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Securities
Commission

Commission des
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de l'Ontario

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

AND

**IN THE MATTER OF
FRANKLIN DANNY WHITE, NAVEED AHMAD QURESHI,
WNBC THE WORLD NETWORK BUSINESS CLUB LTD.,
MMCL MIND MANAGEMENT CONSULTING,
CAPITAL RESERVE FINANCIAL GROUP, and
CAPITAL INVESTMENTS OF AMERICA**

REASONS AND DECISION

Hearing: March 23, 24, 25 and 27, 2009

Decision: February 10, 2010

Panel: Patrick J. LeSage - Commissioner and Chair of the Panel
Suresh Thakrar - Commissioner

Counsel: Cullen Price - For the Ontario Securities Commission

No one appeared for any of the
Respondents.

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REASONS AND DECISION

1. 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 Franklin Danny White (“White”), Naveed Ahmad Qureshi (“Qureshi”), WNBC The World Network Business Club Ltd. (“WNBC”), MMCL Mind Management Consulting (“MMCL”), Capital Reserve Financial Group (“Capital Reserve”), and Capital Investments of America (“Capital Investments”) (collectively, the “Respondents”) breached the Act and acted contrary to the public interest.

[2] A Statement of Allegations and a Notice of Hearing were filed by Staff of the Commission (“Staff”) on February 7, 2008. In the Statement of Allegations, Staff alleged that during the period from May 2002 to March 2005 White and Qureshi established, promoted and operated an investment opportunity called Eggvestments which were sold to investors raising a total of approximately 1 million Canadian dollars. Of this amount, it is alleged that while some investors have been repaid by the Respondents, approximately two-thirds of the funds raised have not been repaid to investors. White and Qureshi used the companies they operated (the other respondents) to handle the money for the Eggvestment program.

[3] Staff alleges that this conduct is in breach of subsections 25(1)(a) of the Act (trading without registration), 25(1)(c) of the Act (advising without registration), and 53(1) of the Act (engaging in a distribution of securities without fulfilling the Act’s prospectus requirements) in respect of which no exemptions were available under the Act. Staff further alleges that the Respondents’ conduct was contrary to the public interest and harmful to the integrity of Ontario capital markets.

B. History of the Proceeding

[4] The first appearance in this matter was held on February 28, 2008 and a second appearance was held on March 18, 2008. During the second appearance, the hearing on the merits was set down to commence on January 12, 2009. Subsequently, three pre-hearing conferences were held on June 24, 2008, December 17, 2008 and January 9, 2009.

[5] On January 12, 2009, an adjournment motion was brought by White. Subsequent appearances were held on February 13, 2009 and March 13, 2009 and the hearing on the merits was set down to commence on March 23, 2009.

[6] On March 23, 24, and 25, 2009, we heard evidence on the merits in this matter and on March 27, 2009 we heard closing submissions from Staff. None of the Respondents were present or represented by legal counsel.

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

C. The Respondents

i. The Individual Respondents

[8] White is a resident of Pontypool, Ontario, and Qureshi is a resident of Toronto, Ontario. Neither individual has ever been registered with the Commission; however, Qureshi has stated that he was formerly a registrant in New York State.

[9] In 2002, White and Qureshi created Eggvestments, an investment offered to WNBC members, whereby the members (investors) bought “Eggs” for US\$ 1,000 per “Egg”. The funds were collected by White and were to be used by Qureshi to trade in the foreign currency markets.

ii. The Corporate Respondents

[10] None of the corporate respondents, WNBC, MMCL, Capital Reserve and Capital Investments, have ever been registered in Ontario or reporting issuers in Ontario.

[11] WNBC and MMCL are operated by White. White also owned a sole-proprietorship called World Network Business Club, which had Ontario-based bank accounts. According to White, the sole proprietorship was the operating business. White ran the investment club using the sole proprietorship.

[12] Capital Reserve and Capital Investments are operated by Qureshi.

WNBC

[13] WNBC was incorporated in Ontario on June 29, 2000 and White was at all times the sole director and officer of WNBC. Its incorporation was cancelled on February 26, 2007. According to White, he incorporated WNBC in order to establish offshore bank accounts. WNBC’s website defines the company as a membership based organization providing the following services: business consulting, tax consulting, private banking, financial literacy, offshore international business consulting and financial planning...etc.

[14] Eggvestments were one of the investment opportunities facilitated by WNBC. WNBC contracted with investors, issuing one unit (or Egg) for every US\$ 1,000 contributed to the Eggvestment fund. The Eggvestments are central to Staff’s allegations of misconduct.

MMCL

[15] MMCL is a sole proprietorship operated by White, who was also the sole signing officer on MMCL’s Ontario based bank accounts. Funds from investors and interest payments for Eggvestments and other WNBC investments were channeled through MMCL. In addition to MMCL, White incorporated Mind Management Consulting Ltd. solely for the purpose of opening offshore bank accounts.

Capital Reserve

[16] Capital Reserve is a sole proprietorship registered on July 29, 2002 by Qureshi's brother and cancelled on September 4, 2003. It was re-registered on September 4, 2003 by Qureshi, who is the sole owner and operator of the company, with a stated business activity of "asset management". In addition to currency trading in his name, Qureshi conducted currency trading through Capital Reserve trading accounts.

[17] Capital Reserve's website states that it offers Capital Reserve members and clients services such as financial consultancy, real estate investments and forex trading. The website describes Capital Reserve as having offices in Toronto, Calgary, London, New York, Switzerland and Dubai.

Capital Investments

[18] Capital Investments is a sole proprietorship owned and operated by Qureshi. It was registered on October 19, 2005 and lists asset management and forex trading as its business activities.

[19] Capital Investments contracted with WNBC to invest money in forex and other markets in May 2002. Qureshi used Capital Investment accounts to pay interest and close off accounts with Eggvestment investors. Qureshi also conducted currency trading through Capital Investments trading accounts.

2. Preliminary Issues

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

[20] As stated above, none of the Respondents were represented or appeared at the hearing. Subsection 7(1) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended (the "SPPA") provides that a tribunal may proceed in the absence of a party when that party has been given adequate notice:

Where notice of an oral hearing has been given to a party to a proceeding in accordance with this Act and the party does not attend at the hearing; the tribunal may proceed in the absence of the party and the party is not entitled to any further notice in the proceeding.

[21] We are satisfied that Staff gave adequate notice of this proceeding to the Respondents and that we are entitled to proceed in their absence in accordance with subsection 7(1) of the SPPA.

B. The Appropriate Standard of Proof

[22] Staff also made submissions as to the appropriate standard of proof applicable in Commission proceedings.

[23] *F.H. v. McDougall*, [2008] 3 S.C.R. 41, a recent Supreme Court of Canada decision, states at paragraph 49 that:

...in civil cases there is only one standard of proof and that is proof on a balance of probabilities. In all civil cases, the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred.

[24] At paragraph 46, it is further stated that:

...evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test. But again, there is no objective standard to measure sufficiency... If a responsible judge finds for the plaintiff, it must be accepted that the evidence was sufficiently clear, convincing and cogent to that judge that the plaintiff satisfied the balance of probabilities test.

[25] We must decide this matter on the balance of probabilities. In doing so, we must be satisfied that there is sufficient clear, convincing and cogent evidence to support our findings. Before us in evidence we have video recordings of White and Qureshi giving investing presentations; documents submitted by White, Qureshi, investors and Staff's investigator; testimony of investors; and transcripts of voluntary examinations of White and Qureshi. We find that this evidence is clear, convincing and cogent and provides a sufficient basis for our conclusions set out below. We are satisfied on the balance of probabilities that the events described in these reasons have occurred.

3. Issues

[26] Based on the Statement of Allegations, the issues in this matter for us to consider are:

- a. Did the Respondents trade in securities in breach of subsection 25(1)(a) of the Act?
- b. Did the Respondents advise in connection with trading in securities in breach of subsection 25(1)(c) of the Act?
- c. Did the Respondents engage in a distribution of securities without a prospectus in breach of subsection 53(1) of the Act?
- d. Were there any exemptions available to the Respondents?
- e. Did the Respondents act in a manner that was contrary to the public interest and harmful to the integrity of Ontario capital markets?

4. Evidence

[27] Staff submitted to us 19 exhibits which included documentary evidence and video recordings (14 DVDs) of presentations and discussions of White and Qureshi, and called as witnesses a Staff investigator and three individual investors. To protect the privacy of those witness investors, we will refer to those three witness investors as "Investor 1", "Investor 2", and "Investor 3".

[28] In addition, to protect the personal information of Investor 1, Investor 2 and Investor 3, and to protect the personal information of other individual investors in this matter, we have required that Staff provide a redacted version of the record.

[29] The evidence in this proceeding relates to the following investment scheme.

A. The Investment Scheme

i. The Role of White, Qureshi and WNBC

[30] In 2002, White and Qureshi created Eggvestments, an investment offered to WNBC members, whereby the members as investors bought “Eggs” for US\$ 1,000 per “Egg”. The funds were collected by White and were to be used by Qureshi to trade in the foreign currency markets (the details of the Eggvestments are discussed further below).

[31] WNBC’s website defines the company as a membership based organization. Members paid an annual membership to participate in this club. WNBC’s website refers to two different club membership packages: Gold and Platinum. The WNBC Gold Package had a sign up fee of \$5,000 and an annual renewal fee of \$2,500. The WNBC Platinum Package had a sign up fee of \$10,000 and an annual renewal fee of \$5,000.

[32] WNBC held weekly meetings in Toronto, where members of the club could attend seminars on investments, tax planning, networking and financial education. Members were also offered access to offshore and onshore investments, private and offshore banking and investment education. White hosted and presented at these weekly meetings. Qureshi also attended, presented or participated in many WNBC meetings. For example, Investor 3 testified that Qureshi attended 70% of the WNBC meetings.

[33] Weekly WNBC meetings were also held at “satellite clubs” in Oakville, Etobicoke, Calgary and other cities, hosted by a local club member who would show a video recording of the WNBC Toronto meeting from that week. White occasionally attended the satellite club meetings.

[34] In a WNBC promotional video, White describes WNBC as having slowly evolved from a networking club to having a greater focus on the finances of its members. He offers WNBC investment services as follows:

If you’re interested in investing onshore and offshore and want to get a better rate of return on your investments and really want to know why you’re not doing as well with your investments as you should be doing, then WNBC just may be the answer.

(Exhibit 11, tab 5, September 2004, WNBC Video at 12:16)

[35] In May 2002, WNBC entered into a private placement agreement with Capital Investments. Capital Investments agreed to manage WNBC’s assets and participate in forex, futures, commodities and world capital markets through trading accounts set up by Capital

Investments. As part of the agreement, WNBC would receive a fixed annual return of 20% for the assets (funds) under management.

[36] White and Qureshi also offered and promoted additional investment opportunities through WNBC. These included Qureshi's Play Game (or PG) currency trading investment, GreenFleet Car Sharing investment opportunity, Island Ink Jet investments and real estate and land investments.

ii. The Eggvestment Program

[37] As mentioned, White and Qureshi created what they referred to as an investment opportunity for WNBC members which they called the Eggvestment program. White said he decided to call the investment opportunity Eggvestments because he was trying to create "nest eggs" for his members.

[38] Eggvestments were promoted at weekly WNBC meetings, satellite club meetings and on the WNBC website. Investors were told that this was a low risk, high return investment; and that their capital would be safe. In the first year of the program, the investors were told they would be given a guaranteed return on their investment of 15%. This was subsequently changed to a return guarantee of a minimum of 18%, 19% and 20% per annum depending on the term of the investment (1, 2, or 3 years).

[39] Eggvestments raised money through investment contracts made between individual investors and WNBC. For every US\$ 1,000 invested, Eggvestment subscribers were given one unit (or one Egg) in the Eggvestment program, so that each unit purchased was part of the overall Eggvestment pool of funds. The proceeds from unit sales were to be invested in foreign currency markets. Investors were told that by investing in Eggs through pooling their funds, they would gain exposure to currency markets that they would be unable to access on their own.

[40] The Eggvestment money was collected by White through WNBC and MMCL, and then transferred on to accounts controlled by Qureshi for investment in foreign exchange markets. Qureshi then pooled these funds and traded in foreign currency markets through trading accounts in his name and his companies, Capital Reserve and Capital Investments. Eggvestment investors were solicited with assurances of the security of their investment and pronouncements of Qureshi's expertise in currency trading.

[41] From 2002 until 2004, significantly more than 1 million Canadian dollars was raised from investors. Staff was able to obtain evidence of at least 58 investors (if one includes the investors who invested together - e.g. husband and wife - the number of investors rises to 63).

[42] We note that White and Qureshi's records provided in evidence show that neither kept timely or accurate records of the Eggvestments. However, we find that the evidence provided through Staff's witnesses was clear, cogent and convincing evidence to support the numbers of investors and their investments. Based on the following three sources of information: client files and bank transfer information obtained and confirmed by White, copies of repayment cheques marked "Eggs" obtained from Qureshi, and information from third parties (investors and banks), it was determined that investors invested at least: US\$ 560,366 and CDN\$ 577,785. These

amounts relate to Eggvestments only and exclude funds invested and/or placed by investors in other investment opportunities provided by WNBC, White and Qureshi.

[43] According to the records provided by Qureshi, Staff established that US\$ 651,139.50 was accounted for in Qureshi's trading accounts. We were not provided with any evidence from the Respondents regarding what happened to the remaining funds collected under the Eggvestment program, and we find that this highly suggests that the remaining funds were used by the Respondents for some other purpose.

[44] Qureshi admits he lost nearly US\$ 500,000 in foreign currency trading activities.

[45] Investors have, on aggregate, been repaid only approximately one third of the money they invested. However, some investors received all their money back, while other investors received nothing back. For example:

- Investor 1 received back two-thirds of his original investment of US\$ 30,000 in the Eggvestment program. Investor 1 was repaid US\$ 20,000 by White because, according to what White told Investor 1, the money from his original investment never went to Qureshi. White paid back Investor 1 by cheque from MMCL's bank account and also by cash in the amount of CDN\$ 13,855. Investor 1 lost US\$ 10,000 and accrued interest on his total investment.
- Of all the witnesses, Investor 2 was the most ill-treated; this vulnerable investor lost the entire US\$ 44,000 investment she made in the Eggvestment program and all the accrued interest on that investment. In addition to the US\$ 44,000 invested in the Eggvestment program, Investor 2 also invested another CDN\$ 12,000 in other WNBC investment opportunities such as GreenFleet, Island Ink Jet and real estate/land investments; of which CDN\$ 10,000 was returned to Investor 2 without interest. Investor 2 also gave evidence of being vulnerable and how White and Qureshi abused her trust and she lost additional money on some other property and real estate investments. This occurred while Investor 2 was experiencing health problems and problems from a divorce. For example, Investor 2 testified that she was advised by White and Qureshi to buy property and leverage whatever she had, and as a result she mortgaged her own house and bought a property owned by Qureshi that was in horrible condition and infested with insects and rodents and was unrentable. She had to sell this property two years later at a loss. After her dealings with White, Qureshi and WNBC, Investor 2 had lost her home and most of her savings.
- Investor 3 got back his principal investment of US\$ 70,000 in the Eggvestment program. Investor 3 initially received interest payments on his investment, but Qureshi later deducted these interest payments received when settling Investor 3's account. In the end, Investor 3 only got back his principal investment of US\$ 70,000.

[46] According to the evidence submitted, investors who invested in the Eggvestment program have been repaid US\$ 220,202 and CDN\$ 146,700. Some investors did not get their money back and the amount outstanding to Eggvestment investors is US\$ 340,164 and CDN \$431,085. This amount does not include any accrued interest that was guaranteed to the investors for their

investment in the Eggvestments, nor does it include other funds invested in other investment opportunities offered by White, Qureshi and WNBC.

5. Analysis

A. The Commission's Public Interest Jurisdiction

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

- (a) provide protection to investors from unfair, improper or fraudulent practices; and
- (b) foster fair and efficient capital markets and confidence in those capital markets.

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

- i. requirements for timely, accurate and efficient disclosure of information;
- ii. restrictions on fraudulent and unfair market practices and procedures; and
- iii. requirements for the maintenance of high standards of fairness and business conduct to ensure honest and responsible conduct by market participants.

[49] Registration and prospectus requirements (found in sections 25 and 53 respectively) serve an important role to protect investors and ensure the efficiency of the capital markets. Registration ensures that the public deals with individuals who have met the necessary proficiency requirements, good character and ethical standards, while the prospectus requirements ensure that prospective investors have full information on which to properly assess the risks of certain investments, and it enables them to make informed investment decisions. As the Canadian securities regulatory system is primarily disclosure-based, the prospectus requirement plays a significant role in the overall scheme of investor protection. Sections 25 and 53 of the Act are discussed in further detail in the sections below.

B. Did the Respondents Trade in Securities in Breach of Subsection 25(1)(a) of the Act?

i. The Applicable Law

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

No person or company shall,

- (a) trade in a security or act as an underwriter unless the person or company is registered as a dealer, or is registered as a salesperson or as a partner or as an officer of a registered dealer and is acting on behalf of the dealer;

...

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

[51] The elements of a breach of subsection 25(1)(a) of the Act are findings that:

- a. the person or company is unregistered;
- b. a trade occurred, which includes any act in furtherance of a trade; and
- c. the trade was with respect to a security as defined in the Act.

Registration

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

Registration serves as an important gate-keeping mechanism ensuring that only properly qualified and suitable individuals are permitted to be registrants and to trade with or on behalf of the public. Through the registration process, the Commission attempts to ensure that those who trade in securities meet the applicable proficiency requirements, are of good character, satisfy the appropriate ethical standards and comply with the Act.

Trading

[53] For a breach of subsection 25(1)(a), a trade in securities is required. Under subsection 1(1) of the Act, a “trade” 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,

(b) any participation as a trader in any transaction in a security through the facilities of any stock exchange or quotation and trade reporting system,

...

(e) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the foregoing.

[54] In addition to an actual trade, any act in furtherance of a trade that occurs in Ontario constitutes trading in securities under the definition in the Act (*Re Lett* (2004), 27 O.S.C.B. 3215 at para. 64). Whether an act is in furtherance of a trade is a question of fact, to be determined in each case, based on whether there is a sufficiently proximate connection to the trade (*Re Costello* (2003), 26 O.S.C.B. 1617 at para. 47). The Commission has held that acts such as depositing investor cheques in a bank account (*Re Limelight Entertainment Inc.*, *supra* at para. 133), providing subscription agreements for signature to investors, conducting information sessions with groups of investors, and accepting money (*Re Momentas Corporation* (2006), 29 O.S.C.B. 7408 at para. 80) constitute acts in furtherance of a trade.

[55] The primary consideration of the Commission in determining whether a trade has occurred is the effect on investors and potential investors. The Commission will consider the totality of the conduct as well as the setting in which the acts occurred in determining whether there has been a trade (*Re Momentas Corporation*, *supra* at para. 77). This is a contextual approach that examines the totality of the conduct and the setting in which the acts of the Respondents have occurred.

Securities

[56] Subsection 1(1) of the Act defines “security”. The relevant parts of that subsection provide that a security includes:

(a) any document, instrument or writing commonly known as a security,

...

(e) any bond, debenture, note or other evidence of indebtedness, share, stock, unit, unit certificate, participation certificate, certificate of share or interest, preorganization or subscription ...,

...

(n) any investment contract,

...

whether any of the foregoing relate to an issuer or proposed issuer.

[57] A unit purchased in a fund with an interest in the profits of that fund fits the definition of a security given in paragraph (e) of subsection 1(1) of the Act.

Investment Contracts

[58] While the Act does not define an investment contract, an investment contract is defined by the Supreme Court of Canada as being an investment of money in a common enterprise with profits to come from the efforts of others (*Pacific Coast Coin Exchange v. Ontario Securities Commission*, [1978] 2 S.C.R. 112). According to the Supreme Court, a “common enterprise” describes a situation where investors’ fortunes are interwoven with and dependent upon the

efforts and success of those seeking the investment of third parties (*Pacific Coast Coin Exchange v. Ontario Securities Commission, supra* at 128).

[59] The elements of an investment contract that constitute a security are therefore:

- a. an investment of money;
- b. with an intention or expectation of profit;
- c. in a common enterprise, where the investors' fortunes are interwoven and dependent upon the efforts of those seeking the investment; and
- d. where the efforts made by those other than the investor are the significant ones with respect to the affect on the failure or success of the enterprise.

(*Pacific Coast Coin Exchange v. Ontario Securities Commission, supra* at 128 to 132).

ii. Analysis

Registration

[60] None of the Respondents in this matter were ever registered with the Commission in any capacity and as discussed later, no registration exemptions were available as none of the investors were accredited investors.

Trading

[61] The Respondents were involved in transactions that constitute trading in securities. White, Qureshi and WNBC acted together to elicit funds from investors that were used to invest in a security called Eggs, which were units in the Eggvestment program. At a weekly WNBC meeting, White described the investment process as follows: "What we do is everybody puts into the pot and then we put the increments to [Qureshi] on a regular basis" (*Exhibit 11, tab 1, WNBC Video, September 15, 2003* at 1:05:51). Individuals would invest in a security, Eggs, and the funds would then be pooled and put in the hands of Qureshi for investing.

[62] In exchange for money, investors were given Eggs, which were essentially a unit that allowed the investor to participate in the foreign currency trading conducted by Qureshi and his companies, Capital Investments and Capital Reserve. Investors signed Eggvestment investment contracts, purchasing each Egg for US\$ 1,000.

[63] Investors provided large sums of money and in many cases made repeated investments. For example, Investor 3 first invested US\$ 10,000 in May 2002 and he invested another US\$ 60,000 in March 2003. Investor 2 first invested US\$ 22,000 in June 2002, followed by an additional investment of US\$ 2,000 in July 2003 and she invested another US\$ 22,000 in August 2003. Investor 1 invested US\$ 10,000 three times (February 2003, June 2003 and September 2003).

[64] WNBC members were sold Eggvestments with the understanding that the money invested through White, MMCL and WNBC would be forwarded to Qureshi. Qureshi would then use his currency trading expertise to invest the money from WNBC members by trading in foreign currency, and all investors would receive a guaranteed return on their investment.

Investment Contracts

[65] White and Qureshi created Eggvestments as a fund in which investors purchased units to give them exposure and participation on a pooled basis to foreign currency markets. Each Egg unit in itself constitutes a security, and the sale of these securities constitutes a trade.

[66] The Eggvestment contracts also fulfill the requirements for an investment contract as described in *Pacific Coast Coin Exchange v. Ontario Securities Commission* (referred to above in paragraphs 58 and 59 of our Reasons):

- (i) the Eggvestment investors provided money to be invested;
- (ii) the investors had expectations of profit from the rates of return of up to 20% per annum guaranteed to them;
- (iii) The Eggvestment program was a common enterprise, where the fortunes of the Eggvestment investors were dependent upon White's management of their money and Qureshi's successful trading of their investments in the Eggs on foreign currency markets; and
- (iv) the investors themselves had no role in the scheme, beyond providing the investment money. White, Qureshi and WNBC's management control of the Eggvestments and Qureshi's expert trading were the only efforts that mattered.

[67] The Eggvestments contracts therefore constituted securities under the Supreme Court of Canada's definition of "investment contracts". As a result, any acts by the Respondents in furtherance of these contracts would constitute trades governed by Ontario securities law.

[68] The Respondents also participated in trading in securities outside of the Eggvestments. At a WNBC meeting, White and Qureshi promoted GreenFleet Car Sharing as an investment opportunity to members. White described this opportunity by stating: "For every dollar that you put into an investment, you would get – you would end up with one share in the new company, the publicly traded company" (*Exhibit 11, tab 3, WNBC Video, April 19, 2004* at 1:01:37). Investors also testified about their involvement in numerous other investment opportunities facilitated by WNBC, White and Qureshi, including another forex investment, the GreenFleet Car Sharing, Island Ink Jet, and real estate/land investments.

iii. Findings

White

[69] Based on the evidence before us, we have concluded that White made trades and acted in furtherance of trades within the meaning of the Act.

[70] The evidence before us shows that White took the view that he was not dealing with, or selling securities. However, we disagree. White's discussion of the creation of investments can be heard in video recordings from WNBC meetings. When soliciting funds for his GreenFleet Car Sharing investment, White told potential investors:

What we're going to do is give you shares in the new company, the publicly traded one, but as an interim what we have to use is the limited liability partnership that has been incorporated but not finalized.

(Exhibit 11, tab 3, WNBC Video, April 19, 2004 at 1:00:57)

[71] Similarly, in a speech he gave in November 2003 entitled "Investing 101 Basics", White discusses how WNBC creates new investments because of the limitations on investing in Canada:

So we're really limited in here in Canada in what we can do and we have to pay an awful lot for it, and we don't get better returns. So we have to create our own investments in the club to get away from that.

(Exhibit 11, tab 1, WNBC Video, November 24, 2003 at 1:03:54)

[72] At a September 2003 WNBC meeting, White described how the Eggvestment scheme began:

[Qureshi] made his living doing foreign currency exchange trading, and one night at the club when he was being particularly pressured to handle investments for us, he said that he would do it if we put together a fund and [Qureshi] dealt with me and I passed the money on to him and he only had to deal with me, that he would manage our investment.

(Exhibit 11, tab 1, WNBC Video, September 15, 2003 at 13:33)

[73] White was the signing authority on behalf of WNBC in the private placement agreement with Capital Investments that laid the groundwork for White and Qureshi's Eggvestment scheme. In it, the parties agreed that Capital Investments would manage WNBC assets and participate and trade in forex, commodities, futures, and world capital markets with a guaranteed return of 20 percent.

[74] In addition to his direct involvement in the creation of Eggvestments, White participated in acts that were in furtherance of unit (Egg) trades. White signed the Eggvestment contracts on

behalf of WNBC. For example, White signed the Eggvestment contracts entered into with Investor 1 and Investor 3, each for US\$ 10,000. In addition, Investor 1 testified that he gave White funds to invest in Eggvestments.

[75] The Trading Summary prepared by Staff shows that White forwarded money to accounts controlled by Qureshi to invest in currency trading. There is also an authorization for a wire transfer of US\$ 82,000 from MMCL to Qureshi signed by White. White also signed an MMCL cheque for CDN\$ 10,800, representing an interest payment on 60 units (Eggs) to Investor 3. White transferred funds from MMCL to a bank account in Cyprus and also directed funds to accounts controlled by Qureshi. These transfers and directions of funds from investors to various accounts controlled by Qureshi are acts in furtherance of trades in Eggs.

[76] In the evidence, White mentions in his voluntary interview that the general public was not invited to WNBC and that the club was a private group of members. According to White, the intent was not to sell/promote investments, the intent was to build wealth through opportunities. We disagree with this. Through WNBC White solicited investment money from investors, guaranteeing minimum rates of return. He opened one WNBC meeting by saying: "I'm happy to meet with you regarding, uh, investing in Cartridge Cure Management, a guaranteed 12 percent on your money" (*Exhibit 11, tab1, WNBC Video, September 15, 2003 at 0:12*).

[77] White also made these solicitations through (1) his classes he taught at the Learning Annex, (2) satellite clubs and (3) public speaking engagements.

[78] White facilitated the Eggvestment investment scheme, promoting WNBC as an investment medium in videos and on the company website. He offered WNBC as the solution for people looking for a better rate of return on their investments. These solicitations of investors amount to acts in furtherance of trades.

[79] Investor 2 testified that "he [Dan White] was WNBC, so ... whatever WNBC does, that's Dan". White acted on behalf of WNBC, arranging the Eggvestments.

[80] Accordingly, we have concluded that White engaged in trades and in acts in furtherance of trades in violation of subsection 25(1)(a) of the Act.

Qureshi

[81] Based on the evidence before us, we have concluded that Qureshi made trades and acted in furtherance of trades within the meaning of the Act.

[82] Qureshi made powerpoint presentations with White at numerous WNBC meetings, soliciting investments. Investor 2 testified that Qureshi presented on the Eggvestment investment program at a weekly WNBC meeting she attended, and he can be seen in WNBC videos contributing to White's presentations on investments. Investor 3 testified that Qureshi attended about 70 percent of the weekly WNBC meetings alongside White. Qureshi's involvement in the solicitation of Eggvestment investors constitutes acts in furtherance of trades in Eggs.

[83] Qureshi was held out to WNBC members as working with White in the management of investment opportunities. Investor 1 testified that it was his understanding that Qureshi assisted White with the GreenFleet investment and that the money he invested through WNBC would be given to Qureshi for currency trading.

[84] More specifically, Qureshi played a management role in Eggvestments. At an April 2004 WNBC meeting he introduced himself saying: "I'm Naveed Qureshi. I'm doing currency trading and managing your Eggs and we're making money" (*Exhibit 11, tab 3, WNBC Video, April 19, 2004* at 26:31). Although Eggvestments were run by both White and Qureshi, it was Qureshi who played the predominant role in the actual investment of the fund, while White had a larger role in investor solicitation. White stated that "I'm the professional presenter, he's the investor" (*Exhibit 11, tab 1, WNBC Video, September 15, 2003* at 38:22).

[85] Evidence shows that Qureshi was closely linked with White in the management of Eggvestment funds and other WNBC investments. At a 2003 WNBC meeting, at which Qureshi was a co-presenter, White described the management of the GreenFleet Car Sharing investment as follows: "Naveed and I continue to contribute in terms of financial control and helping with direction" (*Exhibit 11, tab 1, WNBC Video, September 15, 2003* at 1:01). Qureshi and White were acting together in control of WNBC investments.

[86] Qureshi was the signing authority on behalf of Capital Investments in the private placement agreement with WNBC that laid the groundwork for White and Qureshi's Eggvestment scheme. In it, the parties agreed that Capital Investments would manage WNBC assets and participate and trade in forex, commodities, futures, and world capital markets with a guaranteed return of 20 percent.

[87] To facilitate his management of these investments, Qureshi arranged for virtual office documentation for himself, GreenFleet Car Sharing, Capital Investments and Capital Reserve. He set up a bank account for Capital Investments with National Bank, signing on behalf of the company.

[88] Qureshi was directly involved in the Eggvestment program's finances. Between June 2002 and October 2003, he received payments from MMCL, White and WNBC. He signed cheques from Capital Investments for return of principal and interest on investments from Investor 3 and cheques closing accounts of 23 Eggvestment investors. Qureshi provides further evidence of his involvement in Eggvestment transactions in his email to White confirming ten Eggs for Investor 1.

[89] Qureshi signed as the WNBC representative for Investor 2's August 2005 Eggvestment contract for US\$ 44,000. In this contract, he wrote in additional terms, consolidating all her previous investments into one three year investment contract with a 20 percent annual rate of return. In addition to this contract, there is a document in Qureshi's handwriting, pushing forward the maturity date of a US\$ 44,000 investment for an additional three years at 20 percent.

[90] Accordingly, we have concluded that Qureshi made trades and engaged in acts in furtherance of trades in violation of subsection 25(1)(a) of the Act.

WNBC

[91] Based on the evidence before us, we have concluded that WNBC made trades and acted in furtherance of trades within the meaning of the Act.

[92] The evidence shows that WNBC issued investment contracts for Eggvestments to Investor 1, Investor 2 and Investor 3. The Eggvestment contracts are written agreements between WNBC and the individual investors. They state the number of Eggs issued in exchange for a stated amount of money, in US dollars. The contracts give a guaranteed rate of return, as per WNBC's agreement with Qureshi, of 18 to 20 percent for three years, but also state that the investment is speculative and has inherent risks. As discussed above, the Eggvestment contract fulfills the requirements for being an investment contract and is therefore a security in itself. This is in keeping with the Commission's finding in *Re Momentas Corporation, supra* at para. 80 that providing subscription agreements for signature to investors is an act in furtherance of a trade.

[93] WNBC not only provided these agreements to investors, but also issued units in the fund through them. The substance of the investment contracts, Eggs, are securities. The Eggs are issued in exchange for investment money, and each Egg constitutes ownership of a unit in the Eggvestment program managed by the Respondents.

[94] WNBC solicited investments at its weekly meetings, on its website and through WNBC videos. The WNBC website offered onshore and offshore investment opportunities, including Eggvestments, with guaranteed rates of return to potential investors. In the video statements noted above, White and Qureshi were presenting investment opportunities on behalf of WNBC. It is not necessary for an investment to have taken place for an act in furtherance of a trade to have occurred. Holding information sessions with a group of investors is an act in furtherance of a trade (*Re Momentas Corporation, supra* at para. 80). WNBC went beyond the mere provision of information and actively solicited investors for its projects, thereby acting in furtherance of trades.

[95] The solicitations in this case resulted in attracting investors for WNBC. Investors 1, 2 and 3, as well as 55 other investors were involved in Eggvestments. WNBC's solicitations were directly in furtherance of actual trades in units (Eggs).

[96] There was also evidence of another investor ("Investor 4") (who was not a witness at the hearing) that invested \$300,000 in the Eggvestment program. However, White acknowledged that these funds were never used for the Eggvestment program, instead they were used in the GreenFleet program. Regardless, Investor 4's funds were sent to MMCL's bank account as part of the Eggvestment program. In our view, this transfer of funds is an act in furtherance of a trade.

[97] To manage the Eggvestment program and facilitate trades, WNBC entered into a private placement agreement with Capital Investments, whereby Capital Investments, through Qureshi, would set up a currency trading account and manage WNBC assets.

[98] Accordingly, we have concluded that WNBC made trades and engaged in acts in furtherance of trades and therefore violated subsection 25(1)(a) of the Act.

MMCL

[99] Based on the evidence before us, we have concluded that MMCL acted in furtherance of trades. MMCL accepted funds from investors for investments made through WNBC. Investor 1 provided MMCL with a bank draft for \$45,000 and Investor 2 was given receipts for \$20,000 and US\$ 2,000 that she invested in an MMCL currency exchange investment. MMCL also made an interest payment of \$10,800 to Investor 3 for 60 Eggs.

[100] Although MMCL was not named in the contract, the evidence shows that MMCL accepted money to be used in furtherance of trades in Eggs. Handwritten instructions on one of Investor 1's Eggvestment contracts directs that the money for the investment should be taken from his MMCL funds.

[101] MMCL also transferred money to accounts controlled by Qureshi for investment, including a US\$ 82,000 wire transfer on April 10, 2003. The money forwarded by MMCL to Qureshi, together with MMCL's acceptance of money from investors, constitute acts in furtherance of trades.

[102] Accordingly, we have concluded that MMCL engaged in acts in furtherance of trades within the meaning of the Act. MMCL therefore violated subsection 25(1)(a) of the Act.

Capital Reserve

[103] Based on the evidence before us, we have concluded that Capital Reserve acted in furtherance of trades.

[104] Capital Reserve traded in foreign currency using funds from Eggvestments. Records indicate trading by Capital Reserve from 2003 to 2007 in various currencies through its trading accounts with Man Direct in London, England and M Global in London, England.

[105] Qureshi, through Capital Reserve, sent an email to White confirming ten Eggs for Investor 1. Records provided by White to Staff show that Qureshi received funds from MMCL and WNBC through Capital Reserve accounts with the Bank of Cyprus.

[106] We have concluded that Capital Reserve, through its acceptance of Eggvestment funds and its confirmation of its involvement in Eggvestments, engaged in acts in furtherance of trades within the meaning of the Act. It therefore violated subsection 25(1)(a) of the Act.

Capital Investments

[107] Based on the evidence before us, we have concluded that Capital Investments acted in furtherance of trades. Capital Investments entered into a private placement agreement with WNBC to set up a trading account to manage its assets, and also held an account for currency trading. Signing the contract and opening the trading account were acts in furtherance of the Eggvestment scheme.

[108] Capital Investments traded in foreign currency using funds from Eggvestments. Records indicate trading by Capital Investments from 2003 to 2007 in various currencies through its

trading accounts with Money Garden (MCFG) in New York and Rosenthal Collins Group LLC in Chicago.

[109] Cheques from Capital Investments were given to 23 investors, closing their Eggvestment accounts. Investor 3 received cheques from Capital Investments in amounts of US\$ 28,000 and US\$ 30,000 returning the balance of the principal on 70 Eggs that he held.

[110] Capital Investments was also involved in another WNBC forex investment scheme, Play Game (or PG). Capital Investments wrote cheques to six PG investors closing their accounts, and wrote a \$18,000 interest cheque to Investor 3 on his PG investment.

[111] We have concluded that Capital Investments, through its acceptance of Eggvestment funds and its confirmation of its involvement in Eggvestments, engaged in acts in furtherance of trades within the meaning of the Act. It therefore violated subsection 25(1)(a) of the Act.

C. Did the Respondents Advise in Connection with Trading in Securities in Breach of Subsection 25(1)(c) of the Act?

i. The Applicable Law

[112] Subsection 25(1)(c) of the Act prohibits acting as an advisor without being registered:

No person or company shall,

...

(c) act as an adviser unless the person or company is registered as an adviser, or is registered as a representative or as a partner or as an officer of a registered adviser and is acting on behalf of the adviser,

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

[113] An “advisor” is defined in subsection 1(1) of the Act as “a person or company engaging in or holding himself, herself or itself out as engaging in the business of advising others as to the investing in or the buying or selling of securities.”

[114] In *Costello v. Ontario (Securities Commission)*, [2004] 242 D.L.R. (4th) 301 (Div. Ct.) at para. 62, the court applies a business purpose requirement for advising, but noted that it need not be the only business the person or company in question is engaged in.

[115] The British Columbia Securities Commission set a low threshold for the business purpose requirement in *Re Donas* 1995 LNBCSC 18. The requirement can be met even if the business purpose behind the advising is not the primary business of the person or company (*Jack Maguire and J.K. Maguire & Associates* (1995), 18 O.S.C.B. 4623), or in situations where there is no

evidence that investors acted on the advice given (*Re Hrapstead (c.o.b. North American Group)* [1999] 15 B.C.S.C. Weekly Summary 13).

[116] As for the nature of the communication, providing factual information is not sufficient to constitute advising under the Act:

A person who does nothing more than provide factual information about an issuer and its business activities is not advising in securities. A person who recommends an investment in an issuer or the purchase or sale of an issuer's securities, or who distributes or offers an opinion on the investment merits of an issuer or an issuer's securities, is advising in securities.

(*Re Donas* 1995 LNBCSC 18 at 5 (QL))

[117] Advising requires subjective commentary on the value of the investment.

ii. Analysis

[118] Staff alleges that the activities of the Respondents constituted advising in securities without registration in breach of subsection 25(1)(c) of the Act.

[119] Creating and promoting investments may not have been the primary business purpose of the Respondents, but in our view, the actions of some of the Respondents met the business purpose requirement of advising. The question of whether each of the Respondents acted as an advisor must be determined based on the nature of the investment information communicated by them.

[120] WNBC, White and Qureshi acted as more than a source of investment information. The evidence demonstrates that WNBC, White and Qureshi provided advice to investors. Investors and potential investors were presented with investment opportunities at weekly meetings of WNBC, meetings of satellite clubs and public speaking engagements. These investors and potential investors were solicited, encouraged and advised to invest in projects in which White, Qureshi and WNBC were involved. For example, both White and Qureshi can be seen promoting and explaining the Eggvestment opportunity and answering audience questions and providing investment advice in numerous videotapes of WNBC meetings.

[121] WNBC also charged membership fees to investors. Investor 1 testified that the level of membership fees charged was dependent on the level of service provided by WNBC. As discussed above, the WNBC website lists membership packages with fees, which included investment seminars, access to onshore and offshore investments and consultation via email. In our view, consulting on investments constitutes advising and this was an important part of the services offered to WNBC members. It was a requirement that investors first become members to take advantage of "investment opportunities".

[122] The specific advising activities of White, Qureshi and WNBC are described in more detail below.

iii. Findings

White

[123] Based on the evidence before us, we have concluded that White acted as an unregistered advisor.

[124] White managed and was the face of WNBC. He conducted weekly meetings of the business club every Monday in Toronto and offered members seminars and consultations on investment and other business topics. White also taped his presentations at the weekly meetings and copies were then provided to the satellite clubs. White held out WNBC as an investor club that provided investing and advising services to its members.

[125] For example, White advised WNBC members to trust Qureshi to make investments on their behalf. He told them:

The one thing that you need to know is unless you know what [Qureshi] knows and the other two percent of the investors in that market know, then make less money, but make it reliably, and let's let [Qureshi] do that for you.

(Exhibit 11, tab 1, WNBC Video, September 15, 2003 at 1:13:12)

[126] White presented at each WNBC meeting, promoting investment opportunities. Along with Qureshi, he recommended GreenFleet Car Sharing as a good investment for members:

So you'll actually be getting those shares for less than half what they're traded. So it becomes a very good deal. You're really getting it for free because you're going to get your tax deduction, and you're going to get your shares, and you will get the agreed upon return that you signed up for. So it's a total win-win situation.

(Exhibit 11, tab 3, WNBC Video, April 19, 2004 at 1:02:00)

[127] White also encouraged members to invest in Eggvestments, communicating to them his high level of comfort in the security of the investment based on Qureshi's skill in currency trading:

Because [Qureshi] has a successful track record and knows what he's doing and uses proven risk management principles, I feel extremely comfortable with this. And one of the key things he does is risk management. He's always asking, "What can go wrong?" And one of the things that he doesn't do is he never invests the whole amount.

(Exhibit 11, tab 1, WNBC Video, September 15, 2003 at 14:49)

[128] In addition, at a public presentation to a group of engineers, White advised that he knew a successful foreign currency trader who “I have never known to lose money”. Specifically White explained that Qureshi “manages a fund for us” and:

...tracing his transactions for a year, I’ve never seen him lose money on any trade. I’ve seen him not make money on lots of them but I’ve never seen him lose. He either doesn’t lose or he makes money. So we get 13, 14 or 15% on our money with him per year and it’s doing quite well.

[129] He also described Eggvestments as low risk investments and advised WNBC members to become involved in them.

[130] White discussed different investment opportunities with Investor 1. White refers to this private discussion at a weekly WNBC meeting, and restates his advice to all WNBC members: “I’m not saying it’s a bad investment, but I’m asking probing questions that you would need to have answers to” (*Exhibit 11, tab 1, WNBC Video, September 15, 2003* at 19:22). White suggests to Investor 1 and to the entire club that the investment opportunity he thought was great may not be such a good idea.

[131] White was the contact person for any questions about WNBC investments. The WNBC website Q&A section on Eggvestments states that questions should be directed to White. The Eggvestment contracts also list White as a contact person for any questions on Eggvestments. In our view, responding to questions explaining investments demonstrates an active role in advising.

[132] Accordingly, we have concluded that White acted as an advisor within the meaning of the Act. White was not registered in any capacity with the Commission and no registration exemption was available. White therefore violated subsection 25(1)(c) of the Act.

Qureshi

[133] Based on the evidence before us, we have concluded that Qureshi acted as an unregistered advisor.

[134] The evidence reveals that Qureshi was of the opinion that he never promoted himself directly and that he was just giving educational presentations regarding Eggvestments. Qureshi also takes the view that WNBC was White’s club, and as a result he did not deal with investors directly. However, we find that Qureshi was involved with White in advising potential investors to invest in the Eggvestment program. Specifically, Qureshi was a co-presenter with White at many WNBC meetings that provided investment advice to club members. He interacted with WNBC members at these meetings, also answering their questions on Eggvestments and other investment schemes. In response to one question from the audience on whether returns on investments are paid annually, Qureshi responded “Yeah, in US dollars” (*Exhibit 11, tab 1, WNBC Video, Septmeber 15, 2003* at 1:06:00).

[135] Qureshi met with Investor 2 at his Toronto condo building and convinced her to renew her investment in Eggvestments, taking an active role in advising her on her investments, including advising her on the appropriate term and rate.

[136] Qureshi was the signing WNBC representative on one of Investor 2's original Eggvestment contracts. This Eggvestment contract states that questions can be addressed to Qureshi directly. Offering to field questions on specific investments meets the requirements for advising and engaging in active recommendations for investment products.

[137] Accordingly, we have concluded that Qureshi acted as an advisor within the meaning of the Act. Qureshi was not registered in any capacity with the Commission and no registration exemption was available. Qureshi therefore violated subsection 25(1)(c) of the Act.

WNBC

[138] Based on the evidence before us, we have concluded that WNBC acted as an unregistered advisor.

[139] WNBC was described by White as having evolved from a networking club to having more of a focus on the finances of its members, where members can have access to a team of seasoned consultants. White describes WNBC's advising role as follows:

WNBC will be your coach on how you can win the games. And, you know, you look at what are the games? Well there's the investment game, there's the banking game, there's the tax game, there's the corporation game and there's even the RRSP game.

(Exhibit 11, tab 5, WNBC Video, An Introduction to WNBC at 8:36)

[140] Although WNBC may have business purposes beyond investments, it is clear that one of the roles of the club is to act as a coach and advise its members' investment decisions.

[141] The WNBC website offers consulting services and investment opportunities. Unlimited consulting by email, business club meetings, investment seminars, access to onshore and offshore investments and asset management services are included in membership packages. In a WNBC promotional video, White informs potential investors of the availability of investment consultation by email and in person: "People who join us, they get unlimited consulting by email, they get one-on-one meetings where necessary" (*Exhibit 11, tab 5, WNBC Video, An Introduction to WNBC at 6:15*). This personalized investment consultation constitutes advising in securities.

[142] The Eggvestment contracts provide examples of the advising services made available by WNBC. WNBC advises investors on the percentage of their portfolio that should be allocated to Eggvestments, it directs questions to Qureshi and White and it agrees to provide investors with monthly reports, demonstrating WNBC's ongoing advisory relationship with investors.

[143] WNBC meetings were also used for promoting other investment opportunities such as the GreenFleet Car Sharing investment opportunity and Island Ink Jet investments.

[144] The nature of the information provided by WNBC went beyond information on investments. WNBC offered investment consultation services focused on providing investment advice. Accordingly, we have concluded that WNBC acted as an advisor within the meaning of

the Act. WNBC was not registered in any capacity with the Commission and no registration exemption was available. WNBC therefore violated subsection 25(1)(c) of the Act.

MMCL

[145] Based on the evidence before us, we are not satisfied that MMCL breached subsection 25(1)(c) of the Act.

Capital Reserve

[146] Based on the evidence before us, we are not satisfied that Capital Reserve breached subsection 25(1)(c) of the Act.

Capital Investments

[147] Based on the evidence before us, we are not satisfied that Capital Investments breached subsection 25(1)(c) of the Act.

D. Did the Respondents Engage in a Distribution of Securities Without a Prospectus in Breach of Subsection 53(1) of the Act?

i. The Applicable Law

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

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

[149] The prospectus requirement plays an essential role for the protection of investors. As stated by the Court in *Jones v. F.H. Deacon Hodgson Inc.* (1986), 9 O.S.C.B. 5579 (H.C.) at 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”. The prospectus requirement ensures that prospective investors have sufficient information to ascertain the risk level of their investment and to make informed investment decisions (*Re First Global Ventures, S.A.* (2007), 20 O.S.C.B. 10473 at para. 145).

[150] The definition of a “distribution” under subsection 1(1) of the Act 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;

...

[151] For a trade in securities of an issuer that have not been previously issued, it is therefore important that a prospectus be issued to protect the public.

ii. Analysis

[152] As established above in our discussion of section 25(1)(a) of the Act, the Respondents all engaged in trades, as defined in the Act. They engaged in activities that were trades or acts in furtherance of trades in securities through their involvement in the issuance of Eggs to investors and in the execution of Eggvestment contracts. The Respondents have therefore met the trading requirement under part (a) of subsection 1(1) of the definition of “distribution” under the Act.

[153] The second requirement of this definition is that the securities in question have not been previously issued. As White told WNBC members at a September 15, 2003 meeting, he and Qureshi created the Eggvestment fund in response to investor requests for Qureshi’s assistance in managing currency exchange investments on their behalf. This was therefore the first issuance of the Eggs (units in the Eggvestment program) or investment contracts for Eggvestments.

iii. Findings

[154] The evidence shows that all the Respondents engaged in trades. As well, there is no record that any of the Respondents ever filed as a reporting issuer or filed a prospectus in Ontario. Additionally, there is no evidence that any investors who bought units (Eggs) or potential Eggvestment investors were provided with a prospectus.

[155] As established above, we have concluded that the Respondents engaged in trades or acts in furtherance of trades. At the time of these acts, Eggvestment units had not previously been issued, and we therefore conclude that the trades would have been a distribution. Since no prospectus was filed, we conclude that all the Respondents have contravened subsection 53(1) of the Act.

E. Were There any Exemptions Available to the Respondents?

i. The Law

[156] National Instrument 45-106 (“NI 45-106”) provides exemptions to the registration and prospectus requirements in the Act if certain conditions are met.

[157] Once Staff has shown that the Respondents have traded, advised without registration and distributed securities without a prospectus, the onus shifts to the Respondents to establish that one or more exemptions from the registration and prospectus requirements are available to them (*Re Limelight Entertainment Inc.*, *supra* at para. 142).

[158] Since the Respondents did not appear at the hearing, we requested that Staff address any evidence that might relate to the reliance on an exemption.

ii. Analysis

The Accredited Investor Exemption

[159] The definition of an accredited investor is set out in section 1.1 of NI 45-106 and provides as follows:

...

- (j) an individual who, either alone or with a spouse, beneficially owns, directly or indirectly, financial assets having an aggregate realizable value that before taxes, but net of any related liabilities, exceeds \$1,000,000,
- (k) an individual whose net income before taxes exceeded \$200,000 in each of the 2 most recent calendar years or whose net income before taxes combined with that of a spouse exceeded \$300,000 in each of the 2 most recent calendar years and who, in either case, reasonably expects to exceed that net income level in the current calendar year,
- (l) an individual who, either alone or with a spouse, has net assets of at least \$5,000,000, ...

[160] Investor 1 and Investor 2 confirmed that no one asked them about their financial position/resources prior to their investing. They also testified that WNBC or White were aware of their financial position/resources as WNBC prepared their annual taxes.

[161] In the evidence, Qureshi mentions in his voluntary interview that “I assumed that they [investors] are all educated or smart enough to get involved into this”. In addition, in the agreement between WNBC (signed by White) and Capital Investments (signed by Qureshi) WNBC represents that the investors were “qualified, sophisticated and knowledgeable investors”. The responsibility for ensuring that the requirements of an exemption are met is the responsibility of the person seeking to rely on the exemption. Therefore, Qureshi cannot rely on his assumption about investors nor the agreement between Capital Investments and WNBC that he thought the investors were accredited investors.

[162] Although it is possible that some WNBC members were accredited investors there was no evidence before us that this was the case. In addition, the evidence of the investor witnesses who testified clearly establishes that they did not fit the criteria of accredited investors defined in section 1.1 of NI 45-106. Accordingly, no exemption to registration was available to the Respondents.

The Private Issuer Exemption

[163] Section 2.4 of NI 45-106 provides a private issuer exemption to the dealer registration and prospectus requirement (on certain conditions).

[164] For example, there is a private issuer exemption available for an issuer that is limited to not more than 50 beneficial shareholders. In our view, this exemption is not available to WNBC.

Investors were not shareholders of WNBC, instead they were members of a club who paid membership fees for certain services. In any event, the evidence shows that more than 50 investors participated in WNBC's club.

[165] While White held WNBC out to be a private club, we find that WNBC was dealing with the public. WNBC recruited new members and prospective members were encouraged to attend meetings. In particular, Investor 1 and Investor 2 testified that approximately 30 to 50 members would attend WNBC meetings and sometimes these members would bring non-members along. These individuals required the protections of adequate disclosure from a prospectus.

iii. Findings

[166] Based on the foregoing, we find that there were no registration or prospectus exemptions available to the Respondents.

[167] In our view, WNBC members were precisely the type of investors who are meant to be protected by the registration and disclosure requirements. We find it troubling that WNBC members were not provided with adequate disclosure of Qureshi's qualifications, historical performance record in trading, and ongoing performance. Basically, members of WNBC had little clue about what White and Qureshi were doing with their money.

[168] In addition, under section 6.1 of NI 45-106, issuers are required to file reports of exempt distributions with the Commission within 10 days of the distribution. There is no evidence of any such filings in this matter.

F. Did the Respondents Act in a Manner that was Contrary to the Public Interest and Harmful to the Integrity of Ontario Capital Markets?

i. Analysis

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

[170] All of the Respondents breached a number of key provisions, trading without registration (subsection 25(1)(a)) and engaging in a distribution without satisfying the distribution requirements under the Act (subsection 53(1)), which are intended to protect investors. In addition, White, Qureshi and WNBC also breached subsection 25(1)(c) of the Act, advising without registration.

ii. Findings

[171] These breaches of the Act caused harm to investors and to the integrity of Ontario's capital markets, and were clearly contrary to the public interest. It is contrary to the public interest because registration and distribution requirements are essential to protect investors and to ensure the integrity of the capital markets. Through this conduct, the Respondents failed to maintain high standards of fairness and business conduct to ensure honest and responsible conduct.

[172] WNBC, White and Qureshi made false promises and misleading statements about the returns of the Eggvestment program. In particular, they made dishonest representations as to the future guaranteed returns of the Eggvestment program. In addition, White and Qureshi were not honest with investors in the Eggvestment program. Specifically:

- Qureshi stated that he had several good trades and only two or three bad trades. However, Qureshi knew as early as the summer of 2003 that he was not making the promised 18-20% returns. Nevertheless, he stated on video tape in 2004 that the Eggs were making money.
- White knew that Qureshi was not able to make the promised rate of return as early as 2003 because White acknowledges that Qureshi was having trouble paying investors.
- White knew within months that Qureshi was not providing monthly reports to Eggvestment investors. White attempted to mask that failure by stating on the website that investors already knew how their Eggs were performing because of the promised rate of return.

[173] For example, Investor 1 testified that at his first WNBC meeting, he was given information on investments in Europe with more or less guaranteed returns.

[174] In its description of Eggvestments, the WNBC website states the following about Qureshi's confidence in his ability to make money on currency trading and to guarantee returns:

Although his approach yields much higher than average profits on such markets, his methods are systematic and risk averse as not to risk the capital of the individuals for which he is conducting the service. ... Dr. Qureshi is confident that his methods are capable of providing an annualized rate of return of at least 18% (investment period of one year), 19% (investment period of two years) or 20% (investment period of three years).

[175] Further, during a WNBC meeting, Qureshi told investors that "In reality, my return is more than 40, 50 percent" (*Exhibit 11, tab 1, WNBC Video, September 15, 2003* at 44:26).

[176] Qureshi and his companies were in a position to benefit directly from contributions from investors. The Eggvestment contracts guaranteed rates of return of up to 20 percent, but Qureshi has stated that his actual rates of return on currency trading are in the range of 40 to 50 percent. Any excess profits from currency trading done by Qureshi, Capital Reserve or Capital Investments would have been available to those Respondents.

[177] White gave his opinion on the safety of investments managed by Qureshi:

- "He doesn't want to lose any money. He hates that. He gets really cranky. Fortunately that doesn't happen very often" (*Exhibit 11, tab 1, WNBC Video, September 15, 2003* at 36:30).

- “He never loses money” (*Exhibit 11, tab 5, WNBC Video, September 15, 2004 at 52:45*).
- “He either doesn’t lose or he makes money” (*Exhibit 11, tab 5, WNBC Video, September 15, 2004 at 1:29:25*).

[178] We find that making such promises about future returns on investments is contrary to the public interest. Both White and Qureshi stated that investors were making money on the Eggs (units in the Eggvestment program). However, this was not true and in the summer of 2003 Qureshi was not making the promised returns of 18-20%.

[179] Also, as mentioned above, investors were not provided with monthly reports about their Eggvestments, and when they inquired about this, White just told them that the website states the promised rate of return for their investments.

[180] WNBC required that investors become members in order to take advantage of investment opportunities. With sign up fees and annual membership fees, WNBC and White stood to gain financially from the recruitment of additional investor members.

[181] Overall, we find that the whole scheme in this case was contrary to the public interest. It was determined that investors invested at least: US\$ 560,366 and CDN\$ 577,785 in the Eggvestment program. While some investors were returned some of their investment, not all investors got their money back. Therefore, the amount outstanding to Eggvestment investors is US\$ 340,164 and CDN\$ 431,085 (for a combined total of approximately more than CDN\$ 800,000). This amount does not include any accrued interest that was guaranteed on the Eggvestments, nor does it include other funds invested by investors in other investment opportunities offered by White, Qureshi and WNBC.

6. Conclusion

[182] For the reasons stated above we find that:

- (a) all of the Respondents breached subsection 25(1)(a) of the Act;
- (b) White, Qureshi and WNBC breached subsection 25(1)(c) of the Act;
- (c) all of the Respondents breached subsection 53(1) of the Act;
- (d) there were no exemptions available to the Respondents; and
- (e) all of the Respondents acted contrary to the public interest.

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

Dated at Toronto this 10th day of February, 2010.

“Patrick J. LeSage”

Patrick J. LeSage

“Suresh Thakrar”

Suresh Thakrar