And then the people said, what happens to us? I mean, we came all the way here and why are we not included in that?
>
> So he went back in and then a few minutes later he came back and he said that, okay, Henry Chau will explain it to you. We will make a new arrangement for you guys. And then they explained that, okay, this will be a new deal. This won't be the 60 days – 60 percent in 60 days. **We'll make a concession to this group because they came all the way in this winter.** We will make a new arrangement. We'll call it 60 percent in 90 days.
>
> (Emphasis added)
>
> (Testimony of Investor Six in Hearing Transcript dated January 13, 2011 at p. 151)

[172] Investor Six taped the second meeting at 7:00 p.m. Chau represented that investors' funds were still being held in trust and again discussed the University. Following Chau's presentation, Tulsiani explained the 402 series of bonds and commented on the differences between the 401 series of bonds and the 402 series of bonds, including the relative security of the two investments.

[173] Investor Six testified that there appeared to be no risk given the valuable security that Chau was offering:

> A. They were eager to convert because he explained to us that there is absolutely no risk, that there is a 250-million-dollar university as a security and there is the 5.2 million-dollar land for $600,000 of loan. So there is no risk, and Sunil was saying we don't lose anything to convert.
>
> (Testimony of Investor Six in Hearing Transcript dated January 13, 2011 at pp. 161-162)

[174] Tulsiani also acted as an intermediary between investors and Chau. In the context of providing this advice, Tulsiani told the investors present:

> I love Henry [Chau] but I am with you guys.
>
> (Testimony of Investor Six in Hearing Transcript dated January 13, 2011 at p. 177)

[175] Tulsiani further advised the investors in attendance that "he [Chau] doesn't really need the money" and continued, "to him [Chau] it's peanuts…it's nothing" (Testimony of Investor Six in Hearing Transcript dated January 13, 2011 at p. 179). In the context of commenting on the conversion from the 401 series to the 402A series of bonds, Tulsiani advised the investors: "you really have nothing to lose" (Testimony of Investor Six in Hearing Transcript dated January 13, 2011 at p. 174).

[176] From the presentations given, several investor witnesses testified that they understood the terms of the 401 and 402 series of bonds to be substantially the same.

[177] The Respondents raised $2.8 million from the promotion of the 400 series of bonds.

[178] Investors in the 400 series of bonds who testified gave evidence as to their financial situation. At the time that they invested in either the 401 or 402 series of bonds, none of them:

(a) Earned $200,000 in net annual income before taxes or $300,000 in annual net income together with a spouse;

(b) Beneficially owned alone or together with their spouse financial assets net of liabilities that had an aggregate realizable value before taxes of $1 million; or

(c) Beneficially owned alone or together with their spouse assets (including financial assets and other property) net of liabilities that had an aggregate realizable value before taxes of $5 million.

Actual Operations of MLIF in Late 2008 and 2009 and Use of 400 Series of Bond Funds

[179] In 2008, Tulsiani and Tulsiani Investments promoted the condominiums forming part of the Project to a number of PIC members including a few who later invested in the 400 series of bonds.

[180] On December 4 and 5, 2008, Chau wrote to Ravinder and Tulsiani who he referred to as "Marketing Genees" [*sic*] asking them to confirm that they were proceeding with the syndication campaign that week. He provided certain materials including Eshuis's confirmation of what had been paid for the purchase and paying down of the mortgages on the West-End Property. He expressed the hope that the materials were sufficient and indicated:

> …As I said, this is the time to make the big profit or to flop in the face, for both of us. Make it happen next week.

[181] Chau and Tulsiani discussed compensation a few days later. Chau proposed the following in that regard:

> 5) In addition to paying the bond interest to the bond purchasers, MLIF would pay 15% on the net profit from the sales of the condominiums and shops of the Maple Leaf Hotel in Curacao as a bonus to PIC. Half of the amount would be in cash and the other half would be in the form of second mortgage on the condominiums.
>
> 6) The estimated cash portion of the above bonus would be paid in 12 monthly instalments starting in March 2009.

7) The commission that was due to PIC from the sales of the about 60% sold condominiums would be paid to PIC by 12 monthly instalments in 2009.

[182] Tulsiani wanted the 15% in cash saying that "You will remember [that] I said, 15% of the estimated profit plus the commission owing divided by 12 (months)" but Chau insisted that 50% be paid out of the second mortgage to be taken on the condominiums.

[183] Neither Tulsiani nor Tulsiani Investments disclosed to investors that they were to receive a commission or compensation of any kind for the sale of the 400 series of bonds. Investor Five, who did not know of the discussions Tulsiani was having with Chau, testified that this would have changed his perception of the investment. His understanding from Tulsiani was that Tulsiani invested alongside investors in every deal and he was in the same position as Tulsiani.

[184] On December 19, 2008, following the promotion and sale of the 401 series of bonds, Chau instructed Sookhai to wire $1.4 million raised from the sales to Eshuis's trust account in Curacao.

[185] On December 25, 2008, Chau directed Sookhai, with the approval of Tulsiani to whom he sent a copy of his email message, to instruct Eshuis to "release US$100,000 to the second mortgage holder" of the West-End Property.

[186] On December 28, 2008, Sookhai instructed Eshuis to "release the sum of US$100,000.00 to the second mortgage holder of the [West-End Property]".

[187] On January 8, 2009, Caribbean Petrol Holding Ltd. and Nilajade Finance Holdings Inc., the holders of the second mortgage on the West-End Property (the "**Second Mortgage Holders**"), placed a lien on Eshuis's account. On the same day, Chau sent an email message to Tulsiani to have Sookhai instruct Eshuis to release a further US$50,000 to the Second Mortgage Holders. On January 9, 2009, Tulsiani emailed Sookhai "Please instruct Eshuis to release [US]$50,000 right away". Sookhai sent an email message to Eshuis on January 9, 2009 to authorize the release of US$50,000 to the Second Mortgage Holders.

[188] On January 20, 2009, Pacific European Finance N.V. ("**PEF**") placed a lien on the MLIF funds on deposit with Eshuis in order to collect the outstanding balance of the sale price of the West-End Property from MLIF. As of January 27, 2009, the overdue balance payable to PEF was US$1,867,711.86.

[189] On January 27, 2009, MLIF and PEF entered into an agreement to release the PEF lien and to also have the lien placed by the Second Mortgage Holders on January 8, 2009 released. MLIF agreed to pay the following amounts:

(a) US$500,000 to PEF, to reduce the outstanding debt; and

(b) US$401,000 to the account of MLEF, to be distributed on the instructions of MLEF and Global Health Education Partners Ltd. ("**GHEP**") as set out in their own separate agreement.

[190] On the same day, MLEF and GHEP entered into an agreement whereby MLEF agreed to transfer funds to creditors of Martinus University Services for and on behalf of GHEP representing payments that were due on September 30, 2008, October 31, 2008, November 30, 2008 and January 15, 2009.

[191] After reaching the agreements described above, Chau indicated to the parties in an email message copied to Sookhai that he would "instruct my parties about transferring of funds". On January 28, 2009, Sookhai sent instructions to Eshuis to make certain disbursements out of the funds held in trust. The funds, the original US$1.4 million less the US$150,000 authorized to be distributed previously, were to be transferred as follows:

(a) US$500,000 to PEF;

(b) US$401,000 to LFFW Law, Arend Dewinter in trust for MLEF;

(c) US$10,000 to Eshuis for legal fees; and

(d) US$339,000 to Sookhai's trust account.

Tulsiani was also aware of these instructions as he was copied on various email messages.

[192] The funds distributed in accordance with the foregoing agreements were received from investors in the 400 series of bonds but were diverted by Chau to uses other than the Project.

[193] Sookhai then sent to the MLIF RBC Account $401,208.74 in three tranches on January 30, 2009, February 20, 2009 and March 11, 2009, on Chau's direction as indicated on one of the cheques.

[194] Tulsiani was "aware at all times of each and every transaction which included all wiring of funds and receipt of funds and disbursement of funds".

[195] Chau caused MLIF to use the funds from the 400 series of bond investors sent by Sookhai primarily to pay the following:

(a) $42,900 to Chau consisting almost entirely of net transfers to his personal account at RBC, cash payments and payments for salary;

(b) $36,914 for various business expenses of MLIF, not including $70,000 paid to Tulsiani as commissions or fees;

(c) $137,899 to the University or MLEF; and

(d) $64,500 to MLI Acquisitions Ltd.

[196] In May 2009, as a result of pressure from the 402 and 402A series of bond investors who remained unpaid, Tulsiani forwarded an extensive exchange of email messages and documents relating to his and Tulsiani Investments' dealings with Chau and MLIF to the 402 series of bond investors. The email messages had the effect of

disclosing to the investors for the first time that the funds they invested in the 402 and 402A series of bonds were being employed by Chau and MLIF as security for land transactions in Curacao and not, as represented by the Respondents, as so-called show money for prospective lenders.

[197] Investor Five testified that his reaction to the email chain as "one of those 'oh, my God' moments" (Testimony of Investor Five in Hearing Transcript dated January 13, 2011 at p. 72). Investor Seven described her reaction as a "complete shock" and the situation as a "betrayal" (Testimony of Investor Seven in Hearing Transcript dated January 14, 2011 at p. 80).

[198] Investor Six testified that he thought Tulsiani was "a very trustworthy person" and that this view only changed when he received the series of email messages discussed at paragraph 196 above (Testimony of Investor Six in Hearing Transcript dated January 13, 2011 at p. 187).

[199] The witnesses who invested in the 401 and/or 402 series of bonds, with the exception of Investor Seven who received a refund of $50,000, did not have the principal of their investments returned or receive any interest payments. The losses were very significant for most of these investors. Investments made by some investors ranged from $25,000 to $50,000.

[200] The witnesses who invested in the 100 and 200 series of bonds, with the exception of Investor Four, did not have the principal of their investments returned when the bonds matured. They too suffered significant financial losses. Investments made by the investors ranged from $25,000 to $50,000.

[201] Of the $4,475,000 invested in MLIF bonds, $1,275,000 was returned to investors, and $67,894 was paid out in interest to holders of the MLIF bonds. Of the $4,475,000 invested in the MLIF bonds, over $3.1 million was never returned to investors.

[202] Chau caused MLIF to pay him over $450,000 from the MLIF bank accounts between March 2007 and May 2009. He also caused MLIF to pay over $1.7 million on behalf of the University and other developments that were not part of the Project.

VII. ANALYSIS

A. Did Chau, MLIF, Tulsiani and Tulsiani Investments trade in securities of MLIF without being registered to trade in securities, contrary to subsection 25(1)(a) of the Act?

i. Submissions

Staff

[203] Staff submits that the Respondents traded in securities without registration, in circumstances in which no exemption from registration was available, contrary to subsection 25(1)(a) of the Act.

Chau and MLIF

[204] In their written submissions, Chau and MLIF do not specifically address this issue and rely on the purported accredited investor exemption which we discuss at paragraphs 263 to 284 below.

Tulsiani and Tulsiani Investments

[205] Through their counsel, Tulsiani and Tulsiani Investments admitted that they had engaged in the trading of securities of MLIF without being registered to do so, contrary to subsection 25(1)(a) of the Act.

ii. The Law

Trading Without Registration

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

> 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;
>
> …
>
> and the registration has been made in accordance with Ontario securities law and the person or company has received written notice of the registration from the Director and, where the registration is subject to terms and conditions, the person or company complies with such terms and conditions.

[207] The definition of a "security" as defined in subsection 1(1) of the Act includes "any bond".

[208] Registration requirements play a key role in Ontario securities law and form one of the cornerstones of the regulatory framework of the Act. They impose requirements of proficiency, good character and ethical standards on those people and companies trading in and advising on securities. As the Commission stated in *Re Limelight Entertainment Inc.* (2008), 31 O.S.C.B. 1727 ("***Limelight***") at para. 135:

> Registration serves an important gate-keeping mechanism ensuring that only properly qualified and suitable individuals are permitted to be registrants and to trade with or 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.

[209] Further, as stated in *Gregory & Co. v. Quebec (Securities Commission)*, [1961] S.C.R. 584 at p. 588:

> The paramount object of the Act is to ensure that persons who, in the province, carry on the business of trading in securities or acting as investment counsel, shall be honest and of good repute and, in this way, to protect the public, in the province or elsewhere, from

> being defrauded as a result of certain activities initiated in the province by persons therein carrying on such a business. For the attainment of this object, trading in securities is defined in s. 14 [now s. 1.1]; registration is provided for in s. 16 [now s. 25] as a requisite to trade in securities…

[210] The definition of "trade" or "trading" as defined in subsection 1(1) of the Act 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 any of the foregoing.

[211] Whether an act is in furtherance of a trade is a question of fact, to be determined in each case, based on whether there is a sufficiently proximate connection to the trade. As explained in the case *Re Costello* (2003), 26 O.S.C.B. 1617 ("***Costello***") at para. 47:

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

[212] A contextual approach has been adopted by the Commission to determine whether a non-registered individual or company engaged in acts in furtherance of a trade. In applying this approach, the Commission should examine "the totality of [a respondent's] conduct and the setting in which the acts have occurred, the primary consideration of which is the effects the acts had on those to whom they were directed" (*Re Momentas Corp.* (2006), 29 O.S.C.B. 7408 ("***Momentas***") at para. 77; and *Re Sabourin* (2009), 32 O.S.C.B. 2707 at para. 59).

[213] Solicitation or direct contact with investors is not required for an act to constitute an act in furtherance of a trade (*Re Lett* (2004), 27 O.S.C.B. 3215 ("***Lett***") at paras. 48-51 and 64; and *Re Allen* (2005), 28 O.S.C.B. 8541 ("***Allen***") at para. 85).

[214] In *Momentas*, *supra*, at para. 80, the Commission reviewed the jurisprudence and listed the following examples of activities that have fallen within the scope of "acts in furtherance of a trade":

(a) Providing potential investors with subscription agreements to execute;

(b) Distributing promotional materials concerning potential investments;

(c) Issuing and signing share certificates;

(d) Preparing and disseminating materials describing investment programs;

(e) Preparing and disseminating forms of agreements for signature by investors;

(f) Conducting information sessions with groups of investors; and

(g) Meeting with individual investors.

[215] Other decisions by the Commission and other securities regulators have established that the following actions constitute acts in furtherance of a trade:

(a) Acceptance of funds from investors for the purpose of an investment (*Lett*, *supra*, at paras. 48-51 and 64; *Allen*, *supra*, at para. 85; and *Limelight*, *supra*, at para. 133);

(b) Depositing investor cheques for the purchase of shares in a bank account (*Limelight*, *supra*, at para. 133);

(c) Issuing and signing share certificates and instructing solicitors in connection with the issuance and exchange of shares (*Del Bianco v. Alberta (Securities Commission)* (2004), 357 A.R. 361 at para. 9); and

(d) Setting up websites intended to "excite the reader" about the company's prospects, soliciting potential investors by utilizing the content of the website, and/or using numerous misleading statements, which investors relied on when making their investments. The Commission has found that persons who provide the content and maintain websites that have a "proximate connection" to a trade have engaged in acts in furtherance of a trade (see *Re First Federal Capital (Canada) Corp.* (2004), 27 O.S.C.B. 1603 ("***First Federal***") at paras. 45 and 49; and *Re American Technology Exploration Corp.*, [1998] 4 B.C.S.C.W.S. 7).

iii. Analysis

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

Registration

[217] We find that none of the Respondents in this matter was ever registered with the Commission in any capacity, and as discussed at paragraphs 263 to 284 below, no registration exemptions were available to the Respondents as most, if not all, of the investors were not accredited investors.

Trading and Acts in Furtherance of Trades

Tulsiani and Tulsiani Investments

[218] Through their counsel, Tulsiani and Tulsiani Investments admitted that they engaged in trading the 400 series of bonds in breach of subsection 25(1)(a) of the Act.

Chau and MLIF

[219] Chau and MLIF acknowledged that they sold all four series of bonds.

[220] Staff submits, and we agree, that there is ample evidence that Chau and MLIF engaged in activities or a course of conduct which constituted "acts in furtherance of a trade".

[221] These activities can be summarized as follows:

(a) Maintaining a website for MLIF promoting the Project and the MLIF bonds;

(b) Placing advertisements in newspapers promoting the MLIF bonds;

(c) Employing people to promote and sell the MLIF bonds;

(d) Conducting seminars and meetings and providing written materials to investors promoting the Project and the MLIF bonds;

(e) Drafting and providing the MLIF Forms, including subscription agreements, to investors for the purchase of the MLIF bonds; and

(f) Assisting and directing investors with respect to the completion of the MLIF Forms.

iv. Findings

[222] Based on the admissions and evidence discussed at paragraphs 217 to 221 above, we find that all of the Respondents traded in securities of MLIF without being registered to trade in securities, contrary to subsection 25(1)(a) of the Act. For the reasons set out at paragraphs 263 to 284 below, there were no registration exemptions available to them.

B. Did Tulsiani and Tulsiani Investments engage in advising with respect to investing in securities of MLIF without being registered to advise in securities, contrary to subsection 25(1)(c) (now 25(3)) of the Act?

i. Submissions

Staff

[223] Staff submits that Tulsiani and Tulsiani Investments engaged in advising with respect to investing in securities of MLIF without being registered to advise in securities, contrary to subsection 25(1)(c) of the Act. In particular, Staff submits that these Respondents promoted the sale of the 400 series of bonds and recommended them to the public, as set out at paragraph 21 of our Reasons and Decision.

Tulsiani and Tulsiani Investments

[224] Through their counsel, Tulsiani and Tulsiani Investments admitted that they promoted the sale of the 400 series of bonds, and that they recommended them to members of the public.

ii. The Law

[225] The British Columbia Securities Commission in *Re Donas*, [1995] 14 B.C.S.C.W.S. 39 ("***Donas***") at p. 44 discussed the adviser registration requirement:

> It is because the very nature of advising involves the offering of an opinion or recommendation to others that the Act requires advisers to be registered and to meet certain conditions as to their education and experience. This requirement is intended to protect the public…

[226] In Ontario, the registration requirement for advising with respect to securities is set out in subsection 25(3) of the Act.

> (3) Unless a person or company is exempt under Ontario securities law from the requirement to comply with this subsection, the person or company shall not engage in the business of, or hold himself, herself or itself out as engaging in the business of, advising anyone with respect to investing in, buying or selling securities unless the person or company,
>
> (a) is registered in accordance with Ontario securities law as an adviser;
>
> (b) is a representative registered in accordance with Ontario securities law as an advising representative of a registered adviser and is acting on behalf of the registered adviser; or
>
> (c) is a representative registered in accordance with Ontario securities law as an associate advising representative of a registered adviser and is acting on behalf of the registered adviser under the supervision of a registered advising representative of the registered adviser.

[227] This subsection came into force with the amendments to the Act on September 28, 2009. Prior to the amendments, the registration requirement for advisers was set out in subsection 25(1)(c) of the Act:

> No person or company shall,
>
> …
>
> (c) act as an adviser unless the person or company is registered as an adviser, or is registered as a representative or as a partner or as an officer of a registered adviser and is acting on behalf of the adviser,
>
> and the registration has been made in accordance with Ontario securities law and the person or company has received written notice of the registration from the Director and, where the registration is subject to terms and conditions, the person or company complies with such terms and conditions.

[228] The new subsection 25(3) is substantively the same as its predecessor subsection 25(1)(c) when the definition of "adviser" is taken into account. The definition of "adviser" is set out in subsection 1(1) of the Act:

> "**adviser**" means a person or company engaging in or holding himself, herself or itself out as **engaging in the business of advising others as to the investing in or the buying or selling of securities**;
>
> (Emphasis added)

[229] During the Material Time, there was no exemption from the adviser registration requirements available to a "person" or "company" pursuant to section 5.1 of OSC Rule 45-501 – Ontario Prospectus and Registration Exemptions.

[230] The leading case on what constitutes "advising" is a decision of the British Columbia Securities Commission, *Donas*:

> As indicated by the definition of "advice", the nature of the information given or offered by a person is the key factor in determining whether that person is advising with respect to investment in or the purchase or sale of securities. A person who does nothing more than provide factual information about an issuer and its business activities is not advising in securities. A person who recommends an investment in an issuer or the purchase or sale of an issuers securities, or who distributes or offers an opinion on the investment merits of an issuer or an issuers securities, is advising in securities. If a person advising in securities is distributing or offering the advice in a manner that reflects a business purpose, the person is required to be registered under the Act.
>
> (*Donas, supra*, at p. 45)

[231] In *Re Maguire* (1995), 18 O.S.C.B. 4623 ("***Maguire***"), the Commission adopted the test set out in *Donas* and has continued to apply it in subsequent cases (See *Costello*; *Re Dodsley* (2003), 26 O.S.C.B. 1799; and *First Federal*).

[232] The Commission addressed the issue of what constitutes "advice" in *Costello*:

> Providing mere financial information as to specific securities does not constitute the giving of advice, but providing an opinion on the wisdom or value or desirability of investing in specific securities does: *Re Canadian Shareholders Association* (1992), 15 OSCB 617 (Canadian Shareholders).
>
> (*Costello*, *supra*, at paras. 28)

[233] Further, the provision of recommendations and information formulated by others may, nevertheless, constitute advising on behalf of the person providing the information (*First Federal*, *supra*, at para. 33).

iii. Analysis

[234] Tulsiani and Tulsiani Investments operated PIC. Tulsiani was presented to the public, and PIC members in particular, as someone who was qualified to provide investment advice, namely, a former OPP officer who possessed unique negotiation and due diligence skills that he had successfully employed to become a millionaire investor.

[235] Tulsiani and Tulsiani Investments represented at PIC meetings, in promotional materials for PIC and on the Tulsiani Investments website, that Tulsiani and Tulsiani Investments conducted the necessary due diligence and invested in every transaction that was presented to investors, thereby expressly or impliedly recommending each investment that was presented to PIC members.

[236] In addition, the evidence submitted at the hearing demonstrated that Tulsiani provided investors with advice specifically in relation to the MLIF bonds, which included:

(a) Tulsiani and employees of Tulsiani Investments/PIC, under the direction of Tulsiani, sending email messages to PIC members that referred to the 401 series of bonds as "risk free", a "rare opportunity" and "without any risk";

(b) Tulsiani commenting to PIC members over the telephone and in person that, among other things, the investment was "safe", "really safe" and "the best investment that you can get";

(c) Tulsiani telling investors "you really have nothing to lose" in respect of converting their 401 series of bonds to 402A series of bonds; and

(d) Tulsiani commenting on the relative security of the 401 series of bonds and 402/402A series of bonds.

[237] Further and as noted above at paragraphs 50 and 52, Tulsiani, through his counsel, admitted to promoting the sale of the MLIF bonds and "recommending these bonds to members of the public".

[238] In *Donas*, *supra*, at p. 45, the British Columbia Securities Commission held that merely providing information is not sufficient but that a recommendation to buy a specific security accompanied by a business purpose to the person making the recommendation suffices to constitute advising.

[239] The Commission has held that a business purpose exists where the advisor expects to be remunerated in some respect; however, the source of the remuneration is apparently irrelevant. As the Commission noted in *First Federal*:

> […] Where a respondent expects to be remunerated in some respect with respect to his activities, a business purpose is reflected…
>
> Documentation made it clear that First Federal was to receive fees from the Trading Program. Whether the fees were payable by the Bank out of its own funds or out of the funds deposited into the deposit account by the investor is not entirely clear. What is relevant, however, in determining whether there was a commercial purpose for First Federal in giving advice is the fact that it was to receive remuneration because of its activities, regardless of the specific manner or the specific person from whom the remuneration would be paid. We note, incidentally, that the documentation required a direction to be signed by the investor, directing the Bank to pay fees to First Federal.
>
> (*First Federal*, *supra*, at paras. 29-30; see also *Costello* and *Re Hrappstead (c.o.b. North American Group*, [1999] 15 B.C.S.C.W.S.13 ("***Hrappstead***"))

[240] There is no need for advising to be the only business engaged in for there to be a business purpose (*Costello v. Ontario (Securities Commission)* (2004), 242 D.L.R. (4th) 301 at para. 62).

[241] In *Maguire*, the business purpose was evidenced by an advertisement in the Yellow Pages for "Investment Advisory Services" and by the receipt of a fee or commission relating to the investment made by the party acting on the evidence. The major business of Maguire was the giving of tax planning advice, and the securities

advice was given in that context. Nevertheless, Maguire was held to be within that section (*Maguire*, *supra*, at p. 1801).

[242] In *Hrappstead*, the business purpose element was satisfied even though there was no evidence that any investors had acted on Hrappstead's advice or that he had received a payment of any kind in return for his advice. As to his business purpose, "one need look no further than what he stood to receive if the Investment Programs were successful…" (*Hrappstead*, *supra*, at p. 35)

[243] Staff submits that based on the evidence at the hearing, the business purpose requirement is met with respect to Tulsiani and Tulsiani Investments.

[244] PIC, which was operated by Tulsiani and Tulsiani Investments, charged a membership fee. Investor witnesses testified that they signed up as members, in large part, to learn from Tulsiani and to obtain access to the investment opportunities that Tulsiani recommended. Tulsiani portrayed himself as a successful investor, a millionaire who would mentor PIC members so that they would become millionaires themselves. This is supported by the individual mentorship sessions provided by Tulsiani that were included in the cost of membership as well as the "Millionaire Training Camp" opportunity offered by Tulsiani through PIC for an additional, and substantial, fee.

[245] Tulsiani clearly expected some kind of remuneration from Chau and MLIF as a result of promoting the MLIF bonds. This can be seen from the communications between Tulsiani and Chau about compensation discussed at paragraphs 181 and 182 above.

[246] Tulsiani and Tulsiani Investments, through PIC, had a clear interest in ensuring that the Project received the funding it required as Tulsiani had promoted the MLIF condominium units to PIC members and was entitled to receive further commissions from the sale of MLIF condominium units. Tulsiani was aware of the precarious financial position of the Project and faced reputational risk in the event of its failure, a fact acknowledged by Chau on at least two occasions, as seen in the series of email messages discussed at paragraph 196 above. He did not disclose these conflicts of interest to investors.

[247] As discussed at paragraph 217 above, Tulsiani and Tulsiani Investments were not registered under the Act to advise in securities.

iv. Findings

[248] Based on the forgoing, we find that Tulsiani and Tulsiani Investments engaged in advising with respect to investing in securities of MLIF without being registered to advise in securities, contrary to subsection 25(1)(c) of the Act.

C. Did Chau and MLIF engage in distributions of securities of MLIF when a preliminary prospectus and a prospectus had not been filed and receipts had not been issued for them by the Director, contrary to subsection 53(1) of the Act?

i. Submissions

Staff

[249] Staff submits that the activities of Chau and MLIF constituted distributions of securities of MLIF for which no prospectus was issued, contrary to subsection 53(1) of the Act.

Chau and MLIF

[250] In their written submissions, Chau and MLIF do not specifically address this issue and rely on the purported accredited investor exemption which we discuss at paragraphs 263 to 284 below.

ii. The Law

[251] Subsection 53(1) of the Act sets out the prospectus requirement for trades that comprise a distribution:

> 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.

[252] The definition of "distribution" under subsection 1(1) of the Act provides that:

> "distribution", where used in relation to trading in securities, means,
>
> (a) a trade in securities of an issuer that have not been previously issued,
>
> …

[253] As the Commission held in *Limelight*, a prospectus is fundamental to the protection of the investing public because it ensures that investors have full, true and plain disclosure of information to properly assess the risks of an investment and make an informed decision:

> The requirement to comply with section 53 of the Act is important because a prospectus ensures that prospective investors have full, true and plain disclosure of information to properly assess the risks of an investment and make an informed decision. The prospectus requirements of the Act play a significant role in the overall scheme of investor protection. As stated by the court in *Jones v. F.H. Deacon Hodgson Inc.* (1986), 9 O.S.C.B. 5579 (H.C.) at (p. 5590): "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."
>
> (See, for example, *Limelight*, *supra*, at para. 139; and *First Global*, *supra*, at para. 145)

iii. Analysis

[254] As established above in our discussion of subsection 25(1)(a) of the Act, the Respondents all engaged in trades and/or acts in furtherance of a trade, as defined in the Act, of MLIF securities. The trading requirement in part (a) of the definition of "distribution" under the Act is therefore satisfied.

[255] The second requirement of the definition is that the securities in question have not been previously issued. The evidence demonstrated that Chau and MLIF sold MLIF bonds to investors and Chau had MLIF issue bond certificates to those investors at or near the time of such sales. Staff submits, and we agree, that there is clear evidence that the bonds had not previously been issued.

[256] The evidence further demonstrated that MLIF has never filed a prospectus with the Commission. Chau and MLIF admitted this fact and admitted that no prospectus had ever been issued to qualify the sale of MLIF securities.

iv. Findings

[257] In light of the evidence, we find that Chau and MLIF engaged in distributions of securities of MLIF when a preliminary prospectus and a prospectus had not been filed and receipts had not been issued for them by the Director, contrary to subsection 53(1) of the Act. For the reasons set out at paragraphs 263 to 284 below, there were no prospectus exemptions available to them.

D. Were any registration or prospectus exemptions available to the Respondents?

i. Submissions

Staff

[258] Staff submits that having provided evidence to establish that the Respondents traded in MLIF bonds without registration and that Chau and MLIF engaged in distributions of the MLIF bonds without qualifying them under a prospectus, the onus shifts to the Respondents to establish that an exemption from those requirements was available to them in the circumstances.

Chau and MLIF

[259] Chau submits that he relied on advice given to him by lawyers in Ottawa that he "should only offer these bonds to Accredited Investors and have them sign their declarations", and, accordingly, he did so. Chau further submits that the investors were told that completing the declarations was a requirement before they could participate. Chau submits that it was not his job to explain the requirement to the investors but had clearly instructed his staff that it was a necessity for the investors to declare their own positions.

[260] Chau submits that there is no proof of his staff coercing investors to complete the declarations improperly and thereby misstate their entitlement to accredited investor status, and that he did not normally deal with investors in connection with these issues.

Tulsiani and Tulsiani Investments

[261] Tulsiani and Tulsiani Investments admitted that they engaged in trading the 400 series of bonds in breach of subsection 25(1)(a) of the Act. They did not make any submissions with respect to the existence of any registration exemptions.

ii. The Law

[262] We agree with Staff that the onus shifts to the Respondents to establish that one or more exemptions from the registration and prospectus requirements are available to them (*Limelight*, *supra*, at para. 142).

The Accredited Investor Exemption

[263] During the Material Time, section 2.3 of National Instrument 45-106 – Prospectus and Registration Exemptions ("**NI 45-106**") provided an exemption from the prospectus and registration requirements if the purchaser purchased the security as principal and was an accredited investor.

[264] An "accredited investor" is defined in section 1.1 of NI 45-106 and includes the following:

> […]
>
> (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.
>
> […]

iii. Analysis

[265] On March 25, 2008, Staff made enquiries of Chau regarding the activities of MLIF. On April 8, 2008, Chau responded to Staff advising that MLIF was only selling bonds and shares to "Accredited Investors" in accordance with the Act. Chau further advised that this requirement was explained to investors in person, that Chau and MLIF diligently requested that purchasers examine their own financial position and sign an Accredited Investor's Declaration form declaring their financial positions and assets.

[266] Chau advised Staff that he was the only director and shareholder of MLIF. He further advised that none of his employees was commissioned sales staff and that he was the only one who handled the sales.

[267] Chau advised Staff that MLIF was targeted to be acquired by Maple Leaf International Acquisitions Ltd. which was in the process of becoming a Capital Pool Company under the rules of the TSX Venture Exchange. He indicated that one of Toronto's national law firms was preparing the prospectus but there had been delays, that MLIF had stopped announcing MLIF's expectation to merge in March 2008 and that a more realistic date would likely be near the end of the year. Chau concluded his letter to Staff as follows:

> As you might have noticed that we have decided to stop offering to the public before you sent us these questions because the efforts we put in and the obstacles we have to overcome are not worth the small amount of sales we achieved. We have decided to wait until we have finished with the public listing process before we will offer any products to the public.

[268] When considering the evidence before us, we find that most, if not all, of the MLIF bond investors who testified did not qualify as accredited investors.

[269] Each of Staff's investor witnesses testified with respect to their financial circumstances and none met the definition of an "accredited investor" set out in section 1.1 of NI 45-106.

[270] Further, Masci testified that, based on the investor reviews that he conducted, most of the investors did not meet this definition.

[271] The "Subscriber's Declaration" form that was presented to investors by the Respondents included three statements, the first of which read as follows:

> I alone, or together with my spouse, beneficially own assets that have an aggregate realizable value (before taxes but net of liabilities), exceeding **[C]** $1,000,000.00.
>
> (Emphasis added)

[272] The correct criterion, as stated above, is whether the investor alone, or together with his or her spouse, beneficially owns financial assets that have an aggregate realizable value that before taxes, but net of any related liabilities, exceeds $1,000,000.

[273] Seven of the nine investor witnesses testified that they checked this first box. Investor Three did not check any box and Investor Two checked the box which indicated that his net income before taxes exceeded $200,000 in each of the prior two years, and that he had a reasonable expectation of exceeding that net income level in the current year.

[274] Nonetheless, many of the investor witnesses testified that they indicated to one or more of the Respondents that they did not qualify even under this definition of an accredited investor.

[275] None of the investor witnesses testified that any legitimate efforts were made to determine whether they were in fact accredited investors.

[276] Accordingly, the accredited investor exemption was not available to the Respondents in relation to the trades of MLIF securities or to Chau and MLIF in relation to the distributions of MLIF securities.

[277] Staff submits that, in the alternative, even if Chau and MLIF had provided evidence that the purchasers of the MLIF bonds were accredited investors, the registration exemption was not available as MLIF was a market intermediary and the exemption in section 1.1 of NI 45-106 did not apply to market intermediaries (*Momentas, supra,* at para. 69; *Lett, supra,* at para. 65; *Allen, supra,* at para. 86; and section 2.43 of NI 45-106).

[278] An entity is captured by the definition of a market intermediary as long as there is a predominant function to distribute securities in an organized fashion. This is the case even though the entity has other business purposes at the same time (*Re IMAGIN Diagnostic Centres Inc.* (2010), 33 O.S.C.B. 7761 at para. 120).

[279] A significant amount of MLIF's resources, including the bulk of its workforce, were dedicated to the raising of capital.

[280] Investor Three testified that MLIF hosted two seminars a week, one in English and one in either Mandarin or Cantonese, during which members of the public were solicited to invest in the MLIF bonds and that her role was to participate in these seminars. Investor Three further testified that MLIF had a high turnover of staff and that there were approximately 13 to 16 people working at MLIF whose job was to "sell" (Testimony of Investor Three in Hearing Transcript dated January 12, 2011 at p. 36). Investor Three later clarified that by "sell" she meant the MLIF condominium units, MLIF shares and MLIF bonds. Investor Four testified that she was solicited by Investor Three to purchase the MLIF bonds and that Investor Three told her that she was employed by MLIF to sell the MLIF bonds.

[281] In *Momentas*, the Commission held that the extent to which a company's resources are dedicated to the raising of capital and whether a company's primary source of revenues is from its capital raising are relevant considerations when determining whether the company is a market intermediary (*Momentas, supra,* at paras. 55, 61 and 62).

[282] The evidence at the hearing showed that the only source of revenues for MLIF was through the sale of its bonds, shares and, later, its condominium units and the main business expenses for MLIF related to the raising of capital from investors.

[283] Further, a significant amount of investor funds were used to pay for MLIF office expenses, commissions and fees paid to salespersons and interest payments on the MLIF bonds.

iv. Findings

[284] Based on the foregoing, we find that the accredited investor exemption was not available to the Respondents in relation to the trades of MLIF securities or to Chau and MLIF in relation to the distributions of MLIF securities. We also find that even if Chau

and MLIF had provided evidence that the purchasers of the MLIF bonds were accredited investors, Chau and MLIF were market intermediaries and, accordingly, were not entitled to rely on any accredited investor exemptions from the registration requirements under the Act.

E. Did Chau and MLIF, with the intention of effecting a trade in securities of MLIF, make representations without the written permission of the Director that such securities would be listed on a stock exchange or quoted on a quotation and trade reporting system, contrary to subsection 38(3) of the Act?

i. Submissions

Staff

[285] Staff submits that the representations made to investors and potential investors in MLIF were representations prohibited by subsection 38(3) of the Act.

Chau and MLIF

[286] Neither Chau nor MLIF made any submissions with respect to this issue.

ii. The Law

[287] Subsection 38(3) of the Act prohibits representations with respect to the future listing of a security on any stock exchange. Subsection 38(3) of the Act states:

> 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.

[288] Unlike subsection 38(2) of the Act, subsection 38(3) does not require an undertaking with respect to the future listing, only a representation**.** A representation about listing shares on a stock exchange is sufficient to constitute a violation of subsection 38(3) of the Act. For example, in the *Limelight* case, the Commission found that evidence of salespersons stating that Limelight shares would be listed on an exchange, with the timeframe given ranging from 10 to 12 days to a year, constituted a breach of subsection 38(3) of the Act (*Limelight*, *supra*, at para. 181).

iii. Analysis

[289] The evidence presented to us at the hearing established that Chau and MLIF made representations that MLIF would be listed on an exchange. Investors were told that MLIF would be going public and/or initiating an initial public offering in the near future and that the price of the shares would increase once MLIF was listed on an exchange. These representations were made in the context of selling the MLIF shares and MLIF bonds, which were represented to be convertible into shares, to investors. In addition, investors testified that they relied on, and were influenced by, those representations when deciding to invest.

[290] Chau and MLIF also made representations on the MLIF website that MLIF would be going public and would be listed on the TSX Venture (TSX-V). Chau repeated this misinformation by:

(a) Causing MLIF to send email updates referring to the status of the MLIF initial public offering and/or MLIF going public; and

(b) Making MLIF brochures available which referred to MLIF going public.

[291] Based on the evidence presented to us at the hearing, it is clear that Chau intended to effect trades in the shares of MLIF.

[292] MLIF promotional materials, email messages to investors and the Subscription Applications referred to the shares being listed on the "Toronto Exchange", the "Toronto Stock Exchange", the "Toronto Stock Exchange Venture" or the "TSX-V".

[293] The MLIF website (www.mapleleaffund.com) repeated many of these representations, including that MLIF "is pursuing going public and expects to be listed in Toronto Stock Exchange Venture (TSX-V)", and that "[a]fter maturity bondholders have the option of converting their principle [*sic*] investment into shares…"

[294] Both Investors Three and Four purchased shares.

[295] Further, the signed Subscription Applications that were approved by Chau on behalf of MLIF referred to the "Issuer" in the process of "getting listed at the Toronto Stock Exchange (TSXV)". These Subscription Applications were provided to investors at the time they invested in the shares. The testimony of the investor witnesses makes it clear that they understood from Chau that they were purchasing MLIF securities and that these securities would be listed on the TSX.

[296] We received no evidence that the Director provided written permission with respect to any representation relating to a listing on any stock exchange or quotation on any quotation and trade reporting system.

iv. Findings

[297] For these reasons, we are satisfied that, without the permission of the Director, Chau and MLIF made representations, with the intention of effecting a trade in securities

of MLIF, that such securities would be listed on a stock exchange or quoted on a quotation and trade reporting system, contrary to subsection 38(3) of the Act.

F. Did Chau and MLIF engage in fraud in breach of subsection 126.1(b) of the Act?

i. Submissions

Staff

[298] Staff submits that the evidence shows that Chau and MLIF engaged in conduct relating to securities that they knew or reasonably ought to have known would perpetrate a fraud on MLIF bond investors.

Chau and MLIF

The use of funds

[299] Chau submits that MLIF had an obligation to pay back the loans according to the terms agreed upon, and that there was no restriction on the use of funds by MLIF or the project in which they would be invested. The Project was the one in which MLIF was invested at the time but it did not have to be the only project in which MLIF invested.

[300] In his written submissions, Chau, when addressing the issue surrounding the use of the funds, states that he acknowledged having used a portion of the funds to pay a salary to himself and his staff which he submits was not prohibited by the terms of the agreements with investors.

ii. The Law

[301] Subsection 126.1(b) of the Act prohibits conduct relating to securities that a person or company knows or reasonably ought to know would perpetrate a fraud. The basis for an allegation of fraud involving securities is found under subsection 126.1(b) of the Act, which states:

> 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.

[302] In interpreting the term "fraud", the Commission has taken the approach by other securities regulators and adopted the definition from the decision of the Supreme Court of Canada in *R. v. Théroux*, [1993] 2 S.C.R. 5 ("***Théroux***").

[303] In *Anderson v. British Columbia (Securities Commission)* (2004), 192 B.C.A.C. 119 ("***Anderson***") (leave to appeal to the Supreme Court of Canada denied, [2004] S.C.C.A. No. 81 (S.C.C.)), the British Columbia Court of Appeal reviewed the legal test for fraud and relied on *Théroux*. In *Théroux, supra*, at para. 27, McLachlin J. (as she then was) summarized the elements of fraud as follows:

> …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).

We also rely on the following cases:

- *Anderson*, *supra*, at para. 27;
- *Re Al-Tar Energy Corp.* (2010), 33 O.S.C.B. 5535 ("***Al-Tar***") at paras. 216-221;
- *Re Lehman Cohort Global Group Inc.* (2010), 33 O.S.C.B. 7041 at paras. 95-100;
- *Re Global Partners Capital* (2010), 33 O.S.C.B. 7783 at paras. 239-245; and
- *Re Borealis International Inc*. (2011), 34 O.S.C.B. 777 ("***Borealis***") at paras. 65-67.

The Act of Fraud

[304] The *actus reus* of the offence of fraud is established upon proof of two essential elements: a dishonest act and deprivation (*Théroux*, *supra*, at para. 16).

[305] The first element, the dishonest act, is established by proof of deceit, falsehood or "other fraudulent means". The second element, deprivation, is established by proof of detriment, prejudice, or risk of prejudice to the economic interests of the victim, caused by the dishonest act (*Théroux*, *supra*, at paras. 16 and 27).

Dishonest Acts: Deceit, Falsehood and "Other Fraudulent Means"

[306] A dishonest act may be established by proof of deceit, falsehood or "other fraudulent means" (*Théroux*, *supra*, at para. 16).

[307] In order to find fraud by deceit or by falsehood, "all that need be determined is whether the accused, as a matter of fact, represented that a situation was of a certain character, when, in reality, it was not" (*Théroux*, *supra*, at para. 18).

[308] The third category of dishonesty, "other fraudulent means", encompasses all other means other than deceit or falsehood, which can properly be characterized as dishonest. In considering whether an act is "dishonest", the Supreme Court of Canada has held that the issue is "determined objectively, by reference to what a reasonable person would

consider to be a dishonest act". (*Théroux*, *supra*, at paras. 17-18; and *R. v. Olan*, [1979] 2 S.C.R. 1175 ("***Olan***") at p. 1180).

[309] Within the meaning of "other fraudulent means", courts have included the non-disclosure of important facts, the unauthorized diversion of funds and the unauthorized arrogation of funds or property (*R. v. Zlatic*, [1993] 2 S.C.R. 29 at p. 44; and *Théroux*, *supra*, at para. 18).

[310] In *Re Capital Alternatives Inc.*, 2007 ABASC 79 ("***Capital Alternatives***"), the Alberta Securities Commission also found fraud on the basis of the non-disclosure of information required to be disclosed to investors. In that case, the Alberta Securities Commission held that the omission of material information in an offering memorandum (what investors would be investing in, how their funds would be spent, the risks of the investment) "conveyed a thoroughly misleading picture of what investors were buying into and what was happening with their money" which was "misleading, deceitful and fraudulent". (*Capital Alternatives*, *supra*, at paras. 205-206, 209-215, 243-245, 258, 264-265, aff'd in *Alberta (Securities Commission) v. Brost* (2008), 440 A.R. 7 ("***Brost C.A.***"), at paras. 12 and 41).

[311] In *Borealis*, the Commission recently found fraud where partial information and misinformation was provided regarding the relationship of the issuer with other established entities and the amount of insurance coverage available to protect the investments. The Commission found that the investors were misled about the nature and extent of the security of the investment (*Borealis*, *supra*, at paras. 87, 88, 102, 104-108).

[312] The use of an investor's funds in an unauthorized manner also constitutes "other fraudulent means". In *R. v. Currie* (1984), 5 O.A.C. 280 ("***Currie***"), the accused solicited investments in a factoring scheme which would purchase the accounts receivable of a company known as "Water-Eze Products Ltd.". Investor funds specifically invested for the scheme, however, were diverted by the accused to an aviation company known as "Aerobec" (*Currie*, *supra*, at para. 7). The Ontario Court of Appeal rejected the argument that the accused had implied general discretionary power to invest the funds and noted that it was "clear that the investors responded to a very specific investment proposal" (*Currie*, *supra*, at para. 15). The fraud convictions were upheld.

Deprivation

[313] The second essential element of the *actus reus* of fraud, "deprivation", is satisfied on proof of:

(a) Actual loss to the victim;

(b) Prejudice to a victim's economic interests; or

(c) The risk of prejudice to the economic interests of a victim.

(*Théroux*, *supra*, at paras. 16 and 27)

[314] While actual economic loss suffered by a victim may establish deprivation, it is not required for a finding of fraud. Either "prejudice" or the risk of prejudice to an

economic interest is sufficient (*Olan*, *supra*, at pp. 1182-1183; and *Théroux*, *supra*, at paras. 16-17 and 27).

[315] Prejudice to an economic interest may be established by proof that a victim faced a risk of economic loss, even if that risk did not materialize. "Risk of prejudice" consists of inducing an alleged victim through the accused's dishonesty, to take some form of economic action (such as the making of an investment or a loan), even if that action did not cause an actual economic loss or did not carry with it a risk of economic loss (*Borealis*, *supra*, at para. 19; *Re Borealis International Inc*. (2011), 34 O.S.C.B. 5261 at para. 10; *R. v. Downey*, [2002] O.J. No. 2228 (Ont. S.C.J.) at para. 9, aff'd, [2005] O.J. No. 6301 (Ont. C.A.); Nightingale, *The Law of Fraud and Related Offences* (loose-leaf) (Scarborough: Thomson Carswell, 2009) at pp. 4-22 and 4-38; and Ewart, *Criminal Fraud* (Toronto: Carswell, 1986) at p. 126).

[316] In *Théroux*, the accused was the directing mind of a company which entered into agreements with individuals for the purchase of residences and collected deposits on the basis of false representations that the deposits were insured by a government agency. In upholding the convictions of fraud, the Supreme Court of Canada stated:

> The trial judge found that the appellant deliberately lied to his customers, by means of verbal misrepresentations, a certificate of participation in the insurance scheme, and brochures advising that the scheme protected all deposits. **The lies were told in order to induce potential customers to enter into contracts for the homes the appellant was selling and to induce them to give him their money as deposits on the purchase of these homes. The trial judge also found that the appellant knew at the time he made these falsehoods that the insurance for the deposits was not in place.** Finally, he found that the appellant genuinely believed that the homes would be built and hence that there was no risk to the depositors. No "risk" used in this sense is the equivalent of saying the appellant believed the risk would not materialize.
>
> **Applying the principles discussed above, these findings establish that the appellant was guilty of fraud.** The *actus reus* of the offence is clearly established. The appellant committed deliberate falsehoods. **Those falsehoods caused or gave rise to deprivation. First, the depositors did not get the insurance protection they were told they would get. That, in itself, is a deprivation sufficient to establish the *actus reus* fraud.** Second, the money they gave to the appellant's company was put at risk, a risk which in most cases materialized. Again, this suffices to establish deprivation.
>
> (Emphasis added)
>
> (*Théroux*, *supra*, at paras. 41-42)

[317] In establishing deprivation, it is not necessary to prove that an accused ultimately profited or received an economic benefit or gain from the conduct (*Théroux*, *supra*, at para. 19).

The Mental Element of Fraud

[318] The requisite element of proof for the offence of fraud (the *mens rea*) is established by proof of:

(a) Subjective knowledge of the prohibited act; and

(b) 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).

(*Théroux*, *supra*, at para. 27)

[319] This subjective awareness can be inferred from the totality of the evidence; direct evidence as to the accused's specific knowledge at the time of the fraudulent acts is not required (*Théroux*, *supra*, at paras. 23 and 29; and *Brost C.A.*, *supra*, at para. 43).

[320] This subjective awareness of the accused may also be established by evidence showing that the accused was reckless or wilfully blind to the consequence of his or her conduct and the truth or falsity of their statements (*Théroux*, *supra*, at paras. 26 and 28).

[321] A sincere belief or hope that no risk or deprivation would ultimately materialize does not vitiate fraud. As stated in *Théroux*, a "sanguine belief that all will come out right in the end" is not a defence:

> Pragmatic considerations support the view of *mens rea* proposed above. A person who deprives another person of what the latter has should not escape criminal responsibility merely because, according to his moral or her personal code, he or she was doing nothing wrong or because of a sanguine belief that all will come out right in the end. Many frauds are perpetrated by people who think there is nothing wrong in what they are doing or who sincerely believe that their act of placing other people's property at risk will not ultimately result in actual loss to those persons. If the offence of fraud is to catch those who actually practise fraud, its *mens rea* cannot be cast so narrowly as this.
>
> (*Théroux*, *supra*, at para. 36)

[322] The operative language of subsection 126.1(b) of the Act is identical to the comparable provisions of subsection 57(b) of the British Columbia *Securities Act*, R.S.B.C. 1996, c. 418, as amended (the "**BC Act**"). In interpreting subsection 57(b) of the BC Act as it relates to the mental element of fraud, the British Columbia Court of Appeal in *Anderson* stated 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.
>
> (Emphasis in original)
>
> (*Anderson*, *supra*, at para. 26)

[323] When considering the mental element with respect to a corporation, it is sufficient to show that its directing minds knew or reasonably ought to have known that the acts of the corporation perpetrated a fraud to prove a breach of subsection 126.1(b) of the Act (See, for example, *Al-Tar*, *supra*, at para. 221).

iii. Analysis

[324] Chau and MLIF deceived the investors. The following is a summary of the material representations related to the MLIF bonds, MLIF and the Project that were false.

The 100 and 200 series of bonds

Minimum Guaranteed GIC Interest

[325] Chau repeatedly represented that the return on the 100 and 200 series of bonds included guaranteed minimum "GIC interest" which MLIF distinguished from the interest payable by MLIF. While continuing to make these representations about these characteristics of the 100 and 200 series of bonds to other potential investors and encouraging existing investors to promote to others, Chau caused MLIF to cash existing TD GICs, frequently within days of purchase. The use of investors' funds was totally inconsistent with the use represented by Chau and MLIF.

[326] Months after all of the TD GICs had been cashed, Chau deliberately maintained the fiction that the proceeds of the 100 and 200 series of MLIF bonds were being held in GICs earning the minimum guaranteed interest by using funds paid by new MLIF bond investors to pay "annual GIC interest" to existing investors.

Use of Funds – Maintained in a Bank GIC for two years

[327] Chau expressly represented to some 100 series of bond investors that their funds would remain in a bank GIC and provided them with a GIC Certificate which indicated that the funds would be held for two years. While continuing to make these representations about the use of funds raised from the sale of the 100 and 200 series of bonds, Chau caused MLIF to cash existing TD GICs, frequently within days of the purchase.

Use of Funds – Collateral for a Construction Loan for the Project

[328] Chau admitted that he made this representation to some investors; however, Chau caused MLIF to cash the TD GICs and used the funds to pay personal expenses, the ongoing operational expenses of MLIF which were primarily incurred in connection with raising capital, and expenses of other Chau-related companies that were not connected with the Project.

Risks of Investment – Funds Safe or Guaranteed

[329] Chau repeatedly represented to investors that the 100 and 200 series of bonds were a safe investment and/or that the return of the investors' principal was guaranteed. However, once Chau caused MLIF to cash the GICs and spend the money, the investors' funds were fully dissipated and there was little or no prospect of the return of the principal amounts invested by the investors.

The 400 Series of Bonds

Use of Funds – 401 Series of Bonds Would Stay in a Trust Account

[330] Chau made verbal representations and was present when Tulsiani indicated to potential 401 series of bond investors that the money would stay in Sookhai's trust account. Notwithstanding his representations, Chau directed that US$150,000 of the funds be released to pay the Second Mortgage Holders of the West-End Property. Despite having done so, Chau again represented to investors that the proceeds of the 401 series of bond funds were being held in a trust account.

MLIF

MLIF's Financial Situation

[331] Chau and Tam, an officer of MLIF, represented at different times that they had raised millions of dollars in capital and/or did not need investors' money; however, in reality, at the time that these representations were made, MLIF's financial situation was precarious and dependent on the infusion of further funds, primarily from new investors, just to keep operating. TD Bank and RBC only provided credit to the extent that it was secured by GICs and MLIF had to use investor funds to purchase the necessary collateral for the GICs issued by RBC. MLIF's main operating bank accounts were repeatedly in an overdraft position.

[332] Chau repeatedly indicated to all 100 and 200 series of bond investors through statements and promotional materials that such bonds were issued for a two-year term, that the funds would be placed in a bank GIC immediately and that the return on their investment included a guaranteed minimum "GIC interest" which MLIF distinguished from the additional interest payable by MLIF. In doing so, Chau misled investors that the proceeds of the 100 and 200 series of bonds would be deposited immediately and held in the bank GIC until the MLIF bonds matured in two years and acted dishonestly when he caused MLIF to cash the GICs and spend the proceeds derived therefrom partly to defray his personal expenses and partly to defray the expenses of his other companies.

[333] Chau and MLIF acted dishonestly and made serious and material omissions about the risks associated with investing in the MLIF bonds by failing to advise prospective and current investors that:

(a) MLIF was a Start-up Company: Chau misled investors that MLIF was an established company and/or part of a group of established companies by indicating that MLIF's "investment arm" or the Maple Leaf Group had successfully completed many projects around the world in the last twenty years when, in fact, MLIF was a start-up company in 2007 directly owned by Chau personally which could not obtain even modest loans from the banks without fully securing them with GICs in amounts equal to the amounts of the requested loans.

(b) MLIF's Entire Indirect Interest in the West-End Property was at Risk: Chau misled potential 402 series of bond investors about the risks of investing in the 402 series of bonds by failing to disclose that MLIF had:

(i) repeatedly defaulted on its loan obligations;

(ii) been threatened with auction proceedings by creditors which held mortgages on the West-End Property for part of the Project; and

(iii) in order to obtain a further extension of time to pay its obligations, put all of its shares of a related holding company in escrow and agreed that it would forfeit all of them (and thereby its interest in the West-End Property) if it failed to make any further required payments to its creditors.

(c) The University had Financial Problems: Chau misled potential 402 series of bond investors about the value of the "guarantee" by the University by failing to disclose that the University had suffered shortfalls of operating cash since September 2008 and had inadequate resources to pay rent. There was also no evidence that any legal documentation had ever been prepared to give effect to the purported guarantee.

[334] Chau misled potential 402 series of bond investors about the use of their funds and the consequential risks. Chau told potential 402 series of bond investors that their funds were to be used for the Project and agreed to provide a guarantee by the University, which he allegedly owned, as additional security for the funds advanced. However, without telling those investors, Chau had Tulsiani divert some of the funds from the 402 series of bond investors to other uses so more money was left owing to PEF, thereby increasing the risk that MLIF would default on its obligations to PEF. Chau had Tulsiani:

(a) Instruct Eshuis to pay US$401,000 of the funds designated for PEF to Chau's company MLEF to satisfy obligations that it had to GHEP in connection with the University;

(b) Instruct Eshuis to transfer approximately US$339,000 of the funds to Sookhai; and

(c) Instruct Sookhai to transfer approximately $401,000 of the funds to the MLIF RBC Account which Chau then used in part to pay the expenses of MLEF and the University.

[335] The prejudice and risk of prejudice to the economic interests of MLIF bond investors was considerable. The 100 and 200 series of bond investors were deprived of the protection of having their funds kept secure in a bank GIC as they were assured would be the case. The 401 series of bond investors were deprived of the protection of having all of the funds remain secure in a trust account. The 402 series of bond investors were deprived of a valuable guarantee from a financially established and secure guarantor.

[336] Many of the MLIF bond investors suffered actual losses, including the loss of their entire investment, and many lost promised guaranteed interest payments. Of the $4,475,000 invested in all four series of MLIF bonds, over $3.1 million was never repaid to investors.

[337] Chau induced MLIF bond investors to pay significant sums of money for MLIF bonds, sometimes obtained through lines of credits secured against their homes, through deceit and material omissions. The investors were unaware that their promised returns were not generated in any manner similar to what had been represented to them. They were also unaware that the investments were effectively not guaranteed or secured.

[338] Further, contrary to the 100 and 200 series of bond investors' understanding and expectations, Chau and MLIF used the funds raised from the 100 and 200 series of bond investors to pay the following:

(a) $359,345 to Chau of which $279,305 was transferred on a net basis to his personal TD account and the balance was primarily used for salary, cash or the payment of credit cards;

(b) $420,743 for various business expenses of MLIF, primarily advertising and marketing expenses ($110,154), office rent ($90,218) and salaries ($167,856), not including $66,409 paid in commissions or fees; and

(c) $237,642 to or on behalf of other entities which Chau controlled.

[339] The transfers from the MLIF TD Account to Chau's personal TD account represented the bulk of the funds which were deposited in Chau's personal TD account during the period from March 2007 to May 2009. Chau used the majority of those funds, $189,329, to pay personal expenses including a down payment, mortgage payment and property taxes on his home, personal taxes and Canada Pension Plan payments for the years 2005 and 2006, and $4,905 for a "tub" from Recreational Warehouse.

[340] Contrary to Chau's statements to Staff, MLIF employees assisted in the sale of MLIF bonds and Chau and MLIF paid commissions for MLIF bond sales. Investors Three and Four testified that some employees were involved in the sale of bonds and in some instances commissions were paid for such sales. Tam, who various investors testified helped to promote the MLIF bonds, received a commission on one or more sales of such bonds. One cheque from Tam to MLIF dated January 21, 2008 indicates "commission charge-back" for an investor who cancelled his MLIF bond and obtained his money back on November 2, 2007. Investor Three, an investor herself, who acknowledged working at MLIF, introduced Investor Four to the MLIF bond investments and also received small commission payments.

[341] Almost all of the $237,642 paid to or on behalf of Chau controlled entities was paid to: (a) Maple Leaf Property Investments Inc.; and (b) LFFW Attorneys in Curacao. Chau and MLIF transferred $110,200 on a net basis to Maple Leaf Property Investments Inc., a private company Chau owned which had no involvement in the Project.

[342] Chau and MLIF transferred:

(a) $102,060 on March 27, 2008 to LFFW Attorneys; and

(b) $10,414 on April 9, 2008 to HBN Law.

[343] Chau indicated that the amount paid to LFFW Attorneys was paid to the seller for "work done" (Testimony of Dhillon in Hearing Transcript dated January 19, 2011 at p. 78). MLIF did not purchase any interest in any land in connection with the Project until the end of May 2008. However, on March 27, 2008, Chau announced the acquisition of the University. MLEF, a private company owned by Chau, acquired 40% of the shares in GHEP, which owned the University. Chau indicated that MLIF had nothing to do with MLEF but admitted that some of the funds used for the acquisition of the interest in the University came from MLIF and the sale of the MLIF bonds.

[344] Chau and MLIF cashed the TD GICs so quickly that, in all but three cases, no interest was earned on the TD GICs and the total amount of interest earned on the GICs was less than that paid to 100 and 200 series of bond investors.

[345] Chau knew that he was acting fraudulently. He was at the centre of the fraud, was primarily responsible for the creation, marketing and sales of the MLIF bonds, communicated directly and indirectly with MLIF bond investors and actively misled them. He also had direct and total control of the funds received from the 100, 200 and 300 series of bond investors. The totality of the evidence establishes acts from which the Panel can readily infer subjective intent.

[346] Chau was the directing mind of MLIF. As a result, MLIF shared Chau's state of mind and, accordingly, was also aware of the fraudulent conduct.

iv. Findings

[347] We find that Chau and MLIF engaged or participated in acts, practices or courses of conduct relating to MLIF securities that Chau and MLIF knew would perpetrate a fraud on persons or companies, contrary to subsection 126.1(b) of the Act.

[348] In our view, MLIF's course of conduct was fraudulent whether or not its original intention to develop the Project was legitimate. The MLIF website included false information which was used to induce investors to invest. Through the use of classic high pressure sales tactics, members of the public were effectively stampeded into signing documents without the benefit of reviewing them carefully or obtaining independent financial or legal advice and notwithstanding the natural prudence of some of the investors. In addition, it was quite evident from the documentation submitted in evidence that the security purportedly provided to the investors was non-existent and the documentation was largely inconsistent with the oral representations made to the investors by the Respondents.

[349] Once received, the funds provided by investors were transferred to bank accounts controlled by Chau and frequently used in a manner that was contrary to the representations made to the investors by the Respondents.

[350] Once investors had made their investments, they had an increasingly difficult time obtaining reliable information or verifying the status of their investments.

[351] MLIF's sales tactics were aided and abetted by Tulsiani and Tulsiani Investments. In this regard, Tulsiani made extensive reference to his prior career as an OPP officer both on the PIC website and orally with the clear intention and expectation that prospective investors would thereby view him as trustworthy and his assurances as to his expertise, diligence and monetary success as entirely credible. We have no doubt whatsoever that Tulsiani's constant references to his prior experience with the OPP induced investors to take risks which they otherwise would likely not have assumed.

[352] It was also clear from the evidence that the concerns of at least some of the investors were also assuaged by assurances from Chau and Tulsiani that the proceeds of their investments would be held in the trust account of Sookhai. Sookhai was introduced to prospective investors at a PIC meeting on at least one occasion as the lawyer for the investors. The implicit, if not clear, inference that Sookhai was representing the interests of the investors was not challenged or refuted by him, thereby further encouraging prospective investors to rely on the misrepresentations of the Respondents and to sign documents without the benefit of independent legal advice or a legitimate opportunity to read the documents. We believe that we are justified in being concerned about seeing and hearing repeated references to Sookhai's involvement in certain transactions in the documentation and oral evidence given the conduct of the Respondents described in these Reasons and Decision.

G. Are the Individual Respondents responsible for the breaches of the Act by the Corporate Respondents pursuant to section 129.2 of the Act?

i. Submissions

[353] Staff submits that Chau, being a director and officer of MLIF, authorized, permitted or acquiesced in the commission of the violations of subsections 25(1)(a), 53(1), 38(3) and 126.1(b) of the Act by MLIF.

[354] Staff also submits that Tulsiani, being a director of Tulsiani Investments, authorized, permitted or acquiesced in the commission of the violations of subsections 25(1)(a) and 25(1)(c) of the Act by Tulsiani Investments.

[355] Chau admitted in his submissions to indirectly controlling most of the corporations involved in the ownership and development of the Project.

[356] Tulsiani admitted, through his counsel, to being a director of Tulsiani Investments who authorized, permitted or acquiesced in the actions of Tulsiani Investments.

ii. The Law

[357] Pursuant to section 129.2 of the Act, a director or officer is deemed to be liable for a breach of securities law by a company where the director or officer authorized, permitted or acquiesced in the company's non-compliance with the Act. Specifically, section 129.2 states:

> For the purposes of this Act, if a company or a person other than an individual has not complied with Ontario securities law, a director or officer of the company or person who

> authorized, permitted or acquiesced in the non-compliance shall be deemed to also have not complied with Ontario securities law, whether or not any proceeding has been commenced against the company or person under Ontario securities law or any order has been made against the company or person under section 127.

[358] In essence, the director or officer is held liable as the directing mind behind the company's actions.

[359] In subsection 1(1) of the Act, a "director" is defined as "a director of a company or an individual performing a similar function or occupying a similar position for any person" and an "officer" is defined as:

> (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).

[360] The language of section 129.2 also uses the terms "authorize", "permit" and "acquiesce". "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 (*Momentas*, *supra*, at para. 118).

[361] Section 129.2 of the Act attaches liability to directors and officers who authorize, permit or acquiesce in the non-compliance of a company, whether or not any proceedings have been commenced against the company itself.

[362] The threshold for a finding of liability against a director or officer under section 129.2 of the Act is low. Indeed, merely acquiescing in the conduct or activity in question will satisfy the requirement of liability. As stated in *Momentas*:

> Although these terms have been interpreted to include some form of knowledge or intention, the threshold for liability under section 122 and 129.2 is a low one, as merely acquiescing the conduct or activity in question will satisfy the requirement of liability. The degree of knowledge of intention found in each of the terms "authorize", "permit" and "acquiesce" varies significantly. "Acquiesce" means to agree or consent quietly without protest. "Permit" means to allow, consent, tolerate, give permission, particularly in writing. "Authorize" means to give official approval or permission, to give power or authority or to give justification.
>
> (*Momentas*, *supra*, at para. 118)

iii. Analysis

[363] Chau was the sole director of MLIF in 2008 and 2009. He was also the primary person directing MLIF's conduct in 2007. Tulsiani was a director of Tulsiani Investments in late 2008. Staff submits that there is ample evidence for the Commission to find that

Chau authorized, permitted or acquiesced in the non-compliance of MLIF with subsections 25(1)(a), 38(3), 53(1) and 126.1(b) of the Act and that Tulsiani authorized, permitted or acquiesced in the non-compliance of Tulsiani Investments with subsections 25(1)(a) and 25(1)(c) of the Act.

[364] As stated above, Chau admitted to indirectly controlling most, if not all, of the corporations involved in the ownership and development of the Project. Tulsiani admitted, through his counsel, to being a director of Tulsiani Investments who authorized, permitted or acquiesced in the actions of Tulsiani Investments.

iv. Findings

[365] In light of the evidence and admissions referred to above, we find that Tulsiani authorized, permitted or acquiesced in the commission of the violations of subsections 25(1)(a) and 25(1)(c) of the Act by Tulsiani Investments.

[366] We also find that Chau, being a director and officer of MLIF, authorized, permitted or acquiesced in the commission of the violations of subsections 25(1)(a), 38(3), 53(1) and 126.1(b) of the Act, by MLIF.

H. Was the Conduct of the Respondents Contrary to the Public Interest?

i. Submissions

[367] In addition to the breaches of the Act in this matter, Staff alleges that the conduct of the Respondents was contrary to the public interest.

ii. The Law

[368] As set out in section 1.1 of the Act, it is the Commission's mandate to:

> (a) Provide protection to investors from unfair, improper or fraudulent practices; and
>
> (b) Foster fair and efficient capital markets and confidence in capital markets.

[369] The primary means for achieving the purposes of the Act are listed as follows in paragraph 2 of section 2.1:

> 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 fitness and business conduct to ensure honest and responsible conduct by market participants.

iii. Analysis

[370] The Commission's public interest jurisdiction is animated by the purposes of the Act. The legislature chose not to define the "public interest" in the Act and instead to leave the Commission with a wide discretion to determine what is in the public interest in a particular case.

[371] "It is the function and duty of the OSC to form an opinion, according to the exigencies of the individual cases that come before it, as to the public interest and, in so doing, the OSC is given wide powers of discretion" (*Marchment & MacKay Ltd. v. Ontario (Securities Commission)* (1997), 34 O.R. (3d) 284 at p. 290, citing with approval in the judgment of Craig J. in *Gordon Capital Corp. v. Ontario (Securities Commission)* (1991), 50 O.A.C. 258).

[372] We find that there is ample evidence as set out above that the conduct of the Respondents was contrary to the public interest.

[373] The Respondents breached a number of key provisions of the Act. The Respondents traded securities of MLIF without registration, contrary to subsection 25(1)(a) of the Act. Chau and MLIF were also found to have engaged in a distribution without satisfying the distribution requirements, contrary to subsection 53(1) of the Act. Further, the Respondents encouraged or counseled prospective investors to misstate their entitlement to be treated as accredited investors.

[374] Tulsiani and Tulsiani Investments were found to have engaged in advising with respect to investing in securities of MLIF without being registered to advise in securities, contrary to subsection 25(1)(c) of the Act.

[375] The conduct of the Respondents was contrary to the public interest because registration and distribution requirements are essential to protect investors and to ensure the integrity of the capital markets.

[376] In the course of their promotional activities relating to the MLIF bonds and other securities, Chau and MLIF also made prohibited representations to potential investors about the future listing on the stock market of certain shares, contrary to subsection 38(3) of the Act.

[377] When Chau and MLIF promoted the MLIF bonds, they misled potential investors by providing false and incomplete information regarding the various series of MLIF bonds (including the location and/or use of the funds, guaranteed minimum interest and return of the principal at maturity and overall safety of the investments), MLIF and the Project. Chau also caused MLIF to divert some of the funds received from MLIF bond investors to pay his personal expenses, interest to existing MLIF bond investors, MLIF's further capital raising activities and to finance his other projects. In doing so, Chau and MLIF knowingly placed the MLIF bond investors' funds at risk of significant losses, which occurred. We found that Chau and MLIF knowingly engaged in fraud in breach of subsection 126.1(b) of the Act.

[378] These breaches of the Act caused harm to investors and to the integrity of Ontario's capital markets, and were clearly contrary to the public interest.

[379] The conduct of the Respondents was egregious and dishonest. They preyed on vulnerable investors, many of whom clearly did not understand the purported investments, and did not qualify for any exemptions. In the case of Chau and MLIF, they applied the proceeds of the investments in a manner that was contrary to their written and oral representations without regard to the consequences. In addition to contravening the Act in a number of material respects, the behaviour of the Respondents was reprehensible and contrary to the public interest.

iv. Findings

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

VIII. DECISION

[381] For the reasons stated above, we find that:

(a) Chau, MLIF, Tulsiani and Tulsiani Investments traded in securities of MLIF without being registered to trade in securities and without an exemption being available, contrary to subsection 25(1)(a) of the Act;

(b) Tulsiani and Tulsiani Investments engaged in advising with respect to investing in securities of MLIF without being registered to advise in securities, contrary to subsection 25(1)(c) of the Act;

(c) Chau and MLIF traded in securities of MLIF when a preliminary prospectus and a prospectus had not been filed and receipts had not been issued for them by the Director and without an exemption being available, contrary to subsection 53(1) of the Act;

(d) Chau and MLIF were market intermediaries and, accordingly, were not entitled to rely on the accredited investor exemption from the registration requirements under the Act;

(e) Chau and MLIF made representations, without the written permission of the Director, with the intention of effecting a trade in securities of MLIF that such securities would be listed on a stock exchange or quoted on a quotation and trade reporting system, contrary to subsection 38(3) of the Act;

(f) Chau and MLIF engaged or participated in acts, practices or courses of conduct relating to MLIF securities that Chau and MLIF knew would perpetrate a fraud on persons or companies, contrary to subsection 126.1(b) of the Act;

(g) Tulsiani, being a director of Tulsiani Investments, authorized, permitted or acquiesced in the commission of the violations of subsections 25(1)(a) and 25(1)(c) of the Act, set out above, by Tulsiani Investments;

(h) Chau, being a director and officer of MLIF, authorized, permitted or acquiesced in the commission of the violations of subsections 25(1)(a), 53(1), 38(3) and 126.1(b) of the Act, set out above, by MLIF; and

(i) Chau, MLIF, Tulsiani and Tulsiani Investments acted contrary to the public interest.

[382] The parties are directed to contact the Office of the Secretary within the next 10 days to set a date for a sanctions hearing, failing which a date will be set by the Office of the Secretary.

Dated at Toronto this 9th day of November, 2011.

"*Christopher Portner*"	"*Paulette L. Kennedy*"
Christopher Portner	Paulette L. Kennedy