Ontario Securities Commission
Commission des valeurs mobilières de l'Ontario
22nd Floor
20 Queen Street West
Toronto ON M5H 3S8
22e 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
SANDY WINICK, ANDREA LEE MCCARTHY,
KOLT CURRY, LAURA MATEYAK, GREGORY J. CURRY,
AMERICAN HERITAGE STOCK TRANSFER INC.,
AMERICAN HERITAGE STOCK TRANSFER, INC.,
BFM INDUSTRIES INC., LIQUID GOLD INTERNATIONAL CORP.,
(aka LIQUID GOLD INTERNATIONAL INC.)
and NANOTECH INDUSTRIES INC.

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

Hearing:	In Writing	
Decision:	August 7, 2013	
Panel:	James D. Carnwath, Q.C.	- Commissioner and Chair of the Panel
Submissions:	Jonathan Feasby Cameron Watson Harald Marcovici (Student-at-law)	- For Staff of the Ontario Securities

TABLE OF CONTENTS

I. INTRODUCTION

[1] This proceeding arises out of a Notice of Hearing issued by the Ontario Securities Commission (the "**Commission**") dated January 27, 2012, pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "***Act***") in relation to a Statement of Allegations, also dated January 27, 2012, filed by Staff of the Commission ("**Staff**") against Sandy Winick, ("**Winick**"), Andrea Lee McCarthy ("**McCarthy**"), Kolt Curry ("**Kolt Curry**"), Laura Mateyak ("**Mateyak**"), and Gregory J. Curry ("**Greg Curry**"), American Heritage Stock Transfer Inc., ("**AHST Ontario**"), American Heritage Stock Transfer, Inc., ("**AHST Nevada**"), BFM Industries Inc. ("**BFM**"), Liquid Gold International Corp. (also known as Liquid Gold Inc.) ("**Liquid Gold**"), and Nanotech Industries Inc. ("**Nanotech**").

[2] On October 17, 2012, the Commission ordered that, pursuant to Rule 11.5 of the Commission's Rules of Procedure (2012), 35 O.S.C.B. 10071 (the "*Rules of Procedure*"), the hearing on the merits would proceed as a written hearing. Staff filed an Amended Statement of Allegations in respect of the same parties on November 2, 2012 and the Commission issued an Amended Notice of Hearing on the same day.

[3] On January 21, 2013, on consent of Staff and counsel for McCarthy, BFM and Liquid Gold (the "**McCarthy Respondents**"), the Commission granted an application to sever the matter, as against the McCarthy Respondents, and adjourned the matter with respect to the McCarthy Respondents to a date to be fixed by the office of the Secretary of the Commission in consultation with counsel.

[4] On May 16, 2013, the Panel accepted an Agreed Statement of Facts for Kolt Curry, Mateyak, AHST Ontario and AHST Nevada (the "**Curry Respondents**") and found that the Curry Respondents had contravened Ontario securities law and acted contrary to the public interest. On May 16, 2013, on the request of Staff and counsel for the Curry Respondents, the Commission ordered that the hearing against the Curry Respondents be severed from the main proceeding in this matter and scheduled a sanctions hearing in respect of the Curry Respondents for August 27, 2013.

[5] Staff submitted that Nanotech is dissolved and has been inactive since 2009. As such there are no formal allegations against Nanotech and Staff further submits that no formal findings are sought against Nanotech.

[6] As a result, I will not be making further analysis or findings with respect to the McCarthy Respondents, the Curry Respondents or Nanotech. The following reasons and decision include my findings with respect to Winick and Greg Curry (collectively, the "**Respondents**") in the continuation of the written hearing on the merits.

A. Allegations

[7] Staff alleges that in three separate, but connected, schemes Winick engaged in unregistered trading, illegally distributed securities, perpetrated securities fraud on other persons or companies and made statements that a reasonable investor would consider relevant in deciding

whether to enter or maintain a trading or advising relationship. Staff alleges that the statements were untrue or omitted information necessary to prevent the statements from being false or misleading. Staff further alleged that Greg Curry, as officer and director of BFM, and Winick, as directing mind and *de facto* director and officer of BFM, Liquid Gold, Nanotech, AHST Ontario and AHST Nevada, authorized, permitted or acquiesced in commission of breaches of Ontario Securities law by those respective corporations and therefore Greg Curry and Winick are deemed to also have not complied with Ontario Securities law.

[8] Staff alleges that from June 2009 through December 2010, at least 50 investors outside of Canada purchased shares in BFM, an Ontario company, through telephone salespeople claiming to represent an investment bank from Singapore called Denver Gardner Inc. ("**Denver Gardner**"). Staff alleges that BFM never had an operating business during this investment scheme (the "**BFM Scheme**"). Despite this, 28 BFM nvestors wired more than CDN $360,000 into bank accounts in Ontario to purchase shares in BFM. Staff alleges that over 50% of those funds were withdrawn in cash, transferred to accounts held by Winick or McCarthy or used to pay personal credit card bills. Staff alleges that all of the funds were disposed of on items unrelated to the business of BFM.

[9] Staff further alleges that from June 2009 through November 2010, at least eight investors outside of Canada purchased shares in Liquid Gold, an Ontario company, also through telephone salespeople claiming to represent Denver Gardner. Staff alleges that Liquid Gold never had an operating business or any assets other than cash during this investment scheme (the "**Liquid Gold Scheme**"). Liquid Gold received approximately USD $2.6 million during the Liquid Gold Scheme, of which approximately USD $85,000 was from the sale of its shares to investors. Staff alleges that over 98% of the funds received by Liquid Gold were disbursed on expenses unrelated to the alleged business of the company, including payments to credit cards in Winick's name.

[10] Lastly, Staff alleges that from May 2009 through August 2010, at the direction of Winick, Kolt Curry and others sent correspondence from an Ontario company, AHST Ontario, and a Nevada company, AHST Nevada, to approximately 10,000 people enclosing share and warrant certificates in Nanotech, an inactive Wyoming company (the "**Nanotech Letter**"). The recipients of the Nanotech Letter included both BFM investors and Liquid Gold investors. The Nanotech Letter stated that the recipient was entitled to an unpaid dividend in the form of shares and purchase warrants and further claimed that the warrants could be exercised at a price substantially lower than the price at which Nanotech was currently trading (the "**Nanotech Letter Scheme**"). Staff alleges that this statement, which implied investors could make an immediate and substantial profit, was false.

[11] For the purpose of these reasons, reference to the material time as a whole shall pertain to conduct of the Respondents occurring from May 2009 to December 2010 (the "**Material Time**").

B. Temporary Order.

[12] On April 1, 2011, the Commission issued a temporary cease trade order that all trading in securities of BFM, AHST Ontario, AHST Nevada and Denver Gardner cease and that all trading by the Curry Respondents, McCarthy, Winick and Denver Gardner cease (the "**Temporary Order**"). The Temporary Order also provided that any exemptions contained in Ontario securities law do not apply to any of the parties named. The Temporary Order, as amended, was extended from time to time, and on March 23, 2012, it was extended until the conclusion of the merits hearing.

C. The Respondents

[13] Winick is a resident of Ontario and Bangkok, Thailand. At one point, during the Material Time, Winick lived at McCarthy's residence in Ontario.

[14] Greg Curry is a resident of Bangkok, Thailand. Greg Curry is registered a director of BFM.

D. Other Related Parties

[15] BFM was incorporated in Ontario on November 25, 2008. Liquid Gold was incorporated in Ontario on May 26, 2009. McCarthy is a resident of, a registered director of BFM and sole director of Liquid Gold. McCarthy had signing authority over the AHST Ontario HSBC bank account and sole signing authority over bank accounts for BFM and Liquid Gold.

[16] AHST Ontario was incorporated in Ontario on February 23, 2005 and AHST Nevada was incorporated in Nevada on November 17, 2004. Kolt Curry is a resident of Ontario and Bangkok, Thailand. He is the son of Greg Curry and husband of Mateyak. Kolt Curry was sole director, sole shareholder, President, Secretary and Treasurer of each of AHST Nevada and AHST Ontario at registration (the "**AHST Entites**").

[17] Mateyak is a resident of Ontario and Bangkok, Thailand. Mateyak became sole director, President, Secretary and Treasurer of AHST Ontario as of November 21, 2006. She had signing authority over the AHST Ontario HSBC bank account.

[18] Nanotech was incorporated in Wyoming on September 20, 2007, but was formerly incorporated under other names.

II. PRELIMINARY ISSUES

A. Failure of the Respondents to Participate

[19] Throughout the proceeding, Staff provided a number of Affidavits of Service as evidence that they served each of the Respondents in accordance with the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended (the "**SPPA**") and the Commission's *Rules of Procedure.* Neither of the Respondents participated in the written hearing.

[20] Subsection 6(1) of the SPPA requires that the tribunal provide "reasonable notice of the hearing" to the parties to a proceeding. Subsection 7(1) of the SPPA, permits a tribunal to proceed in the absence of a party when that party has been given notice of the hearing. Similarly, subsection 7(2) of the SPPA permits a tribunal to proceed where notice of a written hearing has been given and the party fails to participate. Subsection 7(2) of the SPPA states:

> [7](2)Where notice of a written hearing has been given to a party to a proceeding in accordance with this Act and the party neither acts under clause 6 (4) (b) [to satisfy the tribunal that there is good reason for not holding a written hearing] nor participates in the hearing in accordance with the notice, the tribunal may proceed without the party's participation and the party is not entitled to any further notice in the proceeding.

[21] Further, Rule 7.1 of the Commission's *Rules of Procedure* provides:

> **7.1 Failure to Participate –** If a Notice of Hearing has been served on any party and the party does not attend the hearing, the Panel may proceed in the party's absence and that party is not entitled to any further notice in the proceeding.

[22] The Commission has previously exercised its jurisdiction to proceed when it is satisfied that an absent respondent has been given adequate notice (*Re Sunwide Finance Inc.* (2009), 32 O.S.C.B. 4671 ("***Sunwide***") at para. 18; *Re First Global Ventures, S.A.* (2007), 30 O.S.C.B. 10473 at paras. 110-112).

[23] Staff filed the Affidavit of Peaches A. Barnaby, sworn on October 15, 2012, as evidence of service on the Respondents via email of the Notice of Hearing and the Statement of Allegations and advising the Respondents that Staff intended to apply to convert the hearing on the merits in this matter to a written hearing. The same affidavit attaches a response from Greg Curry which indicates that Greg Curry would not attend the scheduled hearing. Staff also filed the Affidavit of Service of Peaches A. Barnaby, sworn on November 30, 2012, as evidence of service on the Respondents via email of the Amended Notice of Hearing, the Amended Statement of Allegations and the Commission's order of October 17, 2012, converting the matter into a written hearing.

[24] I am satisfied that notice of the written hearing was served on the Respondents, that Staff took all reasonable steps available to provide reasonable notice of this proceeding to the Respondents and that I am entitled to proceed in their absence in accordance with section 7 of the SPPA and Rule 7.1 of the Commission's *Rules of Procedure*.

B. Jurisdiction Over the Respondents

[25] Although the Respondents were not both resident in Ontario during the Material Time, I accept Staff's submission that there is sufficient evidence connecting the Respondents to Ontario, including:

- BFM, Liquid Gold and AHST Ontario are Ontario based corporations;

- the Respondents were officers and/or directors or *de facto* officers and/or directors of BFM, Liquid Gold and/or AHST Ontario;and
- Bank accounts for BFM, Liquid Gold and AHST Ontario were situated in Ontario.

[26] I agree with the panel in *Lehman Brothers* that a substantial connection to Ontario entitles the Commission to exercise its jurisdiction over the Respondents. The panel in that matter found:

> In this case, the offers to purchase TBS shares were made to investors outside Ontario. […] In addition, Lehman Corp. purported to operate from outside Ontario, namely, from Montreal, Quebec. However, the evidence discloses that some substantial aspects of each transaction occurred within Ontario. Investor funds were sent to accounts located in Toronto on the instructions of Lehman Corp. and Marks. These accounts were opened and maintained by either Lounds or Higgins, both Ontario residents, in the name of Emerson or Triad, both sole proprietorships established and registered in Ontario. The evidence shows that investor funds were withdrawn and disbursed in Toronto for the benefit of these two Ontario residents.
>
> We find that there is a substantial connection to Ontario thereby entitling the Commission to exercise jurisdiction over the Respondents.
>
> (*Re Lehman Brothers & Associates Corp*. (2011), 34 O.S.C.B. 12717 at paras. 35-37)

[27] I find that the Respondents have a substantial connection to Ontario warranting the exercise of jurisdiction by this panel.

III. ISSUES

[28] The issues before me are as follows:

(a) Did Winick trade in and engage in or hold himself out as engaging in the business of trading in securities of BFM, Liquid Gold and Nanotech without being registered to do so in circumstances in which no exemption was available, contrary to subsection 25(1)(a) of the *Act*, as that section was in force at the time the conduct commenced, and contrary to subsection 25(1) of the *Act*, as subsequently amended on September 28, 2009, and contrary to the public interest?

(b) Did Winick distribute securities of BFM, Liquid Gold and Nanotech without a preliminary prospectus and prospectus having been filed and receipts having been issued for them by the Director and without an exemption from the prospectus requirement, contrary to subsection 53(1) of the *Act* and contrary to the public interest?

(c) Did Winick, directly or indirectly, engage or participate in any acts, practices or courses of conduct relating to securities of BFM and Liquid Gold, that he knew or reasonably ought to have known perpetrated a fraud on any person or company contrary to subsection 126.1(b) of the *Act* and contrary to the public interest?

(d) Did Winick make a statement that a reasonable investor would consider relevant in deciding whether to enter into or maintain a trading or advising relationship with Winick which was untrue or omitted information necessary to prevent the statement from being false or misleading in the circumstances, contrary to subsection 44(2) of the *Act* and contrary to the public interest?

(e) Did Winick, as *de facto* director and/or officer of BFM, Liquid Gold, the AHST Entities and Nanotech, authorize, permit or acquiesce in the non-compliance with Ontario securities law by respective employees, agents or representatives of those companies and is Winick therefore deemed to also have not complied with Ontario securities law in accordance with section 129.2 of the *Act* and has he acted contrary to the public interest?

(f) Did Greg Curry, as director of BFM, authorize, permit or acquiesce in the non-compliance with Ontario securities law by BFM or by the employees, agents or representatives of BFM and is Greg Curry therefore deemed to also have not complied with Ontario securities law in accordance with section 129.2 of the *Act* and has he acted contrary to the public interest?

IV. EVIDENCE

A. Standard of Proof

[29] The standard of proof in this written hearing is the civil standard of proof on a balance of probabilities and evidence must be sufficiently clear, convincing and cogent (*F.H. v. McDougall*, [2008] 3 S.C.R. 41 at paras. 46 and 49).

B. Admissibility of Evidence

[30] The Commission has the discretion to admit relevant evidence that might not otherwise be admissible as evidence in a court, including hearsay evidence, under subsection 15(1) of the SPPA, subject to the weight given to such evidence. Subsection 15(1) of the *SPPA* states:

> What is admissible in evidence at a hearing
>
> **15.**(1)Subject to subsections (2) and (3), a tribunal may admit as evidence at a hearing, whether or not given or proven under oath or affirmation or admissible as evidence in a court,
>
> (a) any oral testimony; and
>
> (b) any document or other thing, relevant to the subject-matter of the proceeding and may act on such evidence, but the tribunal may exclude anything unduly repetitious.

[31] The weight to be accorded to such evidence must be determined by the panel. Care must be taken to avoid placing undue reliance on uncorroborated evidence that lacks sufficient indicia of reliability (*Starson v. Swayze,* [2003] 1 S.C.R. 722 at para. 115; *Sunwide,* above at para. 22). I admitted the hearsay evidence tendered by Staff, subject to my consideration of the weight to be given to that evidence.

C. Overview of the Evidence Tendered

[32] In support of the allegations, Staff relies on:

(a) The Affidavit of Daniella Kozovski, sworn November 29, 2012, and entered as Exhibit 1 to this written hearing, together with seven volumes of exhibits to her affidavit, being Volumes 1A, 1B, 2A, 2B, 3, 4 and 5 ("**Ex. 1, Vol. __**");

(b) The Affidavit of Lori Toledano, sworn November 27, 2012 and entered as Exhibit 2 to this written hearing, together with 6 volumes of exhibits to her affidavit, being Volumes 1, 2, ,3, 4, 5 and 6 ("**Ex. 2, Vol. __**");

[33] As previously stated, neither of the Respondents tendered evidence, made submissions or otherwise participated in this written hearing.

[34] Staff submits that all of the documentary evidence that Staff rely upon to prove the allegations against the Respondents is also corroborated and consistent with other documentary evidence. This documentary evidence included banking documents, subscription and other legal agreements, lists of investors, emails, printouts of websites, copies of letters and emails from certain of the Respondents with other respondents or third parties and copies of legal documents referring to transactions between certain of the Respondents and third parties. I accept Staff's submission that while all of the documentary evidence is itself hearsay evidence, nevertheless, taken as a whole, the evidence is corroborative and consistent within itself and with the contents of Exhibits 1 and 2.

[35] I have read Affidavit of Daniella Kozovski and reviewed the documents contained in Ex. 1, Vols. 1A, 1B, 2A, 2B, 3, 4 and 5. Where Ms. Kozovski cites specific material to support a paragraph in her deposition, I have followed those references to satisfy myself that the documents cited support the facts deposed. In particular, Ms. Kozovski relied upon the Affidavit of Andrea McCarthy, sworn November 28, 2012, which attested to conduct of Winick that is relevant to this proceeding (Ex. 1 Vol. 3, Tab 14).

[36] In attempting to construct a narrative history of the matter, including findings of fact, I have compressed many paragraphs in the Ms. Kozovski's affidavit and I have often adopted the language of Ms. Kozovski where it would serve no purpose to recast it. Briefly put, I accept her evidence concerning the activities of the Respondents.

[37] I have read the Affidavit of Lori Toledano and reviewed the documents in Ex. 2, Vols. 1-6 inclusive. Ms. Toledano examined 11 bank accounts and credit card accounts relating to the Respondents. She prepared sources and applications of funds for each bank account and characterized the destination of funds expended. Ms. Toledano obtained bank records for AHST Ontario, Kolt Curry, Winick, Mateyak and others related to the AHST Entities. McCarthy was a signing officer on the AHST Ontario's bank accounts and leased the mailbox for its Hamilton address, on which Winick was listed as a joint holder. Surveillance revealed that Winick was living at McCarthy's residence in Ontario during the Material Time. Further summonses revealed that McCarthy was a signing officer on the bank accounts on BFM and Liquid Gold. Those account records show deposits from individuals outside Canada consistent with the purchase of securities.

[38] My review persuades me that Ms. Toledano's analyses are reliable and give an accurate history of the movement of funds from investors to Winick and related parties and the movement of those funds among the Respondents and companies they controlled.

[39] A search warrant was issued for McCarthy's residence in Ontario. During the search more than 10 banker's boxes of documents, including thousands of Nanotech letters, were collected. Documents and correspondence relating to Denver Gardner, BFM, Liquid Gold and the AHST Entities were also gathered.

[40] Staff conducted voluntary interviews with McCarthy and Kolt Curry. Staff also corresponded with investors in BFM and Liquid Gold, as well as recipients of the Nanotech letter. Furthermore, Staff produced certificates pursuant to section 139 of the *Act*, which demonstrate that neither of the Respondents was registered during the Material Time.

D. The BFM Scheme

[41] The BFM scheme took place from June 2009 through to December 2010 (the "**BFM Material Time**"). BFM was incorporated on November 25, 2008 by McCarthy at Winick's instructions and registered to McCarthy's home address. BFM's advertised mailing address was a mailbox in Toronto, Ontario, to which Winick and McCarthy had been granted access. At Winick's instruction McCarthy also opened Canadian and United States dollar bank accounts (respectively, "**BFM CAD Account**" and "**BFM USD Account**") for BFM at TD Canada Trust ("**TD**") of which she was the sole signatory (collectively, the "**BFM Accounts**").

[42] On Winick's instructions, McCarthy created a website for BFM using content provided by Winick. She provided her name as the administrative and technical contact for the website and registered it to her residence. A draft version of the material for the BFM website, listing "Sandy" as the author in the document's metadata, was tendered. On the website, BFM made statements that made it appear the company was actively engaged in the fertilizer business. In spite of this representation, McCarthy confirmed to Staff that BFM never had any assets or operations other than one contract discussed below with respect to Bio-Fertilis Inc. ("**Bio-Fertilis**"), a fertilizer company. McCarthy also confirmed to Staff that BFM never had a board meeting, a shareholders meeting, passed any by-laws or kept any minutes and never had any employees.

[43] As shown in the charts of the sources and uses of funds reproduced later in these reasons, BFM's only source of funds was the sale of its own securities to investors. McCarthy has acknowledged that the majority of those funds were spent on matters entirely unrelated to the stated business of BFM.

[44] BFM agreed to invest capital in the amount of USD $1.5 million in Bio-Fertilis. However, it never advanced any money for that purpose. On Winick's direction, McCarthy advanced $500,000 from Liquid Gold to Bio-Fertilis on behalf of BFM. According to the agreement, further payments were to be made but, as McCarthy confirmed, Winick terminated the deal because it was too "risky".

(i) Sale and Distribution of BFM Securities

[45] McCarthy confirmed to Staff that BFM sold previously unissued securities over the phone to foreign investors, through an investment bank in Singapore called Denver Gardner. The records of the BFM Accounts attached as exhibits to the Affidavit of Ms. Toledano show that from June 2009 through December 2010, at least 28 foreign resident investors wired over CDN $360,000 to the BFM Accounts. McCarthy confirmed that those sums were deposits from the BFM investors purchasing shares.

[46] In March 2011, the Royal Thai Police seized three USB memory sticks containing electronic files related to the operation of a boiler room connected to the Respondents (the "**RTP documents**"). The RTP documents were obtained by Staff. Among the RTP documents was one entitled "Client share listing for Denver Gardner – BFM Shareholders.doc" which listed names and contact information of BFM investors, including some of the 28 that wired funds to the BFM Accounts in Ontario. The RTP documents also included client statements, on Denver Gardner letterhead, for 50 individual BFM investors, including those who deposited funds in the BFM Accounts. "Sandy" is identified as the author of all the BFM client statements. McCarthy confirmed that at Winick's direction, she signed BFM share certificates and sent them to BFM investors.

(ii) Non-Existence of Denver Gardner

[47] The Denver Gardner website indicates that the company "is a premier provider of wealth management, securities trading and sales, corporate finance and investment banking services."(Ex. 1, Vol 1B, Tab 1D). Ms. Kozovski's investigation caused her to conclude that Denver Gardner was a fictional company invented by Winick to mislead investors about the identity of the sellers of BFM and Liquid Gold securities. The RTP documents contain hundreds of pages of material related to Denver Gardner, including draft instructions on how to use the website, Denver Gardner invoices, Denver Gardner press releases, Denver Gardner "call scripts" and the Denver Gardner client statements. "Sandy" is shown as the author of all these documents. Ms. Kozovski was unable to generate any internet hits that appeared to be related to an investment bank in Singapore called Denver Gardner, other than its own website. The Denver Gardner website appears to have been copied from other online sources. Ms. Kozovski was unable to find any reference to or listing of Denver Gardner on the Government of Singapore's search engine. Staff's attempts to deliver correspondence and proceeding documents via courier were returned as undeliverable. Further, investors were instructed to wire funds, not to Denver Gardner, but directly to bank accounts held by BFM and Liquid Gold.

(iii) BFM Investors

K.D. (United Kingdom)

[48] K.D. is a resident of the United Kingdom and the largest single BFM investor. He learned about BFM as a result of an unsolicited call from "Tom Hill" at Denver Gardner. K.D. wired funds to the BFM Accounts on two occasions: (i) on September 15, 2009, he wired CDN $30,783.21; and (ii) on October 23, 2009, he wired CDN $74,543.61. After much pestering, he finally received two share certificates for BFM. He engaged in substantial email correspondence

with McCarthy regarding his investments in BFM. McCarthy would respond with emails which stated that BFM's business was moving ahead and that projects were proceeding as anticipated.

H.K. (Germany)

[49] H.K. resides in Germany and confirmed that he invested in BFM. He received a call from "Chris Stevens" at Denver Gardner, who told H.K. that he could sell certain shares that H.K. currently held "at a very good price" if H.K. used the proceeds to buy shares of BFM. H.K. provided Staff with correspondence from BFM dated May 17, 2010, enclosing his share certificate. Ms. Toledano's analysis of the BFM Accounts shows that H.K. transferred CAD $8,485.16 to the BFM CAD Account and USD $2,870 to the BFM USD Account. The RTP documents included a client statement for H.K. showing his BFM shares.

Mr. J. O. & Mrs. J.O. (Ireland)

[50] Mr. J.O. and Mrs. J.O. are residents of Ireland and investors in BFM. Mrs. J.O. was first contacted in July 2009 by a "Chris Stevens" of Denver Gardner in Singapore, who recommended that she buy shares in BFM and Liquid Gold. Ms. Toledano's analysis of the BFM Accounts shows that Mrs. J.O. wired USD $16,571.49 to the BFM USD Account. The RTP documents included a client statement for Mrs. J.O. showing her BFM shares.

L.M. (Isreal)

[51] L.M. was a BFM investor located in Isreal. She received a call from "Tom Hill" at Denver Gardner around July 2009, in which the representative asked L.M. about her current investments. An offer was made to purchase shares she had in another company as part of her purchase in BFM, since, she was told, the BFM shares were a better investment. L.M. stayed in contact with "Hill" and another male at Denver Gardner who identified himself as "Paul Bradley". L.M. was advised that BFM was going public on November 16, 2009. Ms. Toledano's analysis of the BFM Accounts shows that L.M. invested CAD $61,920.64 and USD$4,504.18.

(iv) Disposition of BFM Investor Funds

[52] The following chart shows the source of funds in the BFM CAD Account, which funds were primarily composed of BFM investor funds, redacted for privacy reasons:

BFM CAD Account **June 3, 2009 to December 10, 2009** (amounts > $1,000 CAD)	
Description	Total ($)
Account Inflows:	
A. & L. M. (Israel)	*61,920.64*
C. B. (Sweden)	*30,785.13*
C. G. (Denmark)	*4,451.15*
I. G. (Denmark)	*9,247.19*
I. B. (Sweden)	*5,125.65*

K. & S. D. (United Kingdom)	*105,326.82*	
H.K. (Germany)	*8,485.16*	
K. L. (Norway)	*1,553.03*	
M. D. S. (Belgium)	*7,027.12*	
R. H. (Sweden)	*6,394.62*	
T. V. E. W. S. (Sweden)	*19,237.63*	259,554.14
From BFM USD Account		35,502.05
From First European American Credit Ltd.		2,500.00
	Total Inflows:	297,556.19

(Ex. 2)

[53] McCarthy acknowledged that part of her role with BFM was to make withdrawals and transfers from the BFM Accounts as and when Winick directed her to do so. Those transfers included dispersing funds to pay personal expenses of Winick and his wife, as well as McCarthy's own personal expenses, and dispersing funds to other recipients for purposes unrelated to the business of BFM.

[54] The withdrawals and transfers Winick directed McCarthy to make from the BFM CAD Account included the following (rounded to the nearest hundred in CAD):

(a) $153,900 to cover Visa and American Express credit card payments for Winick, his wife and McCarthy, including at least $18,600 to McCarthy's personal Visa account and $54,800 to the American Express account she held jointly with Winick;
(b) $28,000 to a joint bank account held by Winick and McCarthy;
(c) $26,800 to Worldwide Capital Group Inc. and Imanos and Co. Inc., two companies controlled by Winick;
(d) $16,400 to Sherwood Digital Copy & Print to cover printing expenses related to the Nanotech Letter Scheme;
(e) $12,500 in cash withdrawals;
(f) $5,600 to Kolt Curry;
(g) $4,000 to Mateyak;
(h) $3,300 to BFM's USD Account;
(i) $2,800 to pay federal taxes unrelated to BFM; and
(j) $1,100 to Toronto Hydro on behalf Winick's wife.

[55] Ms. Toledano's analysis of the BFM CAD Account shows a total outflow of funds in the amount of CAD$283,982.03 from June 3, 2009 to December 10, 2009.

[56] The following chart shows the source of funds in the BFM US Dollar Account, which were primarily composed of BFM investor funds, redacted for privacy concerns:

BFM USD Account
June 3, 2009 to December 10, 2009
(amounts > $1,000 US)

Description		Total ($)
Account Inflows:		
A. & L. M. (Israel)	*4,504.18*	
A. A. (United Kingdom)	*2,210.08*	
A.(Denmark)	*2,783.81*	
C.O. (Ireland)	*5,583.87*	
D. (Netherlands)	*4,181.51*	
E.M.J. (United Kingdom)	*1,376.96*	
G.W. (Germany)	*11,952.50*	
I.W. (United Kingdom)	*11,736.40*	
I.B. (Sweden)	*7,628.88*	
Mr. J.O. & Mrs. J.O. (Ireland)	*16,571.49*	
H.K. (Germany)	*2,870.00*	
L.S. (Sweden)	*5,691.43*	
M.K. (Finland)	*4,158.14*	
O.L. (United Kingdom)	*2,368.14*	
P.R. (United Kingdom)	*3,063.70*	
R. & S. F. (Ireland)	*2,779.88*	
R. A. (United Kingdom)	*1,089.63*	
R. H. A. (Sweden)	*1,377.29*	
T. B. (Sweden)	*5,692.09*	
W. M. E. (South Africa)	*7,162.48*	104,782.46
From BFM CAD Account		3,000.00
From Winick / McCarthy - Joint Account		1,050.00
	Total Inflows:	**108,832.46**

(Ex. 2)

[57] The withdrawals and transfers Winick directed McCarthy to make from the BFM USD Account included the following (rounded to the nearest hundred in USD):

(a) $32,900 to BFM's CAD Account;
(b) $24,500 to a joint bank account held by Winick and McCarthy;
(c) $21,000 in cash withdrawals;
(d) $11,000 to First European American Credit Ltd. ("**FEAC Ltd.**"), a company controlled by Winick;
(e) $6,500 in payments to Pink OTC markets for expenses related to other companies controlled by Winick;
(f) $4,700 to Lee Freed Holdings, a company McCarthy controlled; and
(g) $3,600 to Kolt Curry.

[58] Ms. Toledano's analysis of the BFM USD Account shows a total outflow of funds in the amount of USD$110,493.83 from June 3, 2009 to December 10, 2009.

(v) Greg Curry's Role in the BFM Scheme

[59] Greg Curry, according to McCarthy, has lived in Bangkok for several years. He has been a director of BFM since the company was incorporated in November 2008 and remained Winick's nominee throughout the time BFM was selling securities.

[60] As president of BFM, Greg Curry signed various documents related to BFM's plans to invest in Bio-Fertilis as discussed above. The President of Bio-Fertilis, D.H., provided Staff with a direction signed by Greg Curry as president of BFM in relation to an earlier, aborted attempt to finance an investment in Bio-Fertilis. D.H. said he never dealt directly with Greg Curry in relation to negotiations between BFM and Bio-Fertilis, but that he understood from Winick that Greg Curry was the president of BFM until McCarthy began acting as president.

[61] Greg Curry received substantial funds directly from Winick and companies Winick controlled during the period in which he was acting as Winick's nominee, while the distribution of BFM shares was ongoing. As shown in the Affidavit of Ms. Toledano, Greg Curry received the equivalent of over USD $14,000 directly from Winick's accounts and the equivalent of over USD $64,000 from FEAC Ltd., a company of which Winick's wife was the sole director and officer.

E. The Liquid Gold Scheme

[62] The Liquid Gold Scheme took place from June 2009 through November 2010 (the "**Liquid Gold Material Time**"). On May 26, 2009, at Winick's request, McCarthy incorporated Liquid Gold. She named herself the sole director, as instructed by Winick, but acknowledged to Staff that Winick remained the directing mind of the company throughout the Liquid Gold Material Time. As with BFM, McCarthy opened Canadian and United States dollar bank accounts (respectively, "**Liquid Gold CAD Account**" and "**Liquid Gold USD Account**") for Liquid Gold in Ontario at the Bank of Montreal ("**BMO**") and a United States dollar TD account ("**Liquid Gold TD Account**") (collectively, the "**Liquid Gold Accounts**"). McCarthy first named herself the sole signatory, but later added her father as a signatory on the first two Liquid Gold Accounts noted above.

[63] Liquid Gold's website contains statements that made it appear as if it was an operating entity. Among other things, the website said Liquid Gold "has assumed the leadership role in the recovery of additional hydrocarbons from domestic sources, lessening the United States' dependence on foreign oil." McCarthy, the sole director of Liquid Gold, told Staff that she always understood that the company did not operated and did not have any oil or hydrocarbon recovery business. McCarthy confirmed that Liquid Gold never had a board meeting or shareholder meeting, passed any by-laws or kept any minutes of the corporation. Liquid Gold never had any employees.

(i) Sale and Distribution of Liquid Gold Securities

[64] Three individuals told Staff they were solicited by sales representatives from Denver Gardner to purchase shares in Liquid Gold. Five individuals wired funds directly to the Liquid Gold Accounts. A Liquid Gold shareholder list, which listed the five investors who transferred funds to the Liquid Gold Accounts, was found in the RTP documents and in hard copy among

Winick's documents found in the Ontario residence he shared with McCarthy. The RTP documents included Denver Gardner client statements for seven individual Liquid Gold investors. Liquid Gold share certificate requests, authored by "Sandy" were found in the RTP documents. In total, the documents identify nine distinct Liquid Gold investors, but it is not known how the four who did not deposit funds into the Liquid Gold accounts paid for their shares.

(ii) Liquid Gold Investors

[65] Mr. J.O. and Mrs. J.O. are investors who had also invested in BFM. Mrs. J.O. purchased Liquid Gold shares through a telephone solicitor purporting to represent Denver Gardner. She wired USD $16,480.18 to the Liquid Gold USD Account.

[66] Three further deposits into the Liquid Gold USD Account came from W.E., in the amount of USD $7,559.69, O.B.J., in the amount of USD $50,252.16, and R.A., in the amount of USD $10,513.59. The Liquid Gold shareholder list, the share certificate requests and the Denver Gardner Liquid Gold client statements confirm they purchased Liquid Gold shares.

[67] The Liquid Gold TD Account, with almost no activity, shows a single deposit from a potential investor, H.G.K., in the amount of USD $1,373.57.

(iii) Disposition of Liquid Gold Investor Funds

[68] The Liquid Gold Accounts received substantial funds that are not known to be derived from the sale of shares to the public. A total of approximately USD $2.6 Million was deposited into the Liquid Gold Accounts. Those funds included approximately USD $85,000 raised through the sale of Liquid Gold shares to a total of four Liquid Gold investors between June 1, 2009 and November 18, 2010.

[69] McCarthy's understanding of the source of the additional funds was that "Sandy was sending it to take care of things that he needed to take care of" (Ex. 1, Vol. 3, Tab 2: Andrea McCarthy – Transcript of Voluntary Interview of May 18, 2011 at p. 167).

[70] As with the BFM Accounts, McCarthy acknowledged that part of her role with Liquid Gold was to make withdrawals and transfers from the Liquid Gold Accounts as and when Winick directed her to do so. McCarthy admitted that over "98% of the USD $2.6 million deposited to the Liquid Gold Accounts was depleted by withdrawals and transfers for purposes unrelated to the alleged business of Liquid Gold", including the approximate USD $85,000 wired by investors (Ex. 1 Vol. 3, Tab 14).

[71] The withdrawals and transfers McCarthy made from the Liquid Gold CAD Account included the following (rounded to the nearest hundred in CAD):

(a) $600,700 in payments to credit cards held by Winick;
(b) $88,400 in federal tax payments on behalf of Winick;
(c) $68,500 in cash withdrawals;
(d) $66,100 to pay a line of credit in McCarthy's name;
(e) $60,000 to McCarthy;
(f) $58,400 in payments to or on behalf of Winick's wife;
(g) $50,000 to repay a loan made to McCarthy;

(h) $38,600 in other credit card payments; and,
(i) $15,100 to Sherwood Digital Copy & Print to cover printing expenses related to the Nanotech Letter Scheme.

[72] The withdrawals and transfers McCarthy made from the Liquid Gold USD Account included the following (rounded to the nearest hundred in USD):

(a) $1,141,500 to the Liquid Gold CAD Account;
(b) $500,000 to Bio-Fertilis;
(c) $499,000 to purchase a term deposit, later cashed and disbursed at Winick's instruction;
(d) $170,000 to Kolt Curry;
(e) $48,000 to a joint account held by McCarthy and her father;
(f) $7,500 to Worldwide Capital Group, a company controlled by Winick; and,
(g) $6,500 to Pink Sheets OTC to cover expenses related to Liquid Gold and Blackout Media, another company controlled by Winick.

F. The Nanotech Letter Scheme

(i) Nanotech and the AHST Entities

[73] In 2005, Winick signed documents for the Wyoming Secretary of State as President of Nanotech's predecessor company. AHST Ontario acted as Nanotech's transfer agent.

[74] Kolt Curry incorporated AHST Nevada in the State of Nevada, United States, on November 17, 2004. Kolt Curry named himself President, Secretary, Treasurer and sole Director of AHST Nevada. He is the only shareholder of the company. Kolt Curry incorporated AHST Nevada to serve Winick's shell companies. In his voluntary interview with Staff, Kolt Curry described his role as follows:

> [Q. 83] So tell us, just to step back a bit, initially when Mr. Winick contacted you and started to talk about a transfer agency, tell us about exactly what was said there?
>
> [Kolt Curry] A. He said he had some shell corporations. I didn't really know what that meant, you know, but there were companies that did trades and as a transfer agent, you know, I would be paid for each and every trade. You know, they would send stocks to me, I would trade them. All I have to do is change the name of the stock and transfer it to the new name, and so it seemed pretty simple. Registered with the SEC. Filed my fingerprints. Everything went fine with the Securities and Exchange Commission, got registered and that's how it all came to be. You know, obviously, you know, for -- most of the companies in the beginning were all his and then that changed and I actually represent 20 or 21 companies now.
>
> (Ex. 1, Vol. 4, Tab 2: Kolt Curry – Transcript of Voluntary Interview of May 10, 2011 at p. 19)

[75] On Winick's instructions, Kolt Curry registered AHST Nevada as a transfer agent with the United States Securities and Exchange Commission (the "**SEC**") on December 21, 2004.

[76] On February 23, 2005, Kolt Curry incorporated AHST Ontario and appointed himself President, Secretary and Treasurer. He is also the sole shareholder of AHST Ontario. Kolt Curry then began using AHST Ontario to conduct the transfer business formerly done by AHST Nevada, as if it was the same company as AHST Nevada. He never told the SEC he was using an Ontario company. All Kolt Curry did was change the address of AHST Nevada to an Ontario address. On November 21, 2006, Kolt Curry removed himself as Director of AHST Ontario and Mateyak assumed the offices of President, Secretary, Treasurer, General Manager and sole director of the company.

[77] As of August 16, 2011, at the time of his continued interview with Staff, Kolt Curry said that AHST Ontario was acting as a transfer agent for 14 different companies, including Nanotech. He stated further that Winick referred virtually all of the 14 companies to him as transfer agent clients, including Nanotech.

(ii) The Nanotech Letter

[78] In early 2009, Winick telephoned Kolt Curry and provided verbal instructions on content of a letter to be sent to Nanotech shareholders. Based on the information Winick provided, Kolt Curry and one other individual prepared the Nanotech letter. Kolt Curry also received via email a list of approximately 10,000 addresses to which he was to send the letter. Briefly put, the Nanotech letter tells the recipient that the transfer agent discovered an unpaid Nanotech dividend, which entitled the recipient to 5,000 shares of Nanotech and 25,000 stock purchase warrants (the "**Nanotech Letter(s)**"). The recipient was invited to exercise the stock purchase warrants, one warrant for one common share of Nanotech, at a price of $2.75 per share. According to the Nanotech Letter, the Nanotech shares were trading at $4.93 per share. The Nanotech Letter enclosed a certificate for 5,000 common shares of Nanotech and a certificate for 25,000 Nanotech purchase warrants. Sample Nanotech Letters may be found at Ex. 1, Vol. 2B, Tab 45. Winick was listed as the author of a draft letter and the Nanotech Letters found in the RTP documents. Kolt Curry and McCarthy confirmed that Winick directed the payment of printing costs for the Nanotech Letter in the amount of at least $34,000. McCarthy admitted that she paid for the printing costs from the BFM Accounts and the Liquid Gold Accounts.

[79] Approximately 10,000 copies of the Nanotech Letter were sent to addresses provided by Winick. McCarthy admitted that the Nanotech Letters were mailed out from July 2009 until at least August 2010 (the "**Nanotech Material Time**"). A draft Nanotech Letter contained in the RTP documents and identified as being authored by "Sandy" was dated March 2, 2009 (the "**Draft Nanotech Letter**").

[80] In the fall of 2009, Winick, Kolt Curry and Mateyak left Ontario for Thailand. The Nanotech letter continued to be sent out through assistance provided by McCarthy, who was authorized to do AHST Ontario's banking and deal with the company's mail.

[81] Ms. Kozovski deposed in her affidavit that Staff did not identify any investor who actually sent money in response to the Nanotech Letter.

(iii) False and Misleading Statements in the Nanotech Letter

[82] The Nanotech Letter told recipients that the transfer agent "uncovered an unpaid dividend to you [the recipient]" and that attached to the dividend were shares and purchase warrants. Kolt Curry admitted the statement was false.

[83] The Nanotech Letter states that "[a]t the time of the writing of this letter the shares of Nanotech Industries Inc. are trading at $4.93". Ms. Toledano downloaded the trading history of Nanotech to show that Nanotech traded at $4.93 only once, in October 2008. The shares did not trade again until August 4th, 2009, at least three months after the first Nanotech Letters were sent when 200 shares changed hands at $0.05 each. Later, Nanotech Letters included an enclosure directing the recipient to disregard the $4.93 price specified and to confirm the current price online. The earliest Nanotech Letters were dated April 14, 2009 and evidence found in the RTP documents suggests that the enclosure was created in or after November 2009. Collectively, this supports a finding that a number of Nanotech Letters were sent with no enclosure qualifying the share price.

[84] The Nanotech Letter was typed on letterhead that uses the formal name of AHST Nevada (ie. with a comma) and the balance the letter refers to AHST Ontario (ie. without a comma). The Nanotech Letter was signed in the name of an individual who was the President of AHST Nevada and who never held any office with AHST Ontario. In fact, he never signed the Nanotech Letter at all. Kolt Curry and McCarthy both acknowledged that they stamped the signature on the Nanotech Letters.

[85] Some versions of the Nanotech Letter included a SEC transfer agent registration number, which corresponds to the registration granted to AHST Nevada in December 2004. Kolt Curry admitted that he had allowed the status of AHST Nevada to lapse in 2008 and was doing business through AHST Ontario, which was not registered through the SEC. The result is that the letter represented the sender as a transfer agent registered with the SEC when it was not. The Draft Nanotech Letter does not contain the SEC registration number.

[86] Both the Nanotech Letter and Nanotech's website presented Nanotech as a going concern during the time of the Nanotech Letter Scheme. Nanotech's website dated September 15th, 2009 stated that:

> Nanotech Industries identifies patented, patent-pending and proprietary technologies at leading universities and funds the additional development of such technologies in exchange for the exclusive rights to commercialize any resulting products.
>
> (Ex. 1, Vol. 1A, Tab 2J)

[87] Nanotech has been listed as "inactive" and "administratively dissolved" by the Wyoming Secretary of State since March 14, 2009. Staff's investigation revealed no evidence that suggests Nanotech ever operated a business of any kind beyond the company's attempt to sell its own shares.

G. Further Evidence of Winick's Involvement

[88] On March 15, 2011, Winick, Greg Curry and others were arrested in Bangkok, Thailand for operating an illegal telemarketing fraud or "boiler room." Electronic files related to the

operation of the boiler room, the RTP documents, were seized by the Royal Thai Police who provided copies to the Royal Canadian Mounted Police ("**RCMP**") liaison officer in Bangkok. Following the arrests in Bangkok, a search warrant was issued for McCarthy's residence in Ontario. During the search Staff seized more than 10 banker's boxes of documents including thousands of Nanotech Letters. Also obtained were documents and correspondence relating to Denver Gardner, BFM, Liquid Gold and the AHST Entities.

[89] In May 2011, Staff received from the RCMP liaison office in Bangkok the RPT documents on three DVDs, containing approximately 20,000 documents.

[90] The RTP documents included files in various electronic formats (ex. Microsoft Word, Microsoft Excel, .pdf, etc.). Applying information retrieval techniques to obtain what is commonly referred to as "meta data", the author of the RTP documents in many cases was identified as either "Sandy" or "Sandy Winick." A number of documents listing "Sandy" as the author were found among the documents recovered pursuant to the search warrant for McCarthy's residence in Ontario or were confirmed by other witnesses to have come from Winick.

[91] The RTP documents include the following:

- Over 3,000 addressed copies of the Nanotech Letter identifying "Sandy" as the author
- Shareholder lists for BFM and Liquid Gold
- Share certificate requests listing names of shareholders and number of BFM or Liquid Gold shares to be issued for each, listing "Sandy" as the author (the "**Share Certificate Requests**")
- Subscription agreements for the purchase of BFM securities
- Email pitches to swap Nanotech shares for BFM shares showing "Sandy" as the author
- "To Do" Lists referring to BFM, Liquid Gold, Nanotech and Denver Gardner, some of which identify "Sandy" as the author (the "**Winick To Do Lists**")
- Draft versions of the BFM website listing "Sandy" as the author
- Private Placement Memorandum for BFM indicating the document was authored by "Sandy"
- Invoices and "client statements" showing the purchase of BFM and Liquid Gold shares by Denver Gardner clients with "Sandy" as the author
- Weekly Denver Gardner newsletters showing "Sandy" as the author
- Denver Gardner "call scripts" for selling securities, authored by "Sandy"

[92] The Winick To Do Lists refer to most of the principal individuals and corporations involved in the BFM Scheme, Liquid Gold Scheme and Nanotech Letter Scheme. The Winick To Do Lists also assign various tasks to those participating in these schemes, which suggests that Winick was directing activity for them. Two of the Winick To Do Lists also suggest that Winick was simultaneously and consciously planning the operations of Denver Gardner, BFM, Liquid Gold and Nanotech (Ex. 1, Vol. 2B, Tabs 25-27).

[93] The Private Placement Memorandum for BFM shares is dated May 31, 2010, describes the purported business of the company and offers a maximum of 3,000,000 shares at a price per

unit of $3.00 (Ex. 1, Vol. 2A, Tab 18). It is not known if the BFM Private Placement Memorandum was ever sent to investors.

[94] Denver Gardner "call scripts" for selling securities include blank spaces in the place of company names and do not expressly refer to BFM, Liquid Gold or Nanotech (Ex. 1, Vol. 2B, Tab 22).

V. LAW

A. Trading Without Registration

[95] During the Material Time and prior to September 28, 2009, subsection 25(1)(a) of the *Act* prohibited trading in securities without being registered with the Commission. Subsection 25(1)(a) of the *Act* provided that:

> No person or company shall,
>
> (a) trade in a security […] 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 […]

[96] During the Material Time, on and after September 28, 2009, subsection 25(1) of the *Act* provided that:

> 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 or hold himself, herself or itself out as engaging in the business of trading in securities unless the person or company
>
> (a) is registered in accordance with Ontario securities law as a dealer; or
>
> (b) is a representative registered in accordance with Ontario securities law as a dealing representative of a registered dealer and is acting on behalf of the registered dealer.

i) Trade in a Security

[97] With respect to the phrase "trade in a security" used in subsection 25(1)(a) of the *Act* or "trading in securities" used in subsection 25(1) of the *Act*, the definition of "trade" or "trading" under subsection 1(1) of the *Act* provides for a broad definition, which includes any sale or disposition of a security for valuable consideration and any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of such a sale or disposition.

ii) Acts in Furtherance of Trade

[98] The Commission has adopted a contextual approach to determining whether non-registered individuals or companies have engaged in acts in furtherance of a trade. The contextual approach examines "the totality of the conduct and the setting in which the acts have

occurred" and has as a primary consideration the effect the acts had on those to whom they were directed (*Re Momentas Corp*. (2006), 29 O.S.C.B. 7408 ("***Momentas***") at para. 77).

[99] A variety of conduct has been found by the Commission to constitute acts in furtherance of trade, including:

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

(b) distributing promotional materials concerning potential investments;

(c) issuing and signing share certificates;

(d) preparing and disseminating materials describing investment programs;

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

(f) conducting information sessions with groups of investors;

(g) meeting with individual investors;

(h) accepting investor funds for the purpose of an investment; and

(i) setting up a website that offers securities to investors;

(*Momentas,* above at para. 80; *Re Lett* (2004), 27 O.S.C.B. 3215 ("***Lett***") at paras. 48-51 and 64; *Re Allen* (2005), 28 O.S.C.B. 8541 ("***Allen***") at para. 85; *Re Limelight Entertainment Inc.* (2008), 31 O.S.C.B. 1727 ("***Limelight***") at para. 133; *Re First Federal Capital (Canada) Corp.* (2003), 27 O.S.C.B. 1603 ("***First Federal***") at para. 45)

[100] Therefore, taking steps to facilitate the mechanical, or logistical, aspects of trading has been found by the Commission to be an act in furtherance of a trade. In *Lett*, investors transferred, deposited or caused to be deposited funds into the accounts of the corporate respondents, which had been opened by an individual respondent. The Commission found that the investors' funds were deposited into the accounts and accepted by the respondents for the purpose of selling securities and held that the respondents had carried out acts in furtherance of trades (*Lett*, above at paras. 60 and 64).

iii) Not Necessary to Complete Trade

[101] The respondent does not have to have direct contact or make a direct solicitation of an investor for an act to constitute an act in furtherance of a trade (*Lett*, above at paras. 48-51 and 64). An act in furtherance of a trade does not require that an investment contract be completed or that an actual trade otherwise occur (*Allen*, above at para. 85). Any claim that an actual trade must occur for there to be an act in furtherance of a trade would necessarily limit the effectiveness and negate the purpose of the *Act*, which is to regulate those who trade, or who purport to trade, in securities (*First Federal,* above at paras. 46-47 and 51).

iv) Definition of Security

[102] The definition of "security" provided for in subsection 1(1)(e) of the *Act* includes "a bond, debenture, note or other evidence of indebtedness or a share, stock, unit, unit certificate, participation certificate, certificate of share or interest".

v) Availability of Exemption

[103] Once Staff has established that a respondent has engaged in an activity for which registration or a prospectus is required, the onus is on the respondent to prove facts establishing the availability of an exemption.

B. Distribution of Securities Without a Prospectus

[104] Subsection 53 (1) of the *Act* provides that:

> 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.

[105] A "distribution" is defined in subsection 1(1)(a) of the *Act* to mean "a trade in securities of an issuer that have not been previously issued."

[106] The prospectus is a primary disclosure document that fulfils a legal requirement pursuant to subsection 56(1) of the *Act* to provide investors with full, true and plain disclosure relating to a security that is issued or proposed to be distributed. The information provided in a prospectus allows investors to properly assess risks of the investment and to make an informed decision on whether or not to invest and, as a result, the document plays a significant role in investor protection (*Limelight,* above at 139).

[107] As stated above, the onus is on the respondent to prove facts establishing the availability of an exemption from the prospectus requirement.

C. Prohibited Representation

[108] Subsection 44(2) of the *Act* states:

> **44.(2) Representation prohibited -** No person or company shall make a statement about any matter that a reasonable investor would consider relevant in deciding whether to enter into or maintain a trading or advising relationship with the person or company if the statement is untrue or omits information necessary to prevent the statement from being false or misleading in the circumstances in which it is made.

[109] In *Carter*, a Director's decision, the Director found that the marketing materials of North American Financial Group ("**NAFG**"), an entity affiliated with Carter Securities Inc., violated subsection 44(2) of the *Act*. The Director in *Carter* decided that marketing materials provided to investors contained statements that are misleading, unsupported or not accurate, including:

a. No disclosure that a substantial percentage of NAFG's investor funds are invested in non-interest bearing related party loans
b. A lack of disclosure regarding NAFG's poor financial condition
c. NAFG has "grown to become a leader in the finance sector" and NAFG is "a leading non-bank finance lender"

d. Comparisons of NAFG's returns to those of low risk secured alternatives (Canada Savings Bonds and GICs)
e. "Quantitative analysis, understanding and interviewing every borrower is the foundation of our lending"
f. "Once a loan is advanced we continue to regularly monitor the borrower and the asset until the loan is repaid", etc.

(*Re Carter Securities Inc.* (2010), 33 O.S.C.B. 8691 ("***Carter***") at para. 53 and 74)

D. Securities Fraud

[110] 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. Subsection 126.1(b) of the *Act* states:

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

[111] In previous decisions, this Commission has adopted the interpretation of the fraud provision in provincial securities legislation as set out by the British Columbia Court of Appeal in the *Anderson* decision. In *Anderson*, the British Columbia Court of Appeal held that the fraud provision in the British Columbia *Securities Act*, which is similar to the Ontario provision, requires proof of the same elements of fraud as in a prosecution under the *Criminal Code*. The fraud provision in the *Act* merely broadens the ambit of liability to those who knew or reasonably ought to have known that a person or company engaged in conduct that perpetrated a fraud. The words "knows or reasonably ought to know" do not diminish the requirement of Staff to prove subjective knowledge of the facts concerning the dishonest act by someone accused of fraud *(Anderson v. British Columbia (Securities Commission)* (2004), 192 B.C.C.A. 7 at para. 26; leave to appeal to the Supreme Court of Canada denied [2004], S.C.C.A. No. 81 (S.C.C.)).

[112] In previous decisions, this Commission has also referred to the legal test for fraud set out in the leading case of *Théroux*. In *Théroux*, McLachlin J. (as she then was) summarized he elements of fraud:

> …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 putting 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 of knowledge that the victim's pecuniary interest are put at risk).

(*R v. Théroux*, [1993] 2 S.C.R. 5 (S.C.C.) ("***Théroux***") at para. 27)

[113] The act of fraud is established by two elements: a dishonest act and deprivation. The dishonest act is established by proof of deceit, falsehood or other fraudulent means. A dishonest act may be established by proof of "other fraudulent means." Other fraudulent means encompasses all other means other than deceit or falsehood, which can properly be characterized as dishonest and is "determined objectively, by reference to what a reasonable person would consider to be a dishonest act" (*Théroux*, above, at para. 17). The courts have included within the meaning of "other fraudulent means" the "use of corporate funds for personal purposes, non-disclosure of important facts, exploiting the weakness of another, unauthorized diversion of funds, and unauthorized arrogation of funds or property" (*Théroux*, above, at para. 18). The use of investors' funds in an unauthorized manner has been determined to be "other fraudulent means" (*R. v. Currie*, [1984] O.J. No. 147 (Ont. CA) pp. 3-4).

[114] The second element of the *actus reus* of fraud, deprivation, is established by proof of detriment, prejudice or risk of prejudice to the economic interests of the victims caused by the dishonest act. Actual economic loss suffered by the victim may establish deprivation, but it is not required. Prejudice or risk of prejudice to an economic interest is sufficient (*Théroux*, above, at paras. 16-17; *R. v. Olan*, [1978] 2 S.C.R. 1175).

[115] The mental element of fraud is established by proof of subjective knowledge of the prohibited act and subjective knowledge that the prohibited act would have the deprivation of another as a consequence. The subjective knowledge can be inferred from the totality of the evidence (*Théroux*, above at para. 29).

E. Director and Officer Deemed Non-compliance With Ontario Securities Law

[116] Section 129.2 of the *Act* provides:

> **129.2 Directors and Officers -** 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 of person who authorized, permitted or acquiesced in the noncompliance 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 had been made against the company or person under section 127.

[117] 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 attract 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,* above at para. 118)

[118] A "director" is defined in subsection 1(1) of the *Act* to include "a director of a company or an individual performing a similar function or occupying a similar position for any person." The term "officer" is also defined in subsection 1(1) of the *Act*, which provides:

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

[119] Therefore, a respondent who performs similar functions to an officer or director is considered a *de facto* officer or director and maybe captured by the language of section 129.2 of the *Act* as a person who authorized, permitted or acquiesced to the noncompliance of Ontario securities law by the relevant company.

[120] Relevant factors, which have been identified for the determination of whether a representative is a *de facto* director or officer, include:

(a) appointing nominees as directors;

(b) responsibility for the supervision, direction, control and operation of the company;

(c) running the company from their office;

(d) negotiating on behalf of the company;

(e) serving as the company's sole representative on a trip to solicit investments;

(f) substantially reorganizing and managing the company;

(g) selecting the name of the company;

(h) arranging a public offering;

(i) making significant business decisions;

(j) acting in a position with similar remuneration and responsibility as a director or officer within the company;

(k) actively managing key aspects of the company's business;

(l) preparing and authorizing the content of corporate documents, including promotional materials, such as brochures or media releases;

(m) instructing law or accounting firms on behalf of the company;

(n) having financial and trading authorization over the accounts of the company, including signing authority over the company's bank account;

(o) making presentations on behalf of the company and inviting expressions of interest to purchase securities of the company;

(p) directing the sending of information packages, including a subscription agreement relating to the purchase of shares, to prospective investors; and

(q) being referred to in correspondence, documents or by others as a director or officer of the company.

(*Momentas,* above at paras. 102, 103, 106, 108, 112-116; *Re World Stock Exchange* (2000), 9 A.S.C.S. 658 (Alta. Sec. Comm.) at para. 14 (Q.L.); *Re Press* (1998), 7 A.S.C.S. 2178 (Alta. Sec. Comm.) at pp. 6-10)

[121] Also, section 129.2 of the *Act* captures conduct "whether or not any proceeding has been commenced against the company […] under Ontario Securities law or any order had been made against the company […] under section 127." Therefore, the company need not be a party to the proceeding against the officer or director or *de facto* officer or director for a finding to be made pursuant to section 129.2 of the *Act*.

VI. ANALYSIS

A. Winick, Greg Curry and the BFM Scheme

i) Unregistered Trading and Illegal Distribution

[122] Four BFM investors, K.D., H.K., Mrs. J.O. and L.M., confirmed that they received calls from a representative of Denver Gardner, who offered to sell them shares of BFM. Each of the four BFM investors subsequently wired funds to one of the BFM Accounts for their purchase BFM shares. McCarthy admitted to Staff that BFM sold previously unissued securities over the phone to individual foreign investors, which she understood to be done through an investment bank from Singapore called Denver Gardner.

[123] The BFM banking records show that from June 2009 through December 2009 at least 28 residents of various foreign countries wired a total of approximately CDN $360,000.00 to the BFM Accounts to purchase BFM shares (the "**BFM Investor Funds**"). I accept that Winick directed McCarthy to sign BFM share certificates and send them to BFM investors. I also find that the Share Certificate Requests listing names of shareholders and number of BFM shares to be issued for each were created by Winick. The BFM share certificates received from multiple investors corroborated the number of shares Winick requested in the Share Certificate Requests.

[124] Winick's direction to McCarthy to sign and forward BFM shares to BFM investors and his determination of how many shares were to be issued to each investor are acts in furtherance of trades. These acts combined with the context in which the trades were effected, through

solicitation by a fictitious entity led by Winick, leads me to conclude that Winick was orchestrating a complex trading scheme which included the issuance of BFM shares. Winick was not registered to trade in securities during the BFM Material Time. Winick did not provide evidence to support the availability of an exemption to registration or prospectus requirements of the *Act.*

[125] Winick acted in furtherance of trades in BFM securities without being registered to do so, in circumstances in which no exemption was available, contrary to subsection 25(1)(a) of the *Act*, as that section was in force at the time the conduct commenced, and contrary to subsection 25(1) at the *Act*, as subsequently amended on September 28, 2009, and acted contrary to the public interest. As the BFM securities had not been previously issued, nor a prospectus filed for them, Winick distributed securities of BFM contrary to subsection 53(1) of the *Act* and contrary to the public interest.

ii) Securities Fraud

[126] As stated above, the act of fraud is established by two elements: (a) a dishonest act, determined objectively, by reference to what a reasonable person would consider to be a dishonest act; and (b) deprivation established by proof of detriment, prejudice or risk of prejudice to the economic interests of the victims, caused by the dishonest act. The mental element of fraud is established by proof of subjective knowledge of the prohibited act and subjective knowledge that the prohibited act would have the deprivation of another as a consequence. The subjective knowledge can be inferred from the totality of the evidence.

[127] The Denver Gardner website indicates that the company "is a premier provider of wealth management, securities trading and sales, corporate finance and investment banking services." (Ex. 1, Vol 1B, Tab 1D). I find that Denver Gardner is a fictitious entity created by Winick to mislead investors. The RTP documents contain hundreds of pages of material related to Denver Gardner, including Denver Gardner "call scripts" and the Denver Gardner client statements for the BFM investors, which showed "Sandy" as the author. Ms. Kozovski was unable to generate any internet hits that appeared to be related to an investment bank in Singapore called Denver Gardner, other than its own website and the Denver Gardner website appears to have been copied from other online sources. Furthermore, investors were directed to provide funds directly to the BFM Accounts.

[128] BFM had no legitimate business. McCarthy confirmed to Staff that BFM had no assets or operations other than the alleged Bio-Fertilis Stock Purchase Agreement. BFM held no board or shareholder meetings, never passed any bylaws or kept any minutes. BFM's only source of funds was the sale of its own securities to investors. As directed by Winick, McCarthy's correspondence with BFM investors purported the fiction that BFM was an operating company and that Denver Gardner was a legitimate investment dealer hired to distribute BFM's shares.

[129] Winick directed McCarthy to create the BFM website, with content that Winick provided. The BFM website furthered the deceptive scheme by creating the appearance that BFM was an operating entity.

[130] Winick directed McCarthy to make transfers which dispersed BFM Investor Funds to pay personal expenses of Winick and his wife, as well as to other recipients, for purposes unrelated to

the business of BFM. I find following investor funds were transferred from the BFM Accounts to or for the benefit of Winick:

(a) CAD $153,900 to cover Visa and American Express credit card payments for Winick, his wife and McCarthy, including CAD $54,800 to an American Express account McCarthy held jointly with Winick;
(b) CAD $28,000 and USD $24,500 to a joint bank account held by Winick and McCarthy;
(c) CAD $26,800 to Worldwide Capital Group Inc. and Imanos and Co. Inc., two companies controlled by Winick;
(d) USD $11,000 to FEAC Ltd., a company controlled by Winick;
(e) USD $6,500 in payments to Pink OTC markets for expenses related to other companies controlled by Winick; and
(f) CAD $1,100 to Toronto Hydro on behalf Winick's wife.

[131] Therefore Winick accepted funds from the BFM Accounts in the amount of approximately CAD$251,800, for his personal benefit. Winick also directed McCarthy to transfer $16,400 from the BFM CAD Account to cover printing expenses related to the Nanotech Letter Scheme, a purpose entirely unrelated to BFM's purported business.

[132] It can be inferred from the totality of the evidence that Winick knew or reasonably ought to have known that he was engaging in the conduct described above at paragraphs 118 to 122 and that Winick knew or reasonably ought to have known that his actions prejudiced or placed at risk the economic interests of BFM investors. McCarthy acknowledged that during the BFM Material Time the actions she took on behalf of BFM, including issuance of shares, communication with investors and disbursement of BFM Investor Funds, was guided by direction of Winick. The Winick To Do Lists assign various tasks to those participating in the BFM Scheme, Liquid Gold Scheme and Nanotech Letter Scheme (the "**Schemes**"), which suggest that Winick was consciously planning and directing activity for the Schemes.

[133] Winick's use of Denver Gardner, a fictitious entity, to sell securities of BFM, a company with no legitimate assets or operations and no source of funds other than investment income, is a dishonest course of conduct that was detrimental to the economic interests of investors. Winick, through McCarthy, misrepresented the true nature of BFM's viability through correspondence with investors and the BFM website to further the fraudulent scheme. Further, Winick knowingly accepted BFM Investor Funds for his personal benefit, which is fraudulent conduct causing a direct deprivation to BFM investors. Finally, Winick knew or ought to have known that the funds from the BFM Accounts were BFM Investor Funds and that using them to further the Nanotech Letter Scheme was inappropriate diversion of those funds. As a result, Winick engaged in acts, practices or a course of conduct relating to securities, that he knew or reasonably ought to have known perpetrated a fraud on investors contrary to subsection 126.1(b) of the *Act* and contrary to the public interest.

iii) Director and/or Officer Liability

[134] Winick instructed McCarthy to incorporate BFM and to open the BFM Accounts in Ontario. Winick also directed McCarthy to create a website for BFM using content provided by

Winick. BFM's address was a mailbox to which Winick and McCarthy had sole access. Winick received or benefitted from over half of the amount of investor funds in the BFM Accounts.

[135] Although Winick was not formally appointed as an officer or director of BFM during the BFM Material Time, he participated in all of the major business decisions of the company for the purposes of the BFM Scheme. One of the major initiatives undertaken by him was to raise capital by way of offering BFM securities to members of the public through Denver Gardner.

[136] Greg Curry was a director of BFM at the time the company was incorporated in November 2008 and held that position during the BFM Material Time. As president of BFM, Greg Curry signed an agreement to purportedly invest in Bio-Fertilis. His formal designation as a director of BFM and signature as president of the company lead me to conclude that Greg Curry was in fact a director of BFM during the BFM Material Time.

[137] I conclude that Winick was the directing mind and management of BFM and that he, as a *de facto* director and officer of BFM, authorized, permitted or acquiesced in the trading and distribution of securities and participation in securities fraud by BFM. I also find that Greg Curry, as director of BFM, permitted or acquiesced in the trading and distribution of securities and participation in securities fraud by BFM. As a result, Winick and Greg Curry are deemed to also have not complied with Ontario securities law in accordance with section 129.2 of the *Act*.

B. Winick and the Liquid Gold Scheme

i) Unregistered Trading and Illegal Distribution

[138] Three individuals confirmed that they were solicited by sales representatives from Denver Gardner to purchase shares in Liquid Gold. At least four investors, Mrs. J.O., W.E. O.B.J and R.A., wired a total of USD $84,805.62 directly to the Liquid Gold Accounts. The Liquid Gold shareholder list found in the RTP documents, and also in hardcopy among Winick's documents at the residence he shared with McCarthy, confirms that Mrs. J.O., W.E. O.B.J and R.A. were Liquid Gold investors.

[139] McCarthy admitted to Staff that Liquid Gold sold previously unissued securities over the phone to at least four foreign investors through telephone representatives claiming to work for Denver Gardner.

[140] The Share Certificate Requests, authored by Winick, also included requests for Liquid Gold shares to be issued for each investor noted at paragraph 129 above. Mrs. O.B. confirmed that after she wired funds to invest in Liquid Gold she received share certificates from AHST Nevada. The Denver Gardner client statement of Mrs. O.B. indicates that she received the same number of Liquid Gold shares as was requested by Winick in the Share Certificate Request for her. I find that Winick directed the issuance of Liquid Gold shares to Mrs. O.B.

[141] Directing the issuance of Liquid Gold shares through the Share Certificate Requests is an act in furtherance of trade. This course of conduct, combined with the context in which the trades were effected, through solicitation by a fictitious entity led by Winick, leads me to conclude that Winick was orchestrating a complex trading scheme which included the issuance of Liquid Gold shares. Winick was not registered to trade in securities during the Liquid Gold Material Time.

Winick did not provide evidence to support the availability of an exemption to registration or prospectus requirements of the *Act.*

[142] Winick acted in furtherance of trades in Liquid Gold securities without being registered to do so in circumstances in which no exemption was available, contrary to subsection 25(1)(a) of the *Act*, as that section was in force at the time the conduct commenced, and contrary to subsection 25(1) at the *Act*, as subsequently amended on September 28, 2009, and acted contrary to the public interest. As the Liquid Gold securities had not been previously issued, nor a prospectus filed for them, Winick distributed securities of Liquid Gold contrary to subsection 53(1) of the *Act* and contrary to the public interest.

ii) Securities Fraud

[143] The evidence suggests that Liquid Gold did not have a legitimate business. Liquid Gold's website made it appear as if the company was operating an enterprise centered on the recovery of additional hydrocarbons from domestic sources. McCarthy, as sole director of Liquid Gold, told Staff that her understanding was the company was inactive. To McCarthy's knowledge, Liquid Gold never operated any oil of hydrocarbon recovery business and never had assets other than cash. Liquid Gold never had a board meeting or a shareholder meeting. Liquid Gold did not keep a minute book, pass any bylaws or have any employees.

[144] McCarthy admitted that over "98% of the USD $2.6 million deposited to the Liquid Gold Accounts was depleted by withdrawals and transfers for purposes unrelated to the alleged business of Liquid Gold", including the approximate USD $85,000 wired by investors (Ex. 1 Vol. 3, Tab 14). Winick directed McCarthy to make transfers, which dispersed funds to pay personal expenses of Winick and his wife, as well as to other recipients, for purposes unrelated to the business of Liquid Gold. I find following investor funds were transferred from the Liquid Gold Accounts to or for the benefit of Winick:

(a) CAD $600,700 in payments to credit cards held by Winick;
(b) CAD $88,400 in federal tax payments on behalf of Winick;
(c) CAD $58,400 in payments to or on behalf of Winick's wife;
(d) USD $499,000 to purchase a term deposit, later cashed and disbursed at Winick's instruction;
(e) $7,500 to Worldwide Capital Group, a company controlled by Winick; and
(f) $6,500 to Pink Sheets OTC to cover expenses related to Liquid Gold and Blackout Media, another company controlled by Winick.

[145] Therefore, Winick accepted nearly half of the funds from the Liquid Gold Accounts, or approximately CAD$1,260,500, for his personal benefit. Winick also directed McCarthy to transfer $15,100 from the Liquid Gold CAD Account to cover printing expenses related to the Nanotech Letter Scheme, another purpose entirely unrelated to Liquid Gold's purported business.

[146] I find, from the totality of the evidence, that Winick knew that he was engaging the conduct described above at paragraphs 135-136 and that Winick knew or reasonably ought to have known that his actions prejudiced or placed at risk the economic interests of Liquid Gold investors. McCarthy acknowledged that during the Liquid Gold Material Time steps she took on

behalf of Liquid Gold, including disbursement of funds from the Liquid Gold Accounts, was guided by direction of Winick. Again, the Winick To Do Lists suggest that Winick was consciously planning and directing activity for the Schemes.

[147] As stated above, I accept that Denver Gardner is a fictitious entity created by Winick to mislead investors. Winick used Denver Gardner to sell shares of Liquid Gold, an inactive company, to the public, which is a dishonest course of conduct that was detrimental to the economic interests of investors. He knowingly accepted almost half of the funds in the Liquid Gold Accounts for his own personal benefit. By participating in this conduct, Winick engaged in acts, practices or a course of conduct relating to securities that he knew or reasonably ought to have known perpetrated a fraud on investors contrary to subsection 126.1(b) of the *Act* and contrary to the public interest.

iii) De facto Director and/or Officer Liability

[148] As with BFM, Winick directed McCarthy to incorporate Liquid Gold and open the Liquid Gold Accounts in Ontario. Winick also directed McCarthy's disbursement of funds from Liquid Gold Accounts, including investor funds. Although Winick was not formally appointed as an officer or director of Liquid Gold during the Liquid Gold Material Time, he participated in the major business decisions of the company for the purposes of the Liquid Gold Scheme. One of the major initiatives undertaken by him was to raise capital by way of offering Liquid Gold securities to members of the public through Denver Gardner.

[149] I conclude that Winick was the directing mind and management of Liquid Gold and that he authorized, permitted or acquiesced in the trading and distribution of securities and participation in securities fraud by Liquid Gold. As a result, Winick is deemed to also have not complied with Ontario securities law in accordance with section 129.2 of the *Act*.

C. Winick and the Nanotech Letter Scheme

i) Unregistered Trading and Illegal Distribution

[150] In early 2009, Winick called Kolt Curry and provided him with the content of the Nanotech Letter. The Draft Nanotech Letter was authored by Winick. Winick also sent Kolt Curry a list of approximately 10,000 addresses in Europe, Asia, Africa and Australia to which Kolt Curry was to send the letter.

[151] The Nanotech Letter enclosed 5,000 Nanotech shares and 25,000 Nanotech purchase warrants per recipient and told potential investors that if they wished to buy more shares in Nanotech, by exercising their share purchase warrants, they could send their funds directly to the address of AHST Nevada. Kolt Curry admitted that he signed the Nanotech share certificates on behalf of the AHST Entities as transfer agent. I conclude that the Nanotech shares enclosed in the Nanotech Letter had not been previously issued.

[152] Approximately 10,000 copies of the Nanotech Letter were in fact sent to addresses provided by Winick. McCarthy assisted Winick and Kolt Curry to continue sending the Nanotech Letter and enclosed share certificates after they left Ontario.

[153] Winick acted in furtherance of trading Nanotech shares by:

- providing the content for the Nanotech Letter, which included enclosure and distribution of Nanotech shares and purchase warrants;
- providing the list of addresses to which the Nanotech Letters were sent for the purpose of soliciting purchases of Nanotech shares through the purchase warrants; and
- arranging for the printing of the Nanotech Letter and certificates and directing McCarthy to pay for the costs in furtherance of distributing the Nanotech shares and purchase warrants.

[154] Winick was not registered to trade in securities during the Nanotech Material Time. Winick did not provide evidence to support the availability of an exemption to registration or prospectus requirements of the *Act.*

[155] Winick acted in furtherance of trades in Nanotech securities without being registered to do so in circumstances in which no exemption was available, contrary to subsection 25(1)(a) of the *Act*, as that section was in force at the time the conduct commenced, and contrary to subsection 25(1) at the *Act*, as subsequently amended on September 28, 2009, and acted contrary to the public interest. As the Nanotech securities had not been previously issued, nor a prospectus filed for them, Winick distributed securities of Nanotech contrary to subsection 53(1) of the *Act* and contrary to the public interest.

ii) Prohibited Representations

[156] To make a finding pursuant to subsection 44(2) of the *Act*, I must be satisfied that the respondent made a statement about a matter that a reasonable investor would consider relevant in deciding whether to enter into or maintain a trading or advising relationship with the respondent, which is untrue or omits information necessary to prevent the statement from being false or misleading in the circumstances.

[157] While the statements made in the Nanotech Letter were false, it is not clear from the Nanotech Letter that the statements were relevant to a reasonable investor in deciding whether to enter into a trading relationship with Winick. Having found below that Winick was not a *de facto* director and/or officer of the AHST Entities, the misstatements made on behalf of the AHST Entities cannot be said to have been made to further or maintain a trading or advising relationship between the potential investor and Winick. If anything, the misrepresentation would be relevant to a reasonable investor considering a trading or advising relationship with the AHST Entities and their principals.

[158] I am unable to find that Winick contravened subsection 44(2) of the *Act.*

iii) De facto Director and/or Officer Liability

[159] Kolt Curry incorporated AHST Nevada at Winick's suggestion, to serve Winick's shell companies. With Winick's assistance, Kolt Curry registered AHST Nevada as a transfer agent with the SEC. However, Kolt Curry also unequivocally stated that the AHST Entities were his own companies, he confirmed that he signed as president, even after his wife was registered in that role.

[160] Kolt Curry confirmed that Winick was the only person he ever dealt with at Nanotech. In early 2009, Winick asked Kolt Curry to prepare the Nanotech Letter based on information Winick provided. Winick also sent Kolt Curry a list of approximately 10,000 addresses to which he was to send the letter. Winick also directed McCarthy to pay the printing costs of the Nanotech Letters from the accounts of companies he controlled through her.

[161] Although Winick was not formally appointed as an officer or director of Nanotech during the Nanotech Material Time, he participated in major business decisions of the Nanotech for the purposes of the Nanotech Letter Scheme. One of the major initiatives undertaken by him was to distribute Nanotech shares and raise capital by offering Nanotech purchase warrants to members of the public through the AHST Entities.

[162] I conclude that Winick was the *de facto* director and/or officer of Nanotech and that he authorized, permitted or acquiesced in the trading and distribution of securities and participation in securities fraud by Nanotech. As a result, Winick is deemed to also have not complied with Ontario securities law in accordance with section 129.2 of the *Act*.

[163] Despite Winick's involvement with the creation and registration of AHST Nevada and his apparent use of the AHST Entities, through Kolt Curry, to serve his companies, I cannot conclude that Winick was a *de facto* director or officer of the AHST Entities. Kolt Curry's interview with Staff made it apparent that Kolt Curry was in control of the AHST Entities, even after he was officially removed from corporate documents. It is not clear on the evidence that Winick directed or controlled the AHST Entities.

VII. CONCLUSION

[164] The BFM and Liquid Gold schemes I find to be entirely fraudulent. The activities of those involved in the Schemes include unregistered trading and illegal distributions.

[165] For the reasons given, I make the following findings in respect of Winick:

(a) Winick traded in and engaged in or held himself out as engaging in the business of trading in securities of BFM, Liquid Gold and Nanotech without being registered to do so in circumstances in which no exemption was available, contrary to subsection 25(1)(a) of the *Act*, as that section was in force at the time the conduct commenced and contrary to subsection 25(1) at the *Act*, as subsequently amended on September 28, 2009, and contrary to the public interest;

(b) Winick distributed securities of BFM, Liquid Gold and Nanotech without a preliminary prospectus and prospectus having been filed and receipts having been issued for them by the Director and without an exemption from the prospectus requirement, contrary to subsection 53(1) of the *Act* and contrary to the public interest;

(c) Winick, directly or indirectly, engaged or participated in acts, practices or a course of conduct relating to securities of BFM and Liquid Gold, that he knew or reasonably ought to have known perpetrated a fraud on any person or company contrary to subsection 126.1(b) of the *Act* and contrary to the public interest; and

(d) Winick, as *de facto* director and/or officer of BFM, Liquid Gold and Nanotech, did authorize, permit or acquiesce in the non-compliance with Ontario securities law by respective employees, agents or representatives of those companies and Winick is therefore deemed to also have not complied with Ontario securities law in accordance with section 129.2 of the *Act*.

[166] I find that Greg Curry, as director of BFM, did permit or acquiesce in the non-compliance with Ontario securities law by BFM or by the employees, agents or representatives of BFM and Greg Curry is therefore deemed to also have not complied with Ontario securities law in accordance with section 129.2 of the *Act*.

[167] For the reasons outlined above, I will also issue an order dated August 7, 2013 which sets down the date for the hearing with respect to sanctions and costs in this matter. That order will also extend the temporary cease order of the Commission with respect to the Winick, dated March 23, 2012, until the conclusion of the proceeding.

Dated this 7th day of August, 2013.

"James D. Carnwath"
James D. Carnwath, Q.C.