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

AND

IN THE MATTER OF 2196768 ONTARIO LTD
Carrying on business as RARE INVESTMENTS,
RAMADHAR DOOKHIE, ADIL SUNDERJI
and EVGUENI TODOROV

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

Hearing:	May 22, 23, 24 and 27, 2013 September 5, 2013	
Decision:	June 27, 2014	
Panel:	Edward P. Kerwin	- Commissioner and Chair of the Panel
Appearances:	Donna Campbell	- For Staff of the Commission
	Behdad Hosseini	- For 2196768 Ontario Ltd, carrying on business as RARE Investments, and Ramadhar Dookhie
	Evgueni Todorov	- Self-represented

TABLE OF CONTENTS

REASONS AND DECISION

I. OVERVIEW

A. Background

[1] This was a hearing before the Ontario Securities Commission (the "**Commission**"), pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**"), to consider whether 2196768 Ontario Ltd, carrying on business as RARE Investments ("**RARE**"), Ramadhar Dookhie ("**Dookhie**") and Evgueni Todorov ("**Todorov**") (collectively, the "**Respondents**") breached the Act and acted contrary to the public interest.

[2] This proceeding was commenced by a Statement of Allegations, which was filed by Staff of the Commission ("**Staff**") on November 22, 2011, and a Notice of Hearing, which was issued by the Commission on the same date. The Statement of Allegations and the Notice of Hearing list the following respondents: RARE, Dookhie, Todorov and Adil Sunderji ("**Sunderji**"). Prior to the hearing on the merits in this matter, on March 15, 2013, the Commission approved a settlement agreement between Staff and Sunderji (*Re 2196768 Ontario Ltd et al.* (2013), 36 O.S.C.B. 2909).

[3] This case involves allegations by Staff of unregistered trading and illegal distribution of securities that span a period of time between January 1, 2009 and March 31, 2010 (the "**Material Time**"). Staff alleges that during the Material Time, the Respondents solicited investment funds for the purpose of trading in foreign currencies ("**Forex**" or "**FX**") for profit and raised approximately $1.15 million from 15 investors ("**RARE Investors**"). Staff alleges that the RARE Investors advanced funds to the Respondents, who issued promissory notes for investor loans and subsequently lost the money in Forex trading or used the funds to repay previous debts unrelated to RARE, and thereby engaged in fraudulent conduct in breach of the Act and acted contrary to the public interest.

[4] Staff alleges that the Respondents' conduct breached the following sections of the Act: subsection 25(1)(a) of the Act (between January 1, 2009 and September 27, 2009) and subsection 25(1) of the Act (between September 28, 2009 and March 31, 2010) (unregistered trading); subsection 53(1) of the Act (illegal distribution of securities); and subsection 126.1(b) of the Act (fraud). In addition, Staff alleges that Dookhie and Todorov, as directors and officers of RARE, authorized, permitted or acquiesced in breaches by RARE of sections 25, 53 and 126.1(b) of the Act by RARE and are therefore deemed to also have not complied with Ontario securities law, pursuant to section 129.2 of the Act. Staff also alleges that the Respondents have engaged in conduct contrary to the public interest.

B. History of the Proceeding

[5] The first appearance in this matter was held on December 5, 2011. Subsequent to that hearing, three pre-hearing conferences were held on May 2, July 19 and September 14, 2012.

[6] At the first appearance held on December 5, 2011, a pre-hearing conference was scheduled for March 5, 2012. On March 1, 2012, at the request of counsel for RARE, Dookhie, Todorov and Sunderji, the Commission adjourned the pre-hearing conference to May 2, 2012 to allow Sunderji and Todorov to retain legal counsel. The pre-hearing conference held on July 19, 2012 was also adjourned to a later date, in order to allow again these respondents to obtain legal counsel.

[7] At the pre-hearing conference held on September 14, 2012, the hearing on the merits was set down to commence on March 18, 2013 and continue on March 19, 20, 21, 22, 25, 27 and 28, 2013 (the "**Merits Hearing**").

[8] On March 13, 2013, Todorov requested an adjournment of the Merits Hearing to retain counsel. The Commission granted the adjournment request, vacated the dates scheduled in March 2013 and scheduled the Merits Hearing to begin on May 22, 2013 and continue on May 23, 24, 27, 28, 29, 30 and 31, 2013. The Commission also ordered that the Merits Hearing be adjourned on a peremptory basis as against Todorov.

[9] As mentioned in paragraph 2 above, on March 15, 2013, the Commission approved a settlement agreement entered into by Staff and Sunderji.

[10] The Merits Hearing commenced on May 22, 2013. Evidence was heard on May 22, 23, 24 and 27, 2013. On May 27, 2013, upon the completion of the submission of evidence by Staff and the Respondents, the Commission vacated the remaining dates of the Merits Hearing, set the timing for the parties to file written closing submissions and set the date of September 5, 2014 for the Panel to hear oral closing submissions. Staff was ordered to serve and file written closing submissions by June 28, 2013, the Respondents were ordered to serve and file written closing submissions by August 9, 2013 and Staff was ordered to serve and file any written reply by August 20, 2013.

[11] On June 26, 2013, Staff served and filed its written closing submissions, a brief of authorities and the Affidavit of Laura Filice, sworn on June 26, 2013. On August 8, 2013, counsel for Dookhie and RARE, Behdad Hosseini ("**Hosseini**"), informed Staff that he would not be able to serve and file the written closing submissions of Dookhie and RARE by August 9, 2013, and indicated that he expected to do so in the week of August 12, 2013. On August 12, 2013, I ordered that:

> 1. the [Respondents] shall serve and file any written closing submissions on or by Friday, August 16, 2013 at 4:30 p.m., which date will not be subject to further extension;
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> 2. Staff shall serve and file their written reply, if any, on or by Tuesday, September 3, 2013 at 4:30 p.m.; and
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> 3. the hearing on the merits shall continue on Thursday, September 5, 2013 at 10:00 a.m. for the purpose of hearing oral closing submissions from the parties.
>
> (*Re 2196768 Ontario Ltd et al.* (2013), 36 O.S.C.B. 8379)

[12] On August 16, 2013, Todorov filed his written closing submissions. No written closing submissions were filed by Dookhie or RARE.

[13] The Merits Hearing continued on September 5, 2013 for the purpose of hearing oral closing submissions from the parties. During the Merits Hearing, Dookhie and RARE were represented by Hosseini and Todorov was self-represented. Dookhie also attended the Merits Hearing in person throughout.

C. The Respondents

1. RARE

[14] The corporate profile report of RARE lists the corporation name as "2196768 Ontario Ltd." The evidence established that 2196768 Ontario Ltd. and RARE were the same company. There was no record that either 2196768 Ontario Ltd. or RARE has ever been registered with the Commission in any capacity.

[15] RARE is a private Ontario corporation, which was incorporated by Dookhie on January 30, 2009. The corporate filings for RARE list Dookhie and Sunderji as the company's directors and officers; Dookhie is listed as the president of RARE and Sunderji is listed as its treasurer. In its corporation profile report, the registered address of RARE is listed as a unit located at 1 Yorkgate Boulevard, North York, Ontario (the "**Yorkgate Mall Address**").

[16] The Shareholders Agreement of RARE made June 2, 2009 (the "**Shareholders Agreement**") was signed by Dookhie, Sunderji, Todorov and RARE, and listed the following individuals as the directors and officers of RARE: Dookhie (as a director and President), Sunderji (as a director Secretary/Treasurer) and Todorov (as a director). The Shareholders Agreement also listed the shareholders of RARE as follows: Dookhie (with 40 common shares), Sunderji (with 30 common shares) and Todorov (with 30 common shares).

2. Ramadhar Dookhie

[17] Dookhie is a resident of Brampton, Ontario and served as a director and the President of RARE throughout the Material Time. During the Material Time, Dookhie was registered with the Commission as a Dealing Representative in the category of "Scholarship Plan Dealer" with a company called Children's Education Funds Inc. Dookhie was registered as a Dealing Representative until December 20, 2010.

[18] Dookhie also owned 6322239 Canada Limited ("**632 Company**"), operating as RANN Financial Services ("**RANN**"). The registered address for RANN is listed as the same address of another business operated by Dookhie, Liberty Tax Services ("**Liberty Services**"). RANN, Liberty Services and RARE were all located at the Yorkgate Mall Address.

3. Evgueni Todorov

[19] Todorov is a resident of Toronto, Ontario. He is an engineer by profession and was trained in Europe. Todorov has no training in securities, is not a registrant and has never worked in the securities industry. Staff alleges that Todorov was one of the directing minds of RARE, together

with Dookhie and Sunderji. As mentioned at paragraph 16 above, Todorov was listed as a director and a shareholder of RARE in the Shareholders Agreement.

[20] The evidence showed that during the Material Time, a cheque was written by RARE on its first bank account to a business named Setenterprice and some cheques were received by RARE from Setenterprice by deposit to the same bank account. On January 23, 2006, Todorov's wife registered Setenterprice as a sole proprietorship under the *Business Names Act*, R.S.O. 1990, c. B.17, as amended. Although the business was registered by Todorov's wife, the evidence showed that Setenterprice was jointly owned by Todorov and his wife. There was no record that Setenterprice has ever been registered with the Commission in any capacity.

4. Adil Sunderji

[21] Sunderji was listed as a director and officer of RARE in the corporate filings for RARE and in the Shareholders Agreement. Sunderji was also a shareholder of a company named Grey Tech Computing Inc. ("**Grey Tech Computing**").

[22] Sunderji was never registered in any capacity with the Commission. As mentioned in paragraph 2 above, on March 15, 2013, the Commission approved a settlement agreement entered into by Staff and Sunderji. Sunderji did not participate in the Merits Hearing.

II. PRELIMINARY ISSUES

A. Hearsay

[23] Staff tendered bank account statements obtained by way of summons, corporate filings, emails and other written communications between Dookhie, Todorov and other third parties. Staff submits that although these documents are hearsay evidence, taken as a whole, the totality of the evidence is corroborative and consistent.

[24] The Commission has the discretion to admit hearsay evidence, subject to the weight given to such evidence, pursuant to subsection 15(1) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended (the "**SPPA**"), which provides as follows:

> **15. (1) What is admissible in evidence at a hearing –** 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,
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> (a) any oral testimony; and
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> (b) any document or other thing,
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> relevant to the subject-matter of the proceeding and may act on such evidence, but the tribunal may exclude anything unduly repetitious.

[25] Pursuant to subsection 15(1) of the SPPA, I am entitled to admit and rely on relevant documents, which constitute hearsay, as evidence. I have exercised my discretion as to the weight to be accorded to such documents in my analysis and findings in this decision.

III. THE POSITION OF THE PARTIES

A. Staff

[26] Staff alleges that during the Material Time the Respondents:

(a) traded and engaged in or held themselves out as engaging in the business of trading in securities without registration or an appropriate exemption from the registration requirements, contrary to subsection 25(1)(a) of the Act as that section existed at the time the conduct commenced in January 2009, and contrary to subsection 25(1) of the Act as subsequently amended on September 28, 2009 and contrary to the public interest;

(b) traded in securities when a preliminary prospectus and a prospectus had not been filed and receipts had not been issued for them by the Director to qualify the sale of the investment contracts, contrary to subsection 53(1) of the Act;

(c) made misleading or fraudulent misrepresentations to investors and misappropriated investors funds knowing or having reasonably ought to have known that they would result in a fraud on a person, contrary to section 126.1 of the Act and contrary to the public interest; and

(d) the course of conduct engaged in by the Respondents compromised the integrity of Ontario's capital markets, was abusive to Ontario's capital markets and was contrary to the public interest.

B. Dookhie and RARE

[27] On May 27, 2013, I ordered the Respondents to submit their written closing submissions by August 9, 2013. As discussed in paragraph 11 above, on August 8, 2013, one day prior to the filing date prescribed in the order, Hosseini, counsel for Dookhie and RARE, faxed a letter to Staff indicating that he was unable to send the written submissions for Dookhie and RARE until the week of August 12, 2013. On August 12, 2013, I granted an extension for the Respondents to provide their written closing submissions by August 16, 2013, which was seven days following the originally scheduled deadline of August 9, 2013. Despite having been granted with an extension, Dookhie and RARE did not provide any written closing submissions.

[28] At the Merits Hearing, Dookhie and RARE did not make an opening statement or make any oral closing submissions. Dookhie and RARE were represented by Hosseini throughout the Merits Hearing and Dookhie attended the hearing in person.

[29] Dookhie testified at the Merits Hearing on May 27, 2013. Dookhie's testimony touched on several issues, including: his personal and business relationships with Todorov and Sunderji, his cooperation with Staff during its investigation and his involvement in the incorporation and operations of RARE. He also discussed his remorse regarding his activities with RARE and the resulting loss of investor funds.

[30] At the Merits Hearing on September 5, 2013, Hosseini informed the Panel and the other parties that he did not have any oral submissions ready because he had limited access to Dookhie due to health issues that Dookhie had been experiencing. Hosseini requested extra time to provide written submissions. Staff, in reply, stated that this was the first time that Staff had heard that Dookhie's health has prevented his counsel from meeting with him to put together submissions. Staff's position was that if a request for additional time is to be made, it should be properly constituted by a notice of motion together with an affidavit outlining the medical issues and accompanied by medical evidence. The Panel declined to grant additional time in view of the ample time that had been provided in the order of May 27, 2013 and the extension that had already been granted on August 12, 2013 for the late filing of written submissions.

C. Todorov

[31] Todorov attended the Merits Hearing in person and was self-represented. Todorov testified at the Merits Hearing on May 27, 2013. Todorov's testimony covered his submission that he was hired to trade in Forex. He acknowledged that he was a shareholder of RARE, he signed the Shareholders Agreement and he signed promissory notes for money that he and RARE borrowed. He denied, however, that he was part of the directorship of RARE or that he signed any documents of RARE as a director.

[32] Todorov filed written closing submissions, dated August 15, 2013. In his written submissions, Todorov states that he firmly believes that he did not contravene the Act, since he never acted as a director of RARE. He submits that he never authorized or permitted any issuance of any documents as a director of RARE.

[33] Todorov submits that his only function with RARE was to place trading orders in the Forex market in the Euro-U.S. dollar pair. He submits that he was not engaged in the incorporation of RARE or any of the company's banking or trading accounts, and adds that he did not have any banking or signing authority on any of these accounts. He submits that for most of the time he was deprived of access to the trading accounts of RARE and he was not the person executing the trade orders. He further submits that he was acting as an employee of the company, which he believed was in full compliance with the existing laws in Ontario.

[34] Todorov submits that Sunderji was supervising the trading activities of RARE to ensure that the Forex trading was done according to the "rules". He further submits that he was confident that everything was filed correctly and done in compliance with the law, given that Dookhie was an accountant who ran an accounting business, Liberty Services. He never suspected that there was any wrongdoing.

[35] He submits that he did not obtain any personal financial gain from his trading activity with RARE. He states that he tried to help the company by contributing approximately $59,500. He submits that he currently suffers a hardship from the consequences of the events tied to RARE. He further submits that with all his actions, he tried to ensure that the company preserved its capital and complied with its obligations.

IV. ISSUES

[36] Staff's allegations raise the following issues for consideration:

1. Did the Respondents trade in securities without registration in breach of subsection 25(1)(a) of the Act (for the time period from January 1, 2009 to September 27, 2009) and subsection 25(1) of the Act (for the time period from September 28, 2009 to March 31, 2010) and contrary to the public interest?

2. Did the Respondents engage in a distribution of securities without a prospectus in breach of subsection 53(1) of the Act and contrary to the public interest?

3. Did the Respondents engage in fraud in breach of subsection 126.1(b) of the Act and contrary to the public interest?

4. Did Dookhie and Todorov (the "**Individual Respondents**") authorize, permit or acquiesce in breaches of subsection 25(1)(a) (for the time period from January 1, 2009 to September 27, 2009), subsection 25(1) (for the time period from September 28, 2009 to March 31, 2010), subsection 53(1) and subsection 126.1(b) of the Act by RARE, such that they are deemed to also have not complied with Ontario securities law pursuant to section 129.2 of the Act?

[37] The standard of proof in administrative proceedings is the civil standard of proof on a balance of probabilities. The balance of probabilities standard of proof requires that the trier of fact assess each of these issues by examining the evidence in this matter and determining whether on a balance of probabilities "…it is more likely than not that the event occurred" (*F.H. v. McDougall*, [2008] 3 S.C.R. 41 at para. 44 ("***McDougall***")). As stated by the Supreme Court of Canada, "…evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test" (*McDougall*, *supra* at para. 46).

V. OVERVIEW OF THE EVIDENCE

A. Evidence Presented

[38] Staff submitted to the Panel documentary evidence electronically, totalling 81 exhibits. Staff called four witnesses: Staff's senior forensic accountant, Mike de Verteuil ("**De Verteuil**") and three investor witnesses, M.A., R.E. and V.M. (the "**Investor Witnesses**").

[39] Staff also relied on the transcripts of the compelled examinations of Dookhie held before Enforcement Staff on April 26, 2010 and August 25, 2010, as well as the compelled examinations of Todorov held on April 27, 2010 and May 28, 2010 (the "**Compelled Examinations**"). Staff tendered the transcripts and key admissions contained in the Compelled Examinations as evidence at the Merits Hearing.

[40] Dookhie and Todorov testified on their own behalf at the Merits Hearing. The Respondents did not call any additional witnesses. No evidence was tendered through Dookhie at the hearing. Todorov tendered two exhibits. These exhibits included a summary statement and the trading statements of an account set up with GCI Financial Ltd. ("**GCI Financial**") in the name of Todorov, spanning a time period from January 7 to March 25, 2013.

[41] In order to protect the privacy of investors, including the Investor Witnesses, I have referred to them anonymously by initials, rather than using their respective names. Staff also provided a redacted version of the record in accordance with the Commission's *Practice Guideline – April 24, 2012 – Use and Disclosure of Personal Information in Ontario Securities Commission's Adjudicative Proceedings.*

B. Overview of the Investment Scheme

[42] The investment scheme in this matter involved the solicitation of funds from the public for the purpose of engaging in Forex trading. In the Statement of Allegations dated November 22, 2011, Staff alleged that the Respondents solicited investment funds for the purpose of trading in foreign currencies for profit and raised approximately $1.15 million from 15 investors in Ontario. However, the evidence presented at the Merits Hearing demonstrated that, during the Material Time, the Respondents actually raised $1,226,832 from 16 RARE Investors (the "**RARE Investor Funds**"). I note that the Respondents were present throughout the Merits Hearing and did not present any evidence to dispute or refute the truth or accuracy of the evidence that established that $1,226,832 was raised from 16 investors.

[43] In return for their investment in RARE, RARE Investors received promissory notes that carried a monthly interest rate of approximately 1% to 3%. Staff submitted that these promissory notes were securities that were sold to the public and had not been previously issued.

[44] RARE Investors were led to believe that the Respondents developed a leveraged Forex trading strategy that could produce an attractive potential return on investment, and that half of their investment would be secured in guaranteed investment certificates ("**GICs**"). These investors were not informed by the Individual Respondents of the extent of the trading losses suffered by RARE, or that their investments would be used to make payments and loans to third parties, who were not investors with RARE.

[45] In his testimony, De Verteuil explained that Forex trading involves the simultaneous buying of one currency and the selling of another. It is an over-the-counter market, or interdealer market, meaning that transactions are not centralized on an exchange but conducted over the telephone or an electronic network. Dealers will offer to retail speculators the opportunity to trade currency in pairs, and, depending on how the currencies move in relation to each other, profits or losses are incurred. De Verteuil described Forex trading to be highly leveraged and stated that such trading was therefore "really only for experienced investors" (Transcript, May 23, 2013, Testimony of De Verteuil, p. 77, ll. 9-15).

[46] Dookhie was a director, the president and the directing mind of RARE throughout the Material Time. He was the only respondent that was registered with the Commission. He was registered as a Dealing Representative in the category of "Scholarship Plan Dealer" with a company called Children's Education Funds Inc. Todorov and RARE were not registered in any capacity with the Commission. As discussed in my finding set forth below in paragraph 207, Todorov was an actual and *de facto* director of RARE during the Material Time.

1. Prior to the Incorporation of RARE

[47] Dookhie met Todorov for the first time in the spring of 2008 through Sunderji, the latter of whom Dookhie characterized to be a good friend of his. Dookhie testified that Sunderji had set up a meeting at the office of Grey Tech Computing to see if Dookhie would be interested in some investment opportunities. At the meeting, Sunderji introduced Dookhie to Todorov who was going to use funds to trade in the FX market. Following the meeting, Dookhie decided to get involved in Forex trading with Todorov and Dookhie began to solicit individuals to invest in this opportunity ("**Pre-RARE Investors**"). In total, there were six Pre-RARE Investors who invested a sum of $450,000 with Dookhie and 632 Company (the "**Pre-RARE Investor Funds**"). In return for their investments, most Pre-RARE Investors received debenture certificates that were issued by 632 Company and signed by Dookhie. As part of his investigation in this matter, De Verteuil testified that he did not investigate the accounts of 632 Company, which is not a respondent in this matter.

[48] Prior to the incorporation of RARE, the entire amount of $450,000 of Pre-RARE Investor Funds was turned over by Dookhie in 2008 and January 2009 to Todorov, who used the funds in Forex trading. For the investors that received debenture certificates, Dookhie testified that he did not tell any of these Pre-RARE Investors that their funds would be given to Todorov. Dookhie also confirmed that there was no documentation between him and Todorov regarding the $450,000.

[49] Dookhie testified that he had an arrangement with Todorov, in which Dookhie paid Pre-RARE Investors a 2% monthly interest rate for the funds they invested, while Dookhie loaned the same funds to Todorov at a 4% monthly interest rate. Despite the fact that Dookhie was making money on the 2% spread on the Pre-RARE Investor Funds, he did not inform Pre-RARE Investors that he was lending out the money to an unknown third party, Todorov, at a monthly interest rate at 4%.

[50] De Verteuil testified that the only documentation between Dookhie and Todorov, regarding the loan of the Pre-RARE Investor Funds, was a promissory note, dated February 25, 2009, that was issued by Todorov as borrower to RARE for $135,000 in respect of two amounts: an amount of $50,000 for investor R.R. and an amount of $85,000 for investor S.G., representing funds turned over to Todorov by Dookhie prior to the formation of RARE. Dookhie did not receive an account statement from Todorov regarding the funds.

[51] In January 2009, Todorov began to miss his interest payments on his loan of $450,000 from Dookhie's Pre-RARE Investors. Dookhie did not inform the Pre-RARE Investors that he could not repay their principal investments. Despite the unpaid and outstanding loan, Dookhie continued to do business with Todorov and formed a new company, RARE.

[52] In total, three of the six Pre-RARE Investors invested additional funds in RARE. During the Material Time, all six Pre-RARE Investors, including three investors who did not invest any funds in RARE, received interest payments from the funds in the main bank account of RARE. Moreover, one Pre-RARE Investor, who was related to Dookhie's wife and had not invested in RARE, was paid back his full principal of $50,000 using the funds contained in the same bank account.

2. Incorporation and Operation of RARE

[53] Dookhie incorporated RARE on January 30, 2009. During the Material Time, Dookhie opened a total of three bank accounts at the Bank of Montreal on behalf of RARE. On February 4, 2009, Dookhie opened the first bank account of RARE, being the account ending in 752 ("**Account 752**"). Dookhie testified that Account 752 was main operating account for RARE. Dookhie was listed as the president and sole authorized signatory in the opening bank account documents of Account 752. De Verteuil testified, and Dookhie confirmed in his testimony, that every cheque that was drawn on Account 752 had Dookhie's signature on it. Dookhie also testified that he signed all cheques associated with Account 752. There was no evidence that indicated that Sunderji or Todorov were involved in any of the banking transactions related to Account 752.

[54] Among the 16 RARE Investors, the funds of 13 investors were deposited into Account 752. Dookhie explained that Account 752 had an overdraft against the GICs obtained by RARE.

[55] On April 3, 2009, Dookhie opened the second bank account of RARE at the Bank of Montreal ("**Account 214**"). Similar to Account 752, Dookhie was listed as the president and sole authorized signatory of Account 214. This account was the U.S. dollar bank account for RARE. The account was opened primarily to receive the deposit of one investor and to make transfers to and from the U.S. dollar trading account of RARE. This investor was Dookhie's brother-in-law, and he invested a total of USD$70,000 in RARE. As of March 31, 2010, the account balance of Account 214 was USD$150.67, or CAD$148.82.

[56] On July 8, 2009, Dookhie opened the third bank account of RARE at the Bank of Montreal ("**Account 736**"). Account 736 was a U.S. dollar account that was opened solely to receive the funds of two RARE Investors, N.M. and M.R. A total of $175,000 was deposited into Account 736 by these two investors.

[57] There were four authorized signatories in the account opening documents for Account 736: Dookhie (as president of RARE), Sunderji (as treasurer of RARE), Rouzbeh Vatanchi (as general manager of RARE, "**Vatanchi**") and Kitty Ho (as secretary of RARE, "**Ho**"). Dookhie met Vatanchi through Todorov in the spring of 2009. Vatanchi was a friend of Todorov's, and was the boyfriend of Ho when the two investors deposited funds into the account in July 2009.

[58] De Verteuil testified that before N.M. and M.R. deposited their funds into Account 736, they expressed concern over the safety of their funds. Vatanchi was added as a signatory to Account 736 to provide comfort to these investors that their investment in RARE was safe. De Verteuil testified that Vatanchi was not a general manager of RARE, nor was Ho the secretary of RARE.

[59] Starting in February 2009, shortly after the formation of RARE, Dookhie met with potential investors to solicit them to invest in RARE. He represented that their money would be used in Forex trading, a monthly return would be paid and they would receive their principal back at the end of the year.

[60] RARE Investors, as lenders, received promissory notes (the "**2009 Promissory Notes**") for their investments in the company. Dookhie drafted the 2009 Promissory Notes, based on a template that was provided to him by Todorov.

[61] All the 2009 Promissory Notes contained the same substantive language and only varied in the amount of the principal investment, the date of the promissory note, the maturity date and the signatories of RARE, who were described as the "borrowers". The promissory notes provided that the borrowers named in the promissory note "shall be jointly and severally liable for any debts secured" and the borrowers would pay the lender a specified sum, together with a 2% monthly interest, and with the repayment of the principal one year from the date of the promissory note. The majority of the 2009 Promissory Notes guaranteed a 2% monthly interest payment.

[62] On February 18, 2009, Dookhie opened a Canadian-dollar Forex trading account ("**Account 32508**") at ODL Securities Limited ("**ODL**"). Dookhie was listed as the sole contact for the account. Dookhie, Todorov and Sunderji all had access to the account through usernames and passwords that were provided by ODL. Nonetheless, Todorov was the primary trader in the account until May 2009. Dookhie testified that he did not trade in the account. Account 32508 was RARE's only trading account until July 2009.

[63] As a result of an aggressive trade made by Todorov on April 22, 2009, ODL closed all of RARE's open positions in Account 32508 on May 13, 2009. The aggregate closed positions for Account 32508 amounted to a cumulative loss of $473,437.61 and the closing account balance was $13.80. Dookhie testified that he takes ownership and is accountable for this loss.

[64] In July 2009, subsequent to the closing of Account 32508, RARE began to trade in a second Canadian dollar ODL account ("**Account 84500**"). After a few months, Account 84500 was closed at a negative balance of $569,379.81.

[65] In April 2009, RARE opened a third ODL account that was first used in August 2009 ("**Account 81216**"). Account 81216 was a U.S. dollar account. In March 2010, Account 81216 was closed and had a cumulative loss of $114,271.78.

[66] In March 2010, Dookhie met with all RARE Investors and renegotiated the terms of their 2009 Promissory Notes, which were due to mature in various months in 2010. Following their discussions with Dookhie, the majority of RARE Investors were persuaded to enter into new promissory notes, which guaranteed lower monthly interest rates at 1% or 1.5% (the "**2010 Promissory Notes**").

[67] One difference between the 2009 Promissory **Notes** and the 2010 Promissory Notes was that the latter bound the company – RARE – and not its principals, being Dookhie, Todorov and Sunderji (the "**RARE Principals**"). In his Compelled Examination on August 25, 2010, Dookhie stated that he informed all RARE Investors that the RARE Principals were still personally responsible for the renewed loans.

[68] By March 2010, RARE was out of money, all of its ODL trading accounts were closed and the company consequently could not complete any trades in the Forex market. When he

discussed the renewals of the 2009 Promissory Notes, Dookhie did not inform investors of the true financial and trading status of RARE.

3. Flow of the RARE Investor Funds

[69] As part of his investigation in this matter, De Verteuil created a source and allocation of funds spreadsheet, summarizing the use and flows of funds of the bank accounts and trading accounts of RARE (Exhibit 37). Dookhie confirmed that he had an opportunity to examine this spreadsheet.

[70] Staff also tendered several supporting spreadsheets through the testimony of De Verteuil (Exhibit 37). These supporting spreadsheets were created by De Verteuil in his analysis of the bank statements of Account 752, Account 214 and Account 736, along with the trading statements of Account 32508, Account 84500 and Account 81216. Dookhie also confirmed the accuracy of these supporting spreadsheets.

[71] De Verteuil's source and application of funds analysis was based on RARE's banking documentation, including bank statements and cheques, as well as its ODL trading statements. De Verteuil's analysis was not based on any financial statements, since no such statements were provided to him. When making his calculations to convert U.S. dollar amounts to Canadian dollar amounts, De Verteuil used an average exchange rate for the date of each respective transaction.

[72] The Respondents did not tender any evidence to refute the truth or accuracy of De Verteuil's analysis in this matter. I therefore accept De Verteuil's analysis of the banking and trading accounts of RARE to be true and accurate.

[73] The evidence showed that the total source of funds for RARE amounted to $1,226,846.47, which was comprised of the RARE Investor Funds ($1,226,832) and approximately $14 that was attributed to income that was received from a mutual fund investment account at the Bank of Montreal.

[74] The total use of funds of RARE amounted to $1,372,339.49. The uses of funds throughout the Material Time were as follows:

- net trading investments with ODL amounted to a loss of $688,757.73 , based on a 1.06310 average exchange rate of U.S. to Canadian dollars;
- total funds placed into term deposits, being GICs, amounted to $275,000;
- net payments made to Dookhie totalled $172,200.30, which was calculated by subtracting the funds paid to Dookhie ($182,200.30) and the funds Dookhie paid to a Pre-RARE Investor who did not invest in RARE ($50,000) from the funds RARE received from Dookhie through 632 Company ($60,000);
- net payments made by Todorov and Setenterprice totalled $31,928.03, which were calculated by subtracting the funds paid to Setenterprice directly ($16,000)

and the funds paid to a third party at Todorov's direction ($11,221.97) from the funds RARE received from Todorov and Setenterprice ($59,150);

- net payments made to Sunderji and Grey Tech Computing totalled $6,000, which were calculated by subtracting the funds paid to Sunderji ($16,000) from the funds RARE received from Sunderji ($10,000);

- third party payments consisted of a loan to Vatanchi ($5,712.50), a referral fee to Viet Hoang ("**Hoang**") ($8,400) and legal fees to the company's lawyer ($3,500);

- identified monthly interest payments made to Pre-RARE and RARE Investors amounted to $226,611.80;

- an unidentified amount that was presumed to be a monthly interest payment ($1,000); and

- other unidentified amounts and balancing adjustments that totalled a negative value of $17,085.18.

[75] Staff presented evidence that payments were made to and from Account 752 after the Material Time in May to August 2010. Specifically, Dookhie made two payments totalling $25,000 to one RARE Investor, one payment of $20,000 to another RARE Investor and he made a direct deposit of $25,000 from his personal funds into Account 752. During his testimony, Dookhie stated that he took extreme steps to refinance his personal property to add funds into the bank accounts of RARE. There was no evidence presented before me to support this statement.

[76] The evidence has shown that only two RARE Investors received partial payments of their principal investments. Aside from several interest payments, most RARE Investors have not been repaid any of their principal investments. Moreover, through its trading activities with ODL, RARE lost a net total of $688,757.73. Dookhie admitted that the funds that were transferred to the trading accounts at ODL were traded and lost.

VI. ANALYSIS

A. Did the Respondents trade in securities without registration in breach of subsection 25(1)(a) of the Act (for the time period from January 1, 2009 to September 27, 2009) and subsection 25(1) of the Act (for the time period from September 28, 2009 to March 31, 2010) and contrary to the public interest?

1. The Law

[77] Staff alleges that the Respondents breached subsections 25(1)(a) and 25(1) of the Act during the Material Time. The Act was amended on September 28, 2009, which falls within the Material Time. It is therefore important to consider the wording of the Act both before and after the amendment came into effect.

[78] As stated in *Re Limelight Entertainment Inc.* (2008), 31 O.S.C.B. 1727 ("***Re Limelight***"):

> The requirement that an individual be registered in order to trade in securities is an essential element of the regulatory framework with the purpose of achieving the regulatory objectives of the Act. Registration serves an important gatekeeping mechanism ensuring that only properly qualified and suitable individuals are permitted to be registrants and to trade with or on behalf of the public. Through the registration process, the Commission attempts to ensure that those who trade in securities meet the applicable proficiency requirements, are of good character, satisfy the appropriate ethical standards and comply with the Act.
>
> (*Re Limelight, supra* at para. 135)

[79] Prior to September 28, 2009, subsection 25(1)(a) of the Act read as follows:

> **25. (1) Registration for trading –** No person or company shall,
>
> (a) trade in a security or act as an underwriter unless the person or company is registered as a dealer, or is registered as a salesperson or as a partner or as an officer of a registered dealer and is acting on behalf of the dealer;
>
> [...]
>
> and the registration has been made in accordance with Ontario securities law and the person or company has received written notice of the registration from the Director and, where the registration is subject to terms and conditions, the person or company complies with such terms and conditions.

[80] As of September 28, 2009, subsection 25(1) of the Act came into force and provides as follows:

> **25. Registration – (1) Dealers –** 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.

[81] The language of subsection 25(1) of the Act has become broader as a result of the September 2009 amendments. Accordingly, if the Panel determines that the evidence indicates that a respondent's actions prior to September 28, 2009 were contrary to the predecessor provision, then the same behaviour post-September 28, 2009 must also be in violation of the broader wording of the Act. The same does not hold true in reverse; namely, acts that are found to be in contravention of the amended subsection 25(1) of the Act post-September 28, 2009 are not necessarily in contravention of subsection 25(1)(a) pre-September 28, 2009. In this case,

Staff has alleged that the Respondents' behaviour and activities were the same throughout the Material Time and contravened the applicable provisions both before and after September 28, 2009.

[82] The phrase "engaging in the business of trading" indicates that the Commission must find that the activity of trading in securities is carried out for a business purpose in determining whether a person or company needs to be registered pursuant to subsection 25(1) of the Act, as amended. Section 1.3 of Companion Policy 31-103CP enumerates a non-exhaustive list of factors that are considered relevant in determining whether an individual or firm is trading or advising in securities for a business purpose and subject to the dealer or advisor registration requirement, including:

(a) engaging in activities similar to a registrant;

(b) intermediating trades or acting as a market maker;

(c) directly or indirectly carrying on the activity with repetition, regularity or continuity;

(d) being, or expecting to be, remunerated or compensated; and

(e) directly or indirectly soliciting.

[83] The policy notes that the enumerated factors listed above are not exhaustive and that no one factor on its own will determine whether an individual or firm is in the business of trading or advising in securities.

[84] Both the predecessor provision subsection 25(1)(a) and the successor provision subsection 25(1) of the Act refer to a trade or trading in a security. The terms "trade" and "trading" are broadly defined in subsection 1(1) of the Act, and include, in clauses (a) and (e) of the definition:

> "trade" or "trading" includes,
>
> > (a) any sale or disposition of a security for valuable consideration, whether the terms of payment be on margin, instalment or otherwise, but does not include a purchase of a security or, except as provided in clause (d), a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a debt made in good faith,
> >
> > […]
> >
> > (e) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the foregoing;

[85] Cases considering the issue of acts in furtherance of trading reflect a contextual approach that examines the totality of the conduct and the setting in which the acts have occurred, and the

"primary consideration of which is the effects the acts had on those to whom they were directed" (*Re Momentas Corp.* (2006), 29 O.S.C.B. 7408 ("***Re Momentas***") at para. 77).

[86] Examples of activities that have constituted acts in furtherance of trading, include:

- providing potential investors with subscription agreements to execute;
- distributing promotional materials concerning potential investments;
- issuing and signing share certificates;
- preparing and disseminating of materials describing investment programs;
- conducting information sessions with groups of investors;
- meeting with individuals investors; and
- accepting money from investors and depositing investor cheques for the purchase of shares in a bank account.

(*Re Limelight*, *supra* at para. 133; *Re Momentas*, *supra* at para. 80)

[87] The definition of "security" is also found in subsection 1(1) of the Act:

> "security" includes,
>
> […]
>
> (e) a bond, debenture, note or other evidence of indebtedness…
>
> […]
>
> (n) any investment contract,
>
> […]

[88] The term "investment contract" is not a term defined in the Act, but its interpretation has been the subject of a long line of established jurisprudence. The Supreme Court of Canada established what constitutes an "investment contract":

> (a) an investment of money;
>
> (b) with an intention or expectation of profit;
>
> (c) in a common enterprise, in which the fortunes of the investor are interwoven with and dependent upon the efforts and success of those seeking the investment or of third parties; and

(d) where the efforts made by those other than the investor are the undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise.

(*Pacific Coast Coin Exchange of Canada Ltd. v. Ontario (Securities Commission),* [1978] 2 S.C.R. 112 ("***Pacific Coast Coin***") at pp. 128-129)

[89] The Supreme Court of Canada considered the third and fourth parts together and accepted that a common enterprise "exists when it is undertaken for the benefit of the supplier of capital (the investor) and of those who solicit the capital (the promoter)" (*Pacific Coast Coin*, *supra* at p. 129). The court further held that the "commonality" necessary for an investment contract is between the investor and the promoter (*Pacific Coast Coin*, *supra* at p. 129).

[90] Once Staff has proven that the Respondents traded without registration and distributed shares without qualifying those shares under a prospectus, the onus shifts to the Respondents to prove an exemption from those requirements is available in the circumstances (*Re Limelight*, supra at para. 142, citing *Re Euston Capital Corp.*, 2007 ABASC 75, *Re Lydia Diamond Exploration of Canada Ltd.* (2003), 26 O.S.C.B. 2511, and *Re Ochnik* (2006), 29 O.S.C.B. 3929).

[91] Exemptions are provided for in National Instrument 45-106 – *Prospectus and Registration Exemptions* ("**NI 45-106**") and in Part 8 of National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (which came into force on September 28, 2009) ("**NI 31-103**"). In this case, there was some indication that the Respondents may have relied upon the "accredited investor" exemption and the "private issuer" exemption, pursuant to sections 2.3 and 2.4 of NI 45-106, respectively.

[92] The definition of "accredited investor" is found at section 1.1 of NI 45-106 and includes:

"accredited investor" means

[...]

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

(k) an individual whose net income before taxes exceeded $200 000 in each of the 2 most recent calendar years or whose net income before taxes combined with that of a spouse exceeded $300 000 in each of the 2 most recent calendar years and who, in either case, reasonably expects to exceed that net income level in the current calendar year,

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

[93] The definition of a "private issuer" is found at subsection 2.4(1) of NI 45-106, which provides as follows:

"private issuer" means an issuer

(a) that is not a reporting issuer or an investment fund,

(b) the securities of which, other than non-convertible debt securities,

(i) are subject to restrictions on transfer that are contained in the issuer's constating documents or security holders' agreements, and

(ii) are beneficially owned by not more than 50 persons, not including employees and former employees of the issuer or its affiliates, provided that each person is counted as one beneficial owner unless the person is created or used solely to purchase or hold securities of the issuer in which case each beneficial owner or each beneficiary of the person, as the case may be, must be counted as a separate beneficial owner, and

(c) that

(i) has distributed its securities only to persons described in subsection (2), or

(ii) has completed a transaction and immediately following the completion of the transaction, its securities were beneficially owned only by persons described in subsection (2) and since the completion of the transaction has distributed its securities only to persons described in subsection (2).

2. Analysis

[94] I find that the 2009 Promissory Notes and the 2010 Promissory Notes (together, the "**Promissory Notes**") are notes, "other evidence of indebtedness" and investment contracts, and therefore constitute securities as defined under subsections 1(1)(e) and 1(1)(n) of the Act, respectively.

[95] In his cross-examination of V.M., Todorov alluded to the fact that the Promissory Notes were loans and he was therefore not involved in any trading or investment of securities. Although the language set forth in the Promissory Notes characterized RARE and its principals as "borrowers" and investors as "lenders", suggesting the monies advanced were loans and not investments, the inclusion of these terms do not detract from the true nature of the Promissory Notes as investment contracts. As stated by the Supreme Court of Canada, "form should be disregarded for substance and the emphasis should be on economic reality" (*Pacific Coast Coin, supra* at p. 127, citing *Tcherepnin v. Knight* (1967), 389 U.S. 332 at 336).

[96] The Investor Witnesses, M.A., R.E. and V.M., all testified that they believed that they were investing funds in RARE and that the Promissory Notes they received described the terms of their investment. Investors understood that they were signing agreements to provide RARE with money to engage in Forex trading and, as a result, investors would be entitled to receive monthly interest payments on their investments. Hence, RARE Investors made their investments with the expectation of profit, in which the returns were entirely dependent upon the efforts and

success of RARE and its principals. It is clear from investor documents and the oral testimonies of the Investor Witnesses that the role of RARE Investors was limited to the advancement of money into the bank accounts of RARE. Upon the transfer of funds, RARE Investors relinquished all control over their funds to RARE. They did not contribute to the profit generation of the company.

[97] Once the RARE Investor Funds were transferred to the bank accounts of RARE, the RARE Principals maintained full control over the success of the investment. The success of the Forex investments was dependent upon the managerial efforts of the RARE Principals alone, but the benefits accrued to both RARE and RARE Investors. The test of an investment contract is clearly met in this case.

[98] Having determined that the Promissory Notes constitute notes, evidence of indebtedness and investment contracts, and are therefore securities pursuant to the Act, I also find, as discussed below, that the Respondents acted contrary to subsection 25(1)(a) of the Act, for conduct prior to September 28, 2009, and contrary to subsection 25(1) of the Act for conduct on and after September 28, 2009, and contrary to the public interest.

(a) RARE

[99] Staff filed certified statements pursuant to section 139 of the Act (the "**Section 139 Certificates**"), with respect to the registration status of the Respondents. Based on Staff's Section 139 Certificates, which were uncontroverted, I find that RARE has never been registered with the Commission in any capacity.

[100] I find that during the Material Time, RARE engaged in trades or acts in furtherance of trades in securities. Examples of these acts include, but are not limited to the following:

- RARE obtained a total of $1,226,832 from 16 RARE Investors for the purpose of investing with RARE;
- RARE Investors were provided with and signed the Promissory Notes in exchange for advancing funds that were meant to be used to generate profits in the Forex trading accounts of RARE;
- RARE Investors provided cheques or bank drafts made out to RARE for their investments;
- as the 2009 Promissory Notes matured, RARE issued the 2010 Promissory Notes at lower interest rates to 13 RARE Investors;
- promotional materials were distributed to potential investors concerning the opportunity to invest in RARE; and
- the Respondents regularly represented to investors that their funds were safe, without disclosing the unfavourable financial situation of RARE, with a view to inducing further investments and/or to maintain investor confidence.

[101] At the Merits Hearing, the Investor Witnesses described their investments with RARE as follows:

- M.A., who was both a Pre-RARE and a RARE Investor, testified that when it came to RARE, Dookhie informed him that he had a team: "Mr. Todorov was on his team. Mr. Sunderji was on his team. These were FX people and understood currency trading and that this would be the basis of the income on [his two promissory notes] that totalled [$100,000]" (Transcript, May 22, 2013, Testimony of M.A., p. 47, ll. 3-7).

- R.E., who was a RARE Investor, signed a 2009 Promissory Note for $50,000 with RARE. R.E. testified that when he met with Dookhie to learn about the investment opportunity with RARE, "[he] was promised 24 percent per year, 2 per month. The monies [would be] invested in foreign exchange which [sic] 50 percent of that amount of monies were going into a GIC" (Transcript, May 22, 2013, Testimony of R.E., p. 84, ll. 19-24). A friend of R.E.'s also attended the meeting, but this individual ultimately did not invest in RARE.

- Prior to his investment with RARE, V.M. and his brother invested funds with Todorov. Todorov used Global Trader Canada ("**Global Trader**") as his online platform to conduct his trades at the time. Global Trader eventually went bankrupt, causing the complete loss of the funds invested by V.M. and his brother. V.M. testified that Todorov informed him "about a fellow, Roy Dookhie, who had a company, [Liberty Services]. He was a financial planner/tax consultant that had clients that were invested or going to invest in a company called RARE, and it was an opportunity for [V.M.] to recoup [his] monies" (Transcript, May 22, 2013, Testimony of V.M., p. 136, ll. 4-10). V.M. and his brother contributed a total of $200,000 into a 2009 Promissory Note with RARE. V.M. testified that his understanding of the $200,000 investment was that "[he] was going to receive 50 percent of the profits on a daily basis. [He] was also to receive an additional 3 percent per month, $6,000 every month" (Transcript, May 22, 2013, Testimony of V.M., p. 156, ll. 3-5). He stated that Dookhie informed him that the profits were "going to come out of RARE" (Transcript, May 22, 2013, Testimony of V.M., p. 156, ll. 13-18).

[102] As a result of RARE's solicitations, a total of 16 RARE Investors invested a total of $1,226,832 in RARE securities.

[103] I conclude that RARE engaged in trades and acts in furtherance of trades in its securities in Ontario within the meaning of the Act. RARE was not registered in any capacity with the Commission and RARE and its principals were actively engaged in the business of trading RARE securities. RARE contravened subsection 25(1)(a) of the Act during the time period from January 1, 2009 to September 27, 2009 and subsection 25(1) of the Act during the time period from September 28, 2009 to March 31, 2010, and there were no registration exemptions available to it, as discussed below. I find this conduct to be contrary to the public interest.

(b) Dookhie

[104] According to Staff's Section 139 Certificates, Dookhie was registered as a Dealing Representative in the category of "Scholarship Plan Dealer" with Children's Education Funds Inc. from September 23, 2003 to July 30, 2004. His registration was reinstated as a Dealing Representative under the same category from September 24, 2004 to December 20, 2010.

[105] Dookhie's registration during the Material Time only extended to his activities as a Dealing Representative with Children's Education Funds Inc. There was no evidence to show that Dookhie was registered as a dealer or as a dealing representative of a registered dealer authorized to trade in the securities of RARE, as required under subsection 25(1)(a) of the Act (as it existed prior to September 28, 2009) and subsection 25(1) of the Act (as it existed on and after September 28, 2009).

[106] I find that, during the Material Time, Dookhie, as the President and directing mind of RARE, engaged in trades or acts in furtherance of trades in securities without being registered, thereby breaching subsections 25(1)(a) and 25(1) of the Act, as these sections existed during the Material Time. Examples of these acts include, but are not limited to the following:

- Dookhie incorporated RARE and established the bank accounts and trading accounts of the company;
- Dookhie was responsible for all the banking activity of RARE;
- Dookhie received the RARE Investor Funds, made the deposits of RARE Investors and wrote all the cheques drawn from the bank accounts of RARE;
- Dookhie was the sole signatory of Account 752 and Account 214, into which the majority of the RARE Investor Funds were deposited;
- Dookhie was one of four authorized signatories of Account 736, into which funds of two investors were deposited;
- Dookhie brought in 13 RARE Investors, whose invested funds represented approximately $851,800, or approximately 69%, of the total funds invested in RARE;
- Dookhie had primary communication with all RARE Investors;
- Dookhie drafted and distributed the promotional documents of RARE;
- Dookhie drafted and distributed the Promissory Notes of RARE and signed all but one of the Promissory Notes as President, Director, CEO and/or accountant of RARE;
- in March 2010, Dookhie met with all RARE Investors and renegotiated the terms of their 2009 Promissory Notes, and 13 RARE Investors subsequently entered the 2010 Promissory Notes with RARE;

- Dookhie was the only signatory of RARE on the 2010 Promissory Notes; and

- all RARE Principals had the ability to trade in the trading accounts of RARE, but from March 2010 onwards, Dookhie was solely responsible for the trading activity of RARE.

[107] In his testimony, Dookhie stated that in hindsight, "…if I had known better [that there could be very serious requirements and regulations with respect to solicitation of funds, issuance of securities, etc.]…I would have done everything to prevent this from happening. Perhaps would have spent my energy and effort to ensure that, you know…we were to follow the rules and get registered…this is a very expensive lesson for me" (Transcript, May 27, 2013, Testimony of Dookhie, p. 34, ll. 16-21).

[108] I conclude that Dookhie engaged in trades and acts in furtherance of trades in securities of RARE in Ontario within the meaning of the Act without being registered. Accordingly, I find that Dookhie contravened subsection 25(1)(a) of the Act during the time period from January 1, 2009 to September 27, 2009 and subsection 25(1) of the Act during the time period from September 28, 2009 to March 31, 2010, and there were no registration exemptions available to him, as discussed below. I find this conduct to be contrary to the public interest.

(c) Todorov

[109] Based on Staff's Section 139 Certificates, I find that Todorov has never been registered with the Commission in any capacity. I also find that during the Material Time, Todorov, a *de facto* director of RARE, engaged in trades or acts in furtherance of trades in the 2009 Promissory Notes, which constitute securities. Examples of these acts include, but are not limited to the following:

- Todorov solicited three RARE Investors, directly and indirectly, whose invested funds represented $375,000, or approximately 31%, of the total funds invested in RARE;

- the 2009 Promissory Notes were drafted by Dookhie, using a template provided by Todorov;

- Todorov signed 3 of the 2009 Promissory Notes as Trading Strategist of RARE; and

- Todorov was the chief trading strategist of RARE and was the primary trader of RARE until May 2009.

[110] I conclude that Todorov engaged in trades and acts in furtherance of trades in securities of RARE in Ontario within the meaning of the Act without being registered. Accordingly, I find that Todorov contravened subsection 25(1)(a) of the Act during the time period from January 1, 2009 to September 27, 2009 and subsection 25(1) of the Act during the time period from September 28, 2009 to March 31, 2010, and there were no registration exemptions available to him, as discussed below. I find this conduct to be contrary to the public interest.

(d) Exemptions

[111] The Respondents did not lead any formal submissions on the availability of any exemptions at the Merits Hearing. However, there was some indication that the Respondents may have relied upon the accredited investor exemption and the private issuer exemption.

[112] Based on the evidence before me, I find that neither of the two exemptions was available to the Respondents during the Material Time. The Respondents also did not establish that they qualified for any other exemption under Ontario securities law.

The Private Issuer Exemption

[113] There was some evidence that the Respondents may have relied upon the private issuer exemption. Specifically, there was a footnote in a promotional document of RARE that read: "This is a private placement investment and not for public solicitation" (Exhibit 5, Vol. 2, Tab C, pp. 18-21 at p. 20; Exhibit 9, Vol. 2, Tab G, pp. 41A; Exhibit 16, Vol. 2, Tab L, pp. 79-105 at p. 102).

[114] Under section 2.4 of NI 45-106, there is a private issuer exemption available for an issuer that is limited to not more than 50 beneficial shareholders, excluding current and former employees of the issuer or its affiliates, who fall into certain categories, such as accredited investors, directors and officers of the issuer and certain relatives, close personal friends or close business associates of a control person of the issuer.

[115] The types of investors that qualify to be permitted private issuer security purchasers are investors that are generally thought to have a relationship to the issuer that allows them to, at least partially, mitigate the risks of the investment because of the closeness of the relationship or the fact that they have access to information from the issuer.

[116] Although I heard submissions that RARE Investors were family, friends and clients of Dookhie and Todorov, the Respondents did not present any evidence that provided details of the relationships they held with these investors. As such, I find that the private issuer exemption was not available to any of the Respondents during the Material Time.

The Accredited Investor Exemption

[117] The accredited investor exemption is premised on an investor being an institution or sophisticated organization, or an individual having the ability to withstand financial loss or the resources to obtain expert financial advice.

[118] In his Compelled Examination on May 28, 2010, Todorov stated that he was familiar with the term "accredited investor". Todorov believed that Dookhie created a document for the purpose of dealing with accredited investors and to limit the number of investors RARE could raise capital from. Staff submits that the document Todorov referred to in his Compelled Examination was a promotional document that was given to the three Investor Witnesses, M.A., R.E. and V.M.

[119] Additionally, during Todorov's cross-examination of V.M., there was some discussion about whether or not V.M. was an accredited investor. After I clarified the definition of an "accredited investor" to V.M., he stated that he was probably an accredited investor, after considering the value of his family trust, his holding company and his personal assets. However, V.M. also testified that he did not recall having a discussion about whether or not he was an accredited investor during his dealings with either Dookhie or Todorov.

[120] In Staff's cross-examination of Dookhie, Staff took Dookhie to the ODL account opening documents for RARE (Exhibit 48, Vol. 1, Tab C, pp. 39-49). The documents contained a section entitled "Where Securities May be Offered", that states the following:

> The contracts for differences in spread trades (the "**Securities**") that are described in the offering memorandum you are about to access are only being offered to potential investors who are resident in the Canadian provinces of **ONTARIO, BRITISH COLUMBIA ALBERTA AND QUEBEC** (the "**Offering Jurisdictions**") and in such Offering Jurisdictions, the Securities are only being issued in reliance upon certain exemptions from the prospectus and registration requirements prescribed under the applicable securities laws of the Offering Jurisdictions. Only potential investors who qualify as "*accredited investors*"… and who are resident in one of the four Offering Jurisdictions will be permitted to trade the Securities offered under the offering memorandum.
>
> [emphasis in original]
>
> (Exhibit 48, Vol. 1, Tab C, pp. 39-49 at p. 44)

[121] The documents also contained a section entitled "Who Securities May be Offered To", that states the following:

> The offering of Securities under this offering memorandum is being made on a prospectus-exempt basis under the applicable securities laws of the Offering Jurisdictions and only to potential investors who are trading in the Securities as principal and who qualify under National Instrument 45-106 *Prospectus and Registration Exemptions* ("NI 45-106") as an "*accredited investor*"…
>
> [emphasis in original]
>
> (Exhibit 48, Vol. 1, Tab C, pp. 39-49 at p. 44)

[122] Dookhie testified that there was perhaps one RARE Investor who was an accredited investor. However, he testified that neither he nor RARE were accredited investors, and further testified that he did not make any inquiries to determine if RARE Investors were accredited or not. I note that the Dookhie had primary communication with all RARE Investors during the Material Time.

[123] I find that the Respondents did not satisfy the requirements for the accredited investor exemption or the private issuer exemption, and therefore neither of the two exemptions was available to the Respondents during the Material Time. There was also no evidence presented

before me that any other exemption from the registration requirements under Ontario securities law was available to the Respondents.

[124] In light of all of the forgoing, I find that during the Material Time, RARE, Dookhie and Todorov engaged in or held themselves out as engaging in the business of trading in securities without being registered to do so in circumstances in which no exemption was available to them, contrary to subsection 25(1)(a) of the Act during the time period from January 1, 2009 to September 27, 2009 and subsection 25(1) of the Act during the time period from September 28, 2009 to March 31, 2010, and contrary to the public interest.

B. Did the Respondents engage in a distribution of securities without a prospectus in breach of subsection 53(1) of the Act and contrary to the public interest?

1. The Law

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

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

[126] The definition of "distribution" is set forth in subsection 1(1) of the Act and states that:

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

[127] As the Commission held in *Re Limelight*:

> The requirement to comply with section 53 of the Securities Act is important because a prospectus ensures that prospective investors have full, true and plain disclosure of information to properly assess the risks of an investment and make an informed investment decision. The prospectus requirements of the Act play a significant role in the overall scheme of investor protection. As stated by the court in *Jones v. F.H. Deacon Hodgson Inc.* (1986), 9 O.S.C.B. 5579 (Ont. H.C.) (at p. 5590), "there can be no question but that the filing of a prospectus and its acceptance by the Commission is fundamental to the protection of the investing public who are contemplating purchase of the shares."
>
> (*Re Limelight*, *supra* at para. 139)

[128] As stated in paragraph 90, once Staff has proven that the Respondents distributed shares without qualifying those shares under a prospectus, the onus shifts to the Respondents to prove

an exemption from those requirements is available in the circumstances. Exemptions from the prospectus requirement are provided in NI 45-106 and include, among others, exemptions for a trade in a security if the purchaser is an accredited investor or if the distribution in question relates to securities of a private issuer to certain purchasers. As previously discussed, there was some indication that the Respondents relied upon the accredited investor and private issuer exemptions from prospectus requirements that existed during the Material Time, as provided in sections 2.3 and 2.4 of NI 45-106, respectively, which are articulated at paragraphs 91 and 93 above.

2. Analysis

[129] As established above in my discussion of subsections 25(1)(a) and 25(1) of the Act, the Respondents all engaged in trades and/or acts in furtherance of a trade, as defined in the Act. The Respondents have therefore met, and are caught by, the trading element under the definition of "distribution" under the Act.

[130] The second element of the definition of "distribution" under the Act is that the securities in question have not been previously issued. I find that at the time the Respondents engaged in trades and/or acts in furtherance of trades, the Promissory Notes that were being traded had not previously been issued. I therefore find that the trades constitute a distribution.

[131] De Verteuil testified that in the Compelled Examinations of Dookhie, Dookhie referred to the fact that he was aware of the requirements to file prospectuses and he indicated that RARE was not engaged in activities that would require the filing of a prospectus. Furthermore, in his Compelled Examination on May 28, 2010, Todorov stated that it was illegal for a private corporation to "advertise for capital, unless you have a prospectus or something" (Exhibit 77, Transcripts of Compelled Examinations of Todorov, May 28, 2010, Qs. 191-193, pp. 39-40). Dookhie and Todorov therefore understood that a prospectus was required to be filed with the Commission when engaging in certain trading activities.

[132] De Verteuil testified that there was neither a prospectus filed with the Commission nor a receipt issued from the Director regarding the Promissory Notes issued by RARE to its investors. Staff further informed the Panel that there was no prospectus included in the documents disclosed by Dookhie to Staff. RARE was also not a reporting issuer during the Material Time.

[133] As discussed above, there was some indication that the Respondents relied on the accredited investor and private issuer exemptions. For the same reasons set forth in in paragraphs 111 to 123, neither the accredited investor nor the private issuer exemptions from the prospectus requirement of subsection 53(1) of the Act were available to the Respondents during the Material Time. There was also no evidence that any other exemption from the prospectus requirement was available to the Respondents in respect of the distribution of the previously unissued Promissory Notes.

[134] I conclude that the Respondents engaged in trades or acts in furtherance of trades. At the time of these trades, the Promissory Notes issued by RARE had not previously been issued, and I therefore conclude that the trades constitute a distribution. Since no prospectus was filed for these trades, I find that the Respondents have contravened subsection 53(1) of the Act, as there

were no valid exemptions available to the Respondents. I further find that such contraventions were contrary to the public interest.

C. Did the Respondents engage in fraud in breach of subsection 126.1(b) of the Act and contrary to the public interest?

1. The Law

[135] Staff alleges that each of the Respondents engaged or participated in securities fraud, contrary to section 126.1(b) of the Act and contrary to the public interest.

[136] Section 126.1(b) of the Act provides as follows:

> **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, derivatives or the underlying interest of a derivative that the person or company knows or reasonably ought to know,
>
> [. . .]
>
> (b) perpetrates a fraud on any person or company.

[137] The Commission first considered subsection 126.1(b) of the in *Re Al-Tar Energy Corp.* (2010), 33 O.S.C.B. 5535 ("***Re Al-Tar***"), and the Commission set out the following statement of the law at paragraphs 214 to 221 of that decision:

> Fraud is "one of the most egregious securities regulatory violations" and is both "an affront to the individual investors directly targeted" and something that "decreases confidence in the fairness and efficiency of the entire capital market system" (*Re Capital Alternatives Inc.* (2007), A.B.A.S.C. 79 at para. 308 citing D. Johnston & K. D. Rockwell, *Canadian Securities Regulation*, 4th ed., Markham: LexisNexis, 2007 at 420).
>
> The term fraud is not defined in the Act. Due to the recent introduction of the fraud provision in the Act, there are no decisions from the Commission interpreting this provision. However, we can draw out guidance and principles from criminal and administrative law jurisprudence and decisions from other securities commissions.
>
> The British Columbia Court of Appeal addressed the application of the substantially identical fraud provision in the British Columbia *Securities Act*, R.S.B.C. 1996, c. 418, as amended (the "BC Act") in *Anderson v. British Columbia (Securities Commission)*, 2004 BCCA 7 (B.C. C.A.) ("*Anderson*"). The Supreme Court of Canada denied leave to appeal the A*nderson v. British Columbia (Securities Commission)* decision ((S.C.C.)).

In *Anderson*, the British Columbia Court of Appeal reviewed the legal test for fraud and relied on *R. v. Théroux*, [1993] 2 S.C.R. 5 (S.C.C.) ("*Théroux*"). In *Théroux*, Justice McLachlin (as she then was) summarized the elements of fraud as follows at paragraph 27:

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

Section 126.1 of the Act has the identical operative language as the fraud provision in the British Columbia Act. In interpreting the fraud provision in the British Columbia Act and with respect to the mental element, the British Columbia Court of Appeal in *Anderson* stated at paragraph 26 that:

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

The British Columbia Court of Appeal in *Anderson* further explained at paragraph 29 that:

> Fraud is a very serious allegation which carries a stigma and requires a high standard of proof. While proof in a civil or regulatory case does not have to meet the criminal law standard of proof beyond a reasonable doubt, it does require evidence that is

> clear and convincing proof of the elements of fraud, including the mental element.
>
> The British Columbia Court of Appeal approach to the legal test in the context of securities fraud as set out in *Anderson* was adopted in *Re Capital Alternatives Inc.*, 2007 ABASC 79, which was affirmed in *Alberta (Securities Commission) v. Brost*, [2008] A.J. No. 1071 (Alta. C.A.).
>
> For a corporation, it is sufficient to show that its directing minds knew or reasonably ought to have known that the corporation perpetrated a fraud to prove a breach of section 126.1(b) of the Act.

[138] The category of "other fraudulent means" captures all other situations in which dishonest acts are involved that cannot be simply characterized as "deceit" or "falsehood". The courts have defined the sort of conduct that may fall under the category of "other fraudulent means", which include 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*, *supra* at para. 18). The existence of conduct that constitutes "other fraudulent means" is determined by what a reasonable person considers to be dishonest dealing. On the other hand, in instances of fraud by deceit or falsehood, it will not be necessary to undertake such an inquiry, since all that needs to be determined is whether, as a matter of fact, the respondent represented that "a situation was of a certain character, when, in reality, it was not" (*Théroux*, *supra* at para. 18).

[139] The element of "deprivation" does not require that the respondent profited by the fraud (*Théroux*, *supra* at para. 19). Moreover, where the conduct and knowledge required by the definitions in *Théroux* are established, the respondent is found to have engaged in fraud, "whether he actually intended the prohibited consequence or was reckless as to whether it would occur" (*Théroux*, *supra* at para. 25).

2. Analysis

[140] For the following reasons, I find that during the Material Time, RARE, Dookhie and Todorov breached subsection 126.1(b) of the Act and acted contrary to the public interest.

(a) RARE

[141] Based on the evidence before me, including De Verteuil's source and allocation of funds analysis, it is clear that RARE engaged in many acts of deceit, falsehood and other fraudulent means that deprived RARE Investors of their funds. The investment scheme arranged by RARE was an underhanded design that placed a substantial amount of risk on the financial situation of its investors, most of whom suffered a complete loss of their principal investments.

[142] Despite their knowledge to the contrary, the Respondents continually made representations that: investor funds would be used in Forex trading, their funds would be secured in GICs and RARE was a successful business that was active in the Forex market. None of these representations was true.

Promotional Materials of RARE

[143] Dookhie, the directing mind of RARE, drafted and prepared the promotional materials of RARE. These documents were provided to investors to encourage them to invest in RARE. Several RARE Investors received a document entitled "How the program works!" (the "**How the Program Works Document**"), which stated, among other things, that 50% of an investor's funds would be invested into the Forex market, while the other 50% would be placed in a GIC that would be locked in for one year with the Bank of Montreal.

[144] In their testimonies, Staff's Investor Witnesses, E.A., R.E. and V.M., all confirmed that they received this document in relation to their investments with RARE. R.E. testified that he was comfortable investing $50,000 in RARE because half of his funds would be secured in a GIC, meaning that in the worst case scenario he would lose half of his investment. He stated that the How the Program Works Document described what he understood would be done with his investment and how it would be kept.

[145] Although the How the Program Works Document represented to investors that 50% of their deposits in RARE would be placed into GICs, RARE only purchased three GICs totalling $275,000 during the Material Time. I note that the investments of RARE Investors amounted to $1,226,832.

[146] The three GICs were purchased using the funds in Account 752 and Account 736. With regards to Account 752, which received the deposits of 13 RARE Investors, only a single GIC of $100,000 was purchased with its funds. With regards to Account 736, two RARE Investors deposited a total amount of $175,000 into the account. Rather than using 50% of the funds to purchase GICs, the entirety of these investor funds was used to purchase two GICs at a total amount of $175,000.

[147] In relation to investor funds that were used to purchase GICs, the evidence indicated that the purpose of these GICs was not to guarantee the security of investors' principal investments. As admitted by Dookhie, the GICs were used to keep the overdraft running on RARE's main operating account, Account 752, in order to fund RARE's trading activities at ODL. In his testimony, Dookhie admitted that when the GICs matured, the funds were deposited back into Account 752 and used to reduce the overdraft in the account. Dookhie further admitted that investors were not informed that their funds would be used to keep a line of credit operating or to satisfy the overdraft obligations of RARE's bank accounts at the Bank of Montreal.

[148] A second promotional document entitled "RARE Investments" (the "**RARE Investments Document**") was also provided to the Investor Witnesses, E.A., R.E. and V.M. Among other things, this document stated the following:

- "RARE Investments, a division of 2196768 Ontario Ltd., is offering individuals a *rare opportunity* to earn up to 24% a year on privately placed investment of Canadian $50K." [emphasis in original]

- "RARE's Investment main strategy is to trade in the FOREX Market."

- "With average daily turnover of US$3.2 trillion, forex is the most traded market in the world."

- "Based on our success over the past 18 months, we are able to offer 24% yearly rate of interest on funds borrowed from clients and also provide a security against 50% of your initial investment."

(Exhibit 5, Vol. 2, Tab C, pp. 18-21; Exhibit 9, Vol. 2, Tab G, pp. 41A; Exhibit 16, Vol. 2, Tab L, pp. 79-105)

[149] I note that during the Material Time, the source of funds of RARE came solely from the deposits of RARE Investors. The evidence showed that RARE was unsuccessful in generating any profits from its trading activities, given that its trading activities resulted in a net loss of $688,757.73.

[150] In his testimony, Dookhie acknowledged that the RARE Investments Document was incorrect in describing RARE's past success. He explained that RARE had just been formed when this document was distributed to investors, and therefore did not have 18 months of experience. Dookhie admitted that he presented this document to investors at a time when the main trading account of RARE was comprised, meaning that RARE was inactive in its trading activities. He also admitted that the statement in the document, regarding RARE's success "over the past 18 months", was a misrepresentation and anyone who thought RARE had been a success at that point were mistaken.

[151] The RARE Investment Document was also misleading since it described RARE as a "division of 2196768 Ontario Ltd.". This language suggested that RARE was part of a larger company, when in fact RARE and 2196768 Ontario Ltd. were one and the same corporate entity that was owned by Dookhie, Sunderji and Todorov and operated out of the same address, the Yorkgate Mall Address.

[152] Using the How the Program Works Document and the RARE Investments Document, RARE represented itself as a company whose success allowed its investors to receive a guaranteed return on investment of 24% per annum, using half of the capital provided by investors. In reality, no such success had ever been achieved by RARE.

[153] Apart from the How the Program Works and the RARE Investments Document, the Individual Respondents provided investors with other promotional materials, such as ODL trading statements. Investors were also shown computer screens of trading activities in their discussions and meetings with Dookhie prior to making their investments with RARE. For example, at his first meeting with Dookhie, R.E. was shown some trading activities of RARE and was assured that there were more gains than losses, which convinced R.E. that Dookhie was making money with RARE. Dookhie promised R.E. an annual rate of return of 24%. Dookhie informed him that that the return could be better, but his lawyer advised him to be more conservative by offering a rate at 24%. Additionally, V.M. testified that Dookhie showed him some screens and trades that were happening with other accounts of his clients. Based on their discussions with Dookhie and the promotional materials provided, both R.E. and V.M. decided to invest a total of $250,000 in RARE.

[154] The promotional materials of RARE, most notably the How the Program Works and the RARE Investments Document, were intended to create an impression of the company's success, based on the knowledge, experience and expertise of the RARE Principals. The supposed guarantee of a 50% security in GICs for each investment, coupled with what appeared to be a history of high returns, added to the attractiveness of investing in RARE. Many statements contained in the promotional materials of RARE were proven to be false by the evidence before me. I therefore find the representations made in the promotional materials, as discussed above, constitute acts of deceit, falsehood and fraud.

Misuse of the RARE Investor Funds

[155] RARE was represented as a company that engaged in Forex trading. The evidence showed that investors were under the belief that their funds would be used as capital to allow RARE to perform its trading activities in the Forex market and that half of their investments would be safely placed in GICs. In reality, RARE was formed to make interest payments to individuals who were not RARE Investors and to service the past financial obligations of the Respondents. These unauthorized uses of investor funds were not disclosed to RARE Investors.

[156] When asked about the formation of RARE, Dookhie testified that RARE was formed to service and pay off debts that were incurred prior to the incorporation of RARE. In his testimony, De Verteuil confirmed that money was transferred from RARE's main bank account, Account 752, to Pre-RARE Investors and to 632 Company, a company owned by Dookhie. The following funds were withdrawn from Account 752 in relation to interest payments made to Pre-RARE Investors:

- on March 11, 2009, the cheque of Account 752 was drawn and was made out to a Pre-RARE Investor who did not invest in RARE;

- on June 24, 2009, M.A. deposited $50,000 in RARE and on the same day, a Pre-RARE Investor, who never deposited funds in RARE, received a payment for the principal amount he invested with 632 Company, being $50,000; and

- throughout the Material Time, all Pre-RARE Investors, including three investors who did not invest any funds in RARE, received interest payments from Account 752.

[157] There was also evidence to show that some obligations that were incurred by the Respondents prior to the formation of RARE subsequently became the liability of RARE and its investors. For instance, two Pre-RARE Investors entered into a $50,000 debenture certificate with 632 Company on October 6, 2008. There was no evidence that either of these investors ever invested in RARE. However, on April 8, 2009, a promissory note of $50,000 was issued by RARE to these two investors.

[158] The evidence also demonstrated that RARE made payments to third parties, i.e. non-investors of RARE:

- In his Compelled Examination on August 25, 2010, Dookhie admitted to facilitating a loan of $11,221.97 by RARE on behalf of Todorov to an individual who was neither a Pre-RARE Investor nor a RARE Investor. Dookhie made the loan to the individual at Todorov's direction, despite not knowing who this individual was or why Todorov wanted RARE to pay her money.

- A total of $8,400 in referral fees was paid to Hoang, who assisted in soliciting one investor to RARE with Vatanchi. Hoang was the only individual who received a referral fee from RARE.

- On August 7, 2009, a transfer of $70,000 was drawn from Account 752 to a company owned by Vatanchi, who was a friend of Todorov and solicited two RARE Investors. The funds were connected to a loan that was provided to Vatanchi with some bridge financing for a real estate transaction. There was no interest payable in respect of this loan, nor was there any documentation evidencing that this loan was made between RARE and Vatanchi's company.

[159] Looking at the investment scheme as a whole, I find that the main indicators of fraud were as follows: false statements in the company's promotional materials; misrepresentations about the financial viability and trading success of the company; and the undisclosed use of the RARE Investor funds to satisfy pre-RARE debt obligations of the Respondents, to pay Pre-RARE Investors with their interest payments and principal sums and to provide referral fees and interest-free loans to third parties.

[160] For the reasons above, I find that the evidence has established that the conduct of RARE during the Material Time was dishonest and was objectively deceitful and false. I also find that any reasonable person would conclude that the actions of RARE were aimed to represent to RARE Investors that their investments were safe when, in reality, their funds were put at risk and most of the principal amounts invested by these investors were ultimately lost.

[161] With regards to a corporate respondent, the Commission has determined that it is "sufficient to show that its directing minds knew or reasonably ought to have known that the corporation perpetrated a fraud to prove a breach of subsection 126.1(b) of the Act" (*Re Al-Tar*, *supra* at para. 221).

[162] As discussed below, Dookhie controlled RARE and was its directing mind. The evidence before me demonstrated that Dookhie knowingly interacted with investors in a deceitful manner that perpetrated the fraud of RARE. I therefore conclude that RARE engaged or participated in acts, practices or courses of conduct relating to securities that it knew or reasonably ought to have known perpetrated a fraud on RARE Investors, contrary to subsection 126.1(b) of the Act and contrary to the public interest.

(b) Dookhie

[163] I find that Dookhie engaged in many acts of deceit, falsehood and other fraudulent means that deprived investors of their funds.

[164] Dookhie stated that he was naïve to put his trust in Todorov and Sunderji and takes full responsibility of the consequences of his misconduct. I do not find that Dookhie played a passive role in perpetrating the investment scheme of RARE; he was not naïve. On the contrary, I find that he was an active player in soliciting funds from RARE Investors. It was through his representations, both oral and written, on which RARE Investors based their decisions to invest.

[165] Moreover, although Dookhie expressed his remorse regarding his misconduct in his testimony at the Merits Hearing, this does not excuse his active engagement in RARE's investment scheme during the Material Time.

Dookhie's Dealings with RARE Investors

[166] In his Compelled Examination on August 25, 2010, Dookhie stated that RARE Investors knew Dookhie well, they were confident in his abilities and they invested in RARE based on the strength of their relationships with him (Exhibit 78, Compelled Examinations of Dookhie, August 25, 2010, Q. 785, p. 159, ll. 1-6). Dookhie used these relationships of trust and confidence to his advantage and placed investors' funds at risk by doing so.

[167] During the Material Time, Dookhie had relationships with all three of the Investor Witnesses. Their relationships with Dookhie are described below:

- M.A. invested a total of $100,000 with RARE. He has no knowledge of securities or the capital markets and he characterizes himself as a naïve investor. M.A. first met Dookhie around 2003. Dookhie had provided M.A.'s father with services for his income taxes through Liberty Services. When M.A. retired, he asked Dookhie to complete his income taxes as When M.A. made his investments with RARE, Dookhie informed M.A. that he had a team that included Todorov and Sunderji, who were "FX people and understood currency trading" (Transcript, May 22, 2013, Testimony of M.A., p. 47, ll. 1-5). From his discussions with Dookhie, M.A. thought that Todorov was an "FX specialist", an "ethical financial investor" and an "honest financial investor" (Transcript, May 22, 2013, Testimony of M.A., p. 50, ll. 24-25; p. 51, l. 1). M.A. further testified that he was under the impression that his money would "grow through [Todorov's] work with currency trading" (Transcript, May 22, 2013, Testimony of M.A., p. 51, ll. 2-3). M.A. testified that he has not received any of his principal of $100,000 from RARE or its principals. M.A. stated that he had "misplaced confidence" when he decided to invest in RARE. M.A. has hired a lawyer to recover his funds.

- R.E. invested $50,000 in RARE, using funds obtained through a line of credit. At the time of the Merits Hearing, R.E. had known Dookhie for over 20 years. When describing Todorov, Dookhie informed R.E. that Todorov would be in charge of carrying out the trading of RARE and that he was a "mathematical whiz" who could make R.E. "some serious money" (Transcript, May 22, 2013, Testimony of R.E., p. 86, ll. 14-18). Until the day of his testimony, R.E. has not received the return of his $50,000 from RARE or its principals. R.E. testified that when he is reminded of his experience with RARE, he stated that "my blood boils. It is a tremendous dollar amount. It is a major financial setback and it is just affecting

me…mentally, physically, emotionally…and I am diagnosed with high blood pressure because of all this" (Transcript, May 22, 2013, Testimony of R.E., p. 96, ll. 23-25; p. 97, ll. 1-3). As of the date of his testimony, the line of credit from which R.E. borrowed the $50,000 for his investment with RARE was still outstanding, and he was uncertain when he would be able to pay off this balance.

- V.M. collaborated with his brother as an equal investment partner and invested a total of $200,000 in RARE. Todorov solicited V.M. and his brother to invest in RARE; however, both Dookhie and Todorov were actively engaged in discussions with V.M. during the Material Time. When asked why he invested in RARE, V.M. stated that one reason he invested was because he was comfortable with Dookhie, who seemed to be "very knowledgeable on what he was doing" (Transcript, May 22, 2013, Testimony of V.M., p. 148, ll. 13-20). V.M. thought Dookhie was doing a good job, he showed V.M. good returns on his trades and V.M. trusted him. From November 2009 to June 2010, Dookhie sent emails to V.M. promising favourable investment opportunities and the possibility to secure V.M.'s investments through collateral. V.M. ultimately decided not to secure his investments with collateral. V.M. also did not invest additional funds in RARE. As of the date of his examination-in-chief on May 22, 2013, V.M. had not received any interest payments or any of his principal investment back from RARE.

[168] Dookhie was also responsible for drafting the How the Program Works and the RARE Investments Document, which included statements that he admitted to be false, as previously discussed.

[169] Dookhie also made representations to RARE Investors that he knew were untrue. For instance, Dookhie sent an email to V.M. on February 8, 2010 that stated, "There is an opportunity to take advantage of the falling or strengthening of the Euro. Our account is well positioned and I doubled the funds I started with last August" (Exhibit 32, Vol. 2, Tab L, pp. 159-160 at p. 159). On February 27, 2010, Dookhie sent another email to V.M. attaching several documents, including a profit and loss statement of the U.S. dollar trading account, Account 81216. The statement showed a monthly rate of return of 274% for February 2010. De Verteuil testified that the rate of return was inaccurate, given that there was an unrealized loss of approximately $369,000 at the end of February 2010. Around March 10, 2010, approximately two weeks following the February 27, 2010 email from Dookhie, Account 81216 was closed and showed a cumulative loss of $114,271.78.

[170] I find that Dookhie was the directing mind and the main orchestrator of the investment scheme of RARE. He exploited the trust, which RARE Investors placed on him, in order to advance his own desire to make money in the Forex market. I find that this conduct constituted acts of deceit, falsehood and dishonesty that deprived RARE Investors of their funds.

Not Disclosing Risks

[171] Dookhie was intimately aware of the dire financial situation of RARE during the Material Time. He was the director, president and accountant of RARE, and he was responsible for all the

banking matters of the company. Dookhie admitted that he reviewed the company's accounts on a "regular basis" (Transcript, May 27, 2013, Testimony of Dookhie, p. 111, ll. 20-23).

[172] As previously discussed, RARE suffered a substantial loss that caused ODL to close Account 32508 in May 2009. Dookhie did not inform RARE Investors or the Bank of Montreal of this loss. Furthermore, as of July 17, 2009, the main bank account of RARE, Account 752, was in an overdraft position, from which it never recovered. Nonetheless, investor funds continued to flow to RARE until December 2009. Dookhie admitted the he never told RARE Investors that the company was in "terrible shape" when he accepted their funds (Transcript, May 27, 2013, Testimony of Dookhie, p. 111, ll. 2-5).

[173] By March 2010, RARE was completely out of money and no longer had an open trading account at ODL. However, at this time, Dookhie engaged in discussions with RARE Investors to enter into the 2010 Promissory Notes. Dookhie admitted that during these discussions he did not inform RARE Investors that there was no money left in the trading account of the company.

[174] In his Compelled Examination on August 25, 2010, Dookhie admitted that he did not disclose the risk of Forex trading with RARE Investors:

> A. …When you are trading, there's a spread between buy and sells, okay…We had the safety to stay in the trading account and this is one of the problems we had with ODL and these are some of the risks that are inherent in the market…
>
> […]
>
> Q. Was that risk or can you tell us how that risk was communicated to the lenders?
>
> A. It was not communicated to the lenders.
>
> Q. So even though they were aware that you were taking the money for the most part and trading in the foreign exchange, they were not made aware of what risks existed?
>
> A. Absolutely not.
>
> Q. Okay. And tell me why not.
>
> A. I didn't think they had to know. I mean, this is something that I was going through and it was evolving and I didn't think I had to worry them about the risk involved. My worry was to ensure that the accounts stayed in good standing order and that the funds are being made to pay -- to make the interest payments in a timely manner and to ensure that the capital at some point in time is going to still be in the account based on the trading methodology that I had been trying to preach to you.
>
> […]

Q. Okay. So what went wrong?

A. What went wrong? I guess gambling instincts.

(Exhibit 78, Transcripts of Compelled Examinations of Dookhie, August 25, 2010, Qs. 138-142 and 181, pp. 33-34 and 45)

[175] The actions of Dookhie discussed above showed a callous disregard of the trust that was bestowed on Dookhie by RARE Investors. By withholding significant information about the financial status of RARE and the risks inherent in its trading activities, Dookhie deprived RARE Investors with the ability to make informed decisions before investing with RARE.

Misuse of the RARE Investor Funds

[176] In his Compelled Examination on August 25, 2010, Dookhie admitted that he was responsible for negotiating the investments with RARE Investors. When he was asked what investors were told about their investments, Dookhie replied:

> Well, I had said to most of my lenders that I'm trading in the foreign exchange market and I will be borrowing the funds to use for that purpose, and some of them didn't care what I used it for that purpose or, you know, what I did with it, once I made the monthly interest payment which they were happy to receive, yeah. So that was the gist of that.
>
> (Exhibit 78, Transcripts of Compelled Examinations of Dookhie, August 25, 2010, Q. 37, p. 12, ll. 17-24)

[177] Investors were never told that their funds would be used to satisfy the interest payments to other investors, including Pre-RARE Investors, nor were they told that their funds would be transferred to third parties for referral fees and interest-free loans. As the individual in charge of all of the banking matters of RARE, Dookhie was solely responsible for the unauthorized uses of the RARE Investor Funds.

[178] It is clear that Dookhie had the subjective awareness that his conduct would put the economic expectations of RARE Investors at risk. In Dookhie's testimony, when asked about the entire events of RARE during the Material Time, including his solicitation of RARE Investors, Dookhie stated that in hindsight, he realized that "it was wrong what we did, it is wrong what I did. I take full responsibility" (Transcript, May 27, 2013, Testimony of Dookhie, p. 49, ll. 8-14). In his testimony, Dookhie admitted that he used other people's money to make money for himself (Transcript, May 27, 2013, Testimony of Dookhie, p. 73, ll. 5-8).

[179] Dookhie's dishonest acts allowed RARE to raise $1,226,832 from 16 RARE Investors. De Verteuil calculated the net payments made to Dookhie from RARE amounted to $172,200.30, as discussed in paragraph 74 above.

[180] I therefore conclude that Dookhie engaged or participated in acts, practices or courses of conduct relating to securities that he knew or reasonably ought to have known perpetrated a

fraud on RARE Investors, contrary to subsection 126.1(b) of the Act. I further find that such conduct was contrary to the public interest.

(c) Todorov

[181] As part of his testimony, Todorov tendered a summary statement and trading statements of an account that was set up with GCI Financial, in his own name, spanning a time period from January 7, 2013 to March 25, 2013 (Exhibits 82 and 83). Todorov created the summary statement (Exhibit 83) by using the information contained in the trading statements of his GCI Financial account (Exhibit 82).

[182] Todorov argued that he was impeded in trading in the accounts of RARE, which led to the substantial trading loss in May 2009. Todorov wished to enter the summary statement and trading statements of his account with GCI Financial as evidence to demonstrate his ability to raise funds based on a formula, rather than a random act, in order to illustrate that his role in connection to the substantial loss was misinterpreted and was a misrepresentation of his abilities. Todorov also argued that the mathematical formula that is applied in his trading can only work if it is not meddled with. Todorov submits that through Exhibits 82 and 83, he is able to prove that his trading is profitable and successful over a continuous period of time.

[183] Todorov submits that the documents in Exhibits 82 and 83 were also tendered to demonstrate that he is able to rectify his obligations towards RARE Investors. At the Merits Hearing, Todorov testified that the summary statement (Exhibit 83) showed that his GCI Financial account obtained a gross profit of $247,740.28 and a net profit of $126,686.06, as of March 25, 2013. Todorov intends to use the funds generated from this account to return the funds owed by him to investors. Todorov testified that there are five RARE Investors that he is responsible for returning funds to: V.M., M.A., N.M. M.R. and A.A.

[184] In Staff's cross-examination of Todorov, Staff raised the issue that the account Todorov established with GCI Financial had positions that were not closed. Todorov confirmed that the final profit/loss value in the GCI trading statements (Exhibit 82 at p. 293) was a floating value and could therefore fluctuate, as was seen with Account 32508 when Todorov made an aggressive trade on April 22, 2009.

[185] The evidence demonstrated that trading in the Forex market can be very volatile. As Todorov explained, "You can damage an account in two minutes and...in less than two minutes you can totally wipe out an account" (Transcript, May 27, 2013, Testimony of Todorov, p. 194, ll. 21-23). Therefore, despite Todorov's stated intention to repay investors with their lost funds, it is not certain whether or not the GCI Financial account will continue to grow a profit and be used to repay investors.

[186] Additionally, although Todorov has stated intentions to rectify the consequences of his misconduct, this does not afford him with a defence against a finding of fraud (*Théroux*, *supra* at paras. 31 to 35). However, these efforts may be of assistance in the consideration of any sanctions that may apply to Todorov in this matter.

Todorov's Dealings with RARE Investors

[187] Similar to Dookhie, Todorov submits that he relied upon the representations of others. He submits that he relied on the representations of RARE's lawyer, who assured Todorov that the operations of RARE were conducted in compliance with Ontario securities law. He states that he was confident that RARE was complying with the law, given that Dookhie is an accountant. He further submits that Sunderji supervised the trading activities of RARE. I do not agree with these submissions.

[188] Though on a lesser scale than that of Dookhie, I find that Todorov actively made misrepresentations, both oral and written, to RARE Investors. As the company's chief trading strategist, Todorov was aware of the detrimental effect that the closing of Account 32508 had on RARE in May 2009. And yet, Todorov continued to solicit funds from investors throughout the Material Time.

[189] Todorov was involved in soliciting three individuals to invest with RARE. V.M. was the only investor whom Todorov directly solicited to invest in RARE. The other two investors were solicited by Vatanchi. There was also evidence showing that Todorov communicated with at least one additional RARE Investor, R.E.

[190] V.M. began investing with Todorov after V.M. spoke with his neighbour, who had invested with Todorov. V.M. and his brother decided to jointly invest a total amount of $200,000 in October 2007, which was later renewed in January 2008. V.M. testified that his entire investment of $200,000 with Todorov was completely lost after the bankruptcy of Global Trader, the online trading platform used by Todorov at the time. In order to recover his lost funds, Todorov suggested that V.M. meet with Dookhie and invest in RARE.

[191] On approximately April 8, 2009, V.M. had his first meeting with Dookhie at the office of Liberty Services. Todorov was also in attendance. On April 22, 2009, V.M. and his brother deposited a total of $200,000 into Account 752. V.M. testified that when he invested with RARE, he trusted both Dookhie and Todorov with his investment. V.M. understood that his funds would be directly invested with RARE. He did not know that Todorov intended to use his investment in partial satisfaction of Todorov's pre-RARE obligations to Dookhie.

[192] As of his examination-in-chief on May 22, 2013, V.M. had not received any return of his principal investment, nor had he received any interest payments. V.M. testified that he communicated with Todorov to inquire about his overdue interest payments. In response to V.M.'s inquiries, Todorov promised him, or led V.M. to believe, that funds were on their way on several occasions. V.M. testified that every time he called or sent emails to Todorov regarding his interest payments, he would receive a response that they were coming, and he stated that they were "always coming, coming, but [they] never came" (Transcript, May 22, 2013, Testimony of V.M., p. 168, ll. 1-2). For example, on August 10, 2009, V.M. wrote an email to Todorov asking when his first interest payment would be provided to him. Todorov replied by stating, "we're getting extra funds plus we've a meeting with HSBC on Thursday for big money (keep yor [*sic*] fingers crossed)" (Exhibit 28, Vol. 2, Tab L, p. 143). V.M. testified that no money materialized.

[193] Although the evidence established that $59,150 was received by RARE from Todorov and his company, Setenterprice, the evidence also showed that $16,000 was paid to Setenterprice directly from Account 752. Todorov also directed Dookhie to make a payment to a third party

for $11,221.97, in order to satisfy a personal debt that Todorov owed to that individual. The net payments to RARE by Todorov and Setenterprice during the Material Time therefore amounted to $31,928.03.

[194] As discussed above, Todorov solicited individuals to invest funds in RARE and he led RARE Investors to believe that their funds would be returned to them, despite knowing the dire financial circumstances of the company. Todorov also held himself out to investors as a trading specialist, despite never having obtained any formal trading in securities or ever worked in the securities industry in any formal capacity.

[195] I find that Todorov knew, or reasonably ought to have known, that his actions would cause deprivation to the pecuniary interests of RARE Investors. I therefore conclude that Todorov engaged or participated in acts, practices or courses of conduct relating to securities that he knew or reasonably ought to have known perpetrated a fraud on RARE Investors, contrary to subsection 126.1(b) of the Act and contrary to the public interest.

D. Did the Individual Respondents authorize, permit or acquiesce in the breaches of the Act by RARE, such that they are deemed to also have not complied with Ontario securities law, pursuant to section 129.2 of the Act?

1. The Law

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

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

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

> (a) a chair or vice-chair of the board of directors, a chief executive officer, a chief operating officer, a chief financial officer, a president, a vice-president, a secretary, an assistant secretary, a treasurer, an assistant treasurer and a general manager;
>
> (b) every individual who is designated as an officer under a by-law or similar authority of the registrant or issuer; and

(c) every individual who performs functions similar to those normally performed by an individual referred to in clause (a) or (b).

[198] Therefore, a respondent who performs similar functions to a director or officer is considered a *de facto* director or officer and may be captured by the language of section 129.2 of the Act as a person who authorized, permitted or acquiesced in the non-compliance of Ontario securities law by the relevant company.

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

(a) responsible for the supervision, direction, control and operation of the company;

(b) negotiated on behalf of the company; or

(c) made all significant business decisions

(*Re Momentas, supra* at para. 102, citing *Re World Stock Exchange* (2000), 9 A.S.C.S. 658)

[200] In *Re Momentas*, the Commission described the meaning of "authorized, permitted or acquiesced in":

> 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 [in] 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.
>
> (*Re Momentas, supra* at para. 118)

2. Analysis

[201] For the reasons discussed below, I find that Dookhie was a director and officer of RARE during the Material Time. I also find that Todorov was an actual director of RARE as of June 2, 2009 and was a *de facto* director of RARE before that time. As directors and/or officers of RARE, Dookhie and Todorov are accountable for RARE's breaches of Ontario securities law, pursuant to section 129.2 of the Act.

(a) Dookhie

[202] Throughout his testimony, Dookhie suggested that he relied on the directions and expertise of others, including Todorov and Sunderji. I do not find his arguments persuasive.

There is no doubt that Dookhie was a director and officer of RARE. Dookhie is listed as a director and the president of RARE in the company's corporation profile report, Shareholders Agreement, "Directors Register" and "List of Corporate Officers" (Exhibit 38, Vol. 1, Tab A, pp. 2-6; Exhibit 39, Vol. 1, Tab A, pp. 7-16; Exhibit 48, Vol. 1, Tab C, pp. 39-49).

[203] Dookhie was also the directing mind of the company and was the architect of the fraudulent investment scheme of RARE. He made all significant business decisions of the company, including the use of the RARE Investor Funds. In his Compelled Examination on August 25, 2010, Dookhie described himself as "the head guy…to ensure that the funds were trading responsibly and funds were added and withdrawn in a timely manner, [he] had to keep control" (Exhibit 78, Transcripts of Compelled Examinations of Dookhie, August 25, 2010, Q. 95, pp. 22-23). Dookhie further described his role in RARE as follows:

> …I figured, well, I can probably have an upper hand in this. So that's why I elected to stay in control of everything, you know, ensure that the account is always active, trades are being placed properly, trades are being closed properly, funds are being transferred back and forth properly. You know, the whole administrative thing. You keep your pulse on the business. And I figure, well, if I'm in total control, you know, I would pull this off…
>
> (Exhibit 78, Transcripts of Compelled Examinations of Dookhie, August 25, 2010, Q. 154, p. 40, ll. 11-20)

[204] The control exerted by Dookhie demonstrated that it was his decision to use the RARE Investor Funds for unauthorized purposes, such as the payments to third parties and Pre-RARE Investors. As the individual who controlled the bank accounts of RARE, Dookhie was able to draw on the funds of RARE without constraint or oversight, which he did continually throughout the Material Time.

[205] I therefore find that Dookhie, being a director and officer of RARE, authorized, permitted or acquiesced in RARE's non-compliance with subsections subsection 25(1)(a) (for the time period from January 1, 2009 to September 27, 2009) and subsection 25(1) of the Act (for the time period from September 28, 2009 to March 31, 2010), subsection 53(1) and subsection 126.1(b) of the Act. As a result, I find that Dookhie is deemed to also have not complied with Ontario securities law.

(b) Todorov

[206] Todorov forcefully submits in his testimony and submissions that he was not a director of RARE and was never consulted to perform the duties typically assigned to a director of a company. When he was pressed by Staff to explain why he was listed as a director in the Shareholders' Agreement of RARE, Todorov stated that: the page listing the directors of RARE may not have been included in the copy he signed; the lack of his initials on the pages indicated that he did not acknowledge the page; and he should have signed an addendum of directorship, which should have been properly registered.

[207] Despite his submissions that he was not a director of RARE during the Material Time, I find that the evidence has shown that Todorov was an actual director of RARE as of June 2, 2009 and was a directing mind and a *de facto* director of RARE before that date:

- Todorov is listed as a director of RARE in the company's Shareholders Agreement, dated June 2, 2009;
- in his testimony, De Verteuil, described Todorov's role as a director, shareholder and chief trading strategist of RARE;
- Todorov was the primary trader of RARE until May 2009;
- Todorov directly solicited V.M. and indirectly solicited two other investors through Vatanchi;
- V.M. testified that he understood that Dookhie and Todorov were the key players of RARE; and
- Todorov's signature appeared on four 2009 Promissory Notes as a signatory of RARE and he agrees that he is responsible for the funds contained in these promissory notes.

[208] Moreover, in his Compelled Examination on May 28, 2010, Todorov repeatedly referred to himself as a director of RARE:

> And [Dookhie and Sunderji] officially formed a company, but they put me as -- officially, I was a director or something, but afterwards I think when they went to a lawyer, they put me as a director of the company because we wanted to share equal responsibilities and, of course, equal duties, and in order to be that -- everybody should be in the same position.
>
> […]
>
> Well, Roy was saying because I wasn't a director, he said that it's better if you are a director if you want to be involved completely and if you want to have everything you should be registered as a director.
>
> So the lawyer…when they were doing the company papers, I believe he made an amendment which basically made me a director of the company.
>
> (Exhibit 77, Transcripts of Compelled Examinations of Todorov, May 28, 2010, Qs. 85-87, p. 20, ll. 4-25; p. 21, ll. 1-4)

[209] For all the reasons given, I find that Todorov, being an actual and *de facto* director of RARE, authorized, permitted or acquiesced in RARE's non-compliance with subsections subsection 25(1)(a) (for the time period from January 1, 2009 to September 27, 2009) and subsection 25(1) of the Act (for the time period from September 28, 2009 to March 31, 2010),

subsection 53(1) and subsection 126.1(b) of the Act. As a result, I find that Todorov is deemed to also have not complied with Ontario securities law.

VII. CONCLUSION

[210] For the reasons stated above, I find that during the Material Time:

(a) RARE, Dookhie and Todorov breached subsection 25(1)(a) of the Act during the time period from January 1, 2009 to September 27, 2009 and subsection 25(1) of the Act during the time period from September 28, 2009 to March 31, 2010;

(b) RARE, Dookhie and Todorov breached subsection 53(1) of the Act;

(c) there were no exemptions available to RARE, Dookhie or Todorov from the registration or prospectus requirements of the Act;

(d) RARE, Dookhie and Todorov breached subsection 126.1(b) of the Act;

(e) pursuant to section 129.2 of the Act, each of Dookhie, as a director and officer of RARE, and Todorov, as an actual and *de facto* director of RARE, is deemed to have not complied with Ontario securities law, having authorized, permitted or acquiesced in RARE's breaches of subsections 25(1)(a) during the time period from January 1, 2009 to September 27, 2009 and subsection 25(1) of the Act during the time period from September 28, 2009 to March 31, 2010, subsection 53(1) and subsection 126.1(b) of the Act; and

(f) RARE, Dookhie and Todorov acted contrary to the public interest.

[211] An order will be issued as follows:

(a) Staff shall serve and file its written submissions on sanctions and costs by July 23, 2014;

(b) The Respondents shall serve and file their written submissions on sanctions and costs by August 15, 2014;

(c) Staff shall serve and file any reply submissions on sanctions and costs by August 25, 2014;

(d) the hearing to determine sanctions and costs against the Respondents will be held at the offices of the Commission at 20 Queen Street West, Toronto, ON, on Thursday, August 28, 2014 at 10:00 a.m., or such further or other dates as agreed by the parties and set by the Office of the Secretary; and

(e) upon the failure of any party to attend at the time and place aforesaid, the hearing may proceed in the absence of that party, and such party is not entitled to any further notice of the proceeding.

DATED at Toronto this 27th day of June, 2014.

"Edward P. Kerwin"

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Edward P. Kerwin