



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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

- and -

**CARLTON IVANHOE LEWIS, MARK ANTHONY SCOTT, SEDWICK HILL,
LEVERAGE PRO INC., PROSPOREX INVESTMENT CLUB INC.,
PROSPOREX INVESTMENTS INC., PROSPOREX LTD.,
PROSPOREX INC., PROSPOREX FOREX SPV TRUST, NETWORTH FINANCIAL
GROUP INC., and NETWORTH MARKETING SOLUTIONS**

REASONS AND DECISION

Hearing: January 10, 12-14, 17-19, 24, April 18, June 14 and September 12, 2011

Decision: October 27, 2011

Panel: James D. Carnwath - Commissioner and Chair of the Panel
Margot C. Howard - Commissioner

Appearances: Helen Daley - For Staff of the Commission

Carlton Ivanhoe Lewis - Self-Represented
Mark Anthony Scott - Self-Represented
Sedwick Hill - Self-Represented (Dorothy Hagel,
Solicitor appeared on his behalf June 14
and September 12, 2011)

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I. INTRODUCTION

[1] This was a hearing before the Ontario Securities Commission (the “**Commission**”) pursuant to ss. 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “*Act*”), to consider whether all the respondents (the “**Respondents**”) breached provisions of the *Act* and/or acted contrary to the public interest.

[2] A Statement of Allegations was filed by Staff of the Commission on March 12, 2010, in connection with a Notice of Hearing issued by the Commission on the same day. Staff allege that the relevant events took place from the spring of 2007 to December 2008 (the “**Relevant Period**”).

[3] During the Relevant Period, Ontario investors were invited to become “members” of NetWorth Financial Group Inc. (“**NetWorth**”). Membership entitled investors to place money with Prosporex Investment Club Inc. (“**Prosporex**”), on the understanding that the funds would be pooled and invested by professional traders in foreign exchange (“**Forex**”) with trading profits to go back to investors. This activity was often referred to by witnesses as the “Prosporex program.”

[4] Approximately \$29 million was obtained from over 1,700 Ontario investors. It is undisputed that no prospectus was filed and no receipts were issued by the Director to qualify the transaction as compliant with the *Act*. It is undisputed that, during the period, none of the named Respondents was registered with the Commission to trade securities or to act as an advisor, nor were they exempt from registration.

[5] Of the \$29 million approximately, \$5.3 million was returned to investors, leaving \$23.5 million to be accounted for.

[6] The Statement of Allegations raises the following issues:

- (1) Did all the Respondents engage in fraudulent conduct contrary to s. 126.1(b) of the *Act*?
- (2) Did all the Respondents make statements that they knew or reasonably ought to have known would reasonably be expected to have a significant effect on the market price or value of a security, contrary to s. 126.2 (1) of the *Act*?
- (3) Did all the Respondents engage in unregistered trading of securities and unregistered advising in securities, contrary to s. 25(1)(a) and (c) of the *Act*?
- (4) Did all the Respondents engage in an illegal distribution of securities contrary to s. 53(1) of the *Act*?
- (5) Did all the Respondents act contrary to the public interest?

[7] The standard of proof that must be met in administrative proceedings is the civil standard of the “balance of probabilities” (*F.H.McDougall* [2008] 3 S.C.R. 41 (“*McDougall*”) at para. 40). The OSC has adopted and endorsed the statement of the law in *McDougall (Re Sunwide Finance Inc.* (2009), 32 O.S.C.B. 4671 at paras. 26-28). Evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test (*McDougall*, above at para. 46).

[8] References to exhibits filed shall be in the form: (Ex. -, Tab -, p. -).

[9] References to the transcripts shall be in the form: (Tr. -, Vol. -, pp. -).

II. THE MAJOR PLAYERS

[10] Carlton Ivanhoe Lewis (“**Mr. Lewis**”) resides in Ontario. He was licensed by the Financial Services Commission of Ontario (“**FSCO**”) as a life insurance and accident and sickness insurance agent until his license expired May 27, 2009. At all material times, Mr. Lewis was not registered with the Commission.

[11] Mark Anthony Scott (“**Mr. Scott**”) resides in Ontario. He has never been registered with the Commission in any capacity.

[12] Sedwick Hill (“**Mr. Hill**”) resides in Ontario. He was registered with the Commission as a mutual fund salesperson for Keybase Financial Group Inc. (“**Keybase**”), until October 29, 2009. He was also licensed with FSCO as a life insurance and accident and sickness insurance agent until his license expired on November 18, 2008.

[13] LeveragePro Inc. (“**LeveragePro**”) was incorporated pursuant to the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 by Messrs. Lewis and Hill together with a third party on May 15, 2006. Messrs. Lewis and Hill were the owners and directors of LeveragePro and its directing mind. They operated LeveragePro’s bank accounts. LeveragePro was not registered with the Commission in any capacity.

[14] Prosporex Investment Club Inc. (“**Prosporex**”) was incorporated by Messrs. Lewis and Scott on May 18, 2007. Prosporex has never been registered by the Commission in any capacity.

[15] Prosporex Investments Inc., Prosporex Ltd. and Prosporex Inc. as they appear in the Title of Proceedings were related entities to Prosporex, were used interchangeably by the principals when communicating with investors and were all wholly-controlled by Messrs. Lewis, Scott and Hill. In these Reasons, all of the Prosporex entities are referred to collectively as “Prosporex”.

[16] Networth Financial Group Inc. (“**Networth**”) was incorporated pursuant to the *Ontario Business Corporations Act*, R.S.O. 1990, CHAPTER B.16 on January 12, 2004 by Mr. Scott and his spouse, Sharon Scott. Mr. Scott was the directing mind of Networth and used it to advance the Prosporex Forex investment scheme. Reference in the evidence was made to Networth Marketing Solutions, an unincorporated entity created and controlled by Mr. Scott which was used in the marketing of the Prosporex program. A Prosporex bank account was named “Prosporex operating as NetWorth Marketing Solutions”.

[17] AGF Trust (“AGF”) was a party to a distribution agreement with LeveragePro. Pursuant to the agreement, LeveragePro could apply to AGF for investment loans on behalf of its clients.

[18] While the distribution agreement itself did not specify whether the loans were to be directed to a Registered Savings Plan (the “Plan” or the “RSP”), the terms of the RSP loan applications required all such loan proceeds to be directed to an RSP created to hold qualified investments as defined by the Canada Revenue Agency (“CRA”) regulations. Throughout these reasons, respondents and witnesses referred to the transfer of funds from LeveragePro to Prosporex as an “ineligible investment”. All applications for AGF loans required the funds to be advanced to LeveragePro.

III. WITNESSES CALLED BY STAFF

Allister Field

[19] Staff called Allister Field, a financial investigator employed by the Commission. Mr. Field served for 21 years with the Toronto Police Service acting as a financial crime investigator for about 10 years. At the outset of his testimony, Staff filed Ex. 3, Mr. Field’s witness statement and brief. His evidence can be found in Tr. Vol. 1, pp. 46-188, Tr. Vol. 2, pp. 4-161 and Tr. Vol. 3, pp. 7-29.

[20] Mr. Field described in considerable detail the course of Staff’s investigation of the Respondents. Over 40 summonses were issued producing approximately 25,000 documents. The s. 13 summonses are found in Ex. 3, Tab 10.

[21] The information provided by AGF is a significant part of Staff’s case. Seventeen hundred client files regarding loans that were forwarded to the Respondents for the purpose of either Prosporex or to purchase legitimate Mackenzie Financial financial instruments were produced to Staff. Twenty-eight million dollars was forwarded to LeveragePro, of which \$25 million was transferred to Prosporex Investment Club Inc. At Ex. 3, Tab 15 is a diagram showing the movement of funds among the Respondents. Mr. Field reported that those persons on the right-hand side of the diagram, including Dominion Investments Club Inc., Albert James, Ezra Douse, 360° Financial Services Inc. and Wilton Neale had all settled with the Commission in a separate matter.

[22] Potential investors either attended a seminar at 1315 Lawrence Avenue East or were referred into the program by other participants. Investors, having heard a presentation, would have an opportunity to do one of two things:

- (1) Join Networth Financial Group Inc. as a member, which gave them the opportunity to invest in the Prosporex Investment Club Inc. which was offering the opportunity to invest in Forex; or
- (2) If people didn’t have the money to make the actual investment, an opportunity was given to investors to fill out an AGF RSP loan application so that they could participate in the program using borrowed funds.

During the investigation Mr. Field found that, once approval was given for a loan, the investor's account was activated some two months later, and at that point would start receiving cheques for that investor's share of the alleged profits from Forex trading of the pooled funds for the month. These payments were often described as "interest" by employees of Prosporex who testified. The source of those cheques came from a Prosporex bank account in the name of Networth Marketing Solutions.

[23] Some investors participated with their own funds but the majority participated with borrowed funds. The applications for loans from AGF were done through LeveragePro Inc., a general managing agency under the FSCO. Messrs. Hill and Lewis were registered with FSCO; in addition, there were a number of people employed by LeveragePro that were independent agents licensed by FSCO who could broker these loan applications. AGF would advance the loan proceeds to a LeveragePro Inc. bank account. The money for the Prosporex investment, the Forex, would then be transferred from LeveragePro bank accounts into Prosporex bank accounts. Attached as Schedule 'A' to these Reasons is a copy of the diagram referred to by Mr. Field in his evidence, Ex. 3, Tab 15.

[24] At this point in Mr. Field's evidence, Staff introduced Volumes 5-1 to 5-12, Staff's Hearing Briefs. Mr. Field's attention was drawn to Ex. 5-1, Tab 11 which contained investor materials relating to an investor, S.L. At Ex. 5-1, Tab 11 is a membership agreement between S.L. and Networth Financial Group which permitted S.L. to take advantage of the Prosporex investment opportunity in Forex.

[25] At Ex. 5-1, Tab 13 is the corresponding Prosporex participation agreement that is twinned with the Networth form in the name of an investor, "S.L.". On the document there is an opportunity to identify who referred S.L. to Networth. In this case the referring person was T.G-T who is later identified as an investor.

[26] The agreement provided two options available to investors. They could go into a monthly pay-out scheme where they would invest money and receive their shares of profit on a monthly basis; as well, there was an annual component where the share of profits compounded weekly for a year at which point the member would have the option to take the money out or to continue. Often investors chose a hybrid, designating part of their investment as monthly and part annually. Mr. Field said that the monthly option in the agreements he analyzed seemed to be quite popular because it allowed the investor to service the loan that was used to buy the investment.

[27] At Ex. 5-1, Tab 15 is an AGF loan application in the name of S.L. On the first page it shows the licensed agent who submitted the loan to be Mr. Lewis. Mr. Field said he examined all the applications to AGF and the one at Tab 15 was typical.

[28] At Ex. 5-1, Tab 16 is a letter to S.L. confirming her loan of \$50,000 at 8.5%, payable monthly at \$670.76. According to Mr. Field, this was representative of the letters that he observed in the files from AGF for all the loan applications. Mr. Field confirmed that all the

funds subject to the agreement between LeveragePro's and AGF were sent to LeveragePro's bank account. Funds were then transferred into the Prosporex accounts.

[29] Mr. Field then identified the registration particulars for Messrs. Lewis, Scott and Hill as disclosed by searches pursuant to s. 139 of the *Act*. The particulars for Mr. Lewis are found at Ex. 5-1, Tab 2; for Mr. Scott at Ex. 5-3, Tab 2; and for Mr. Hill at Ex. 3, Tab 1.

[30] Mr. Field then identified the corporate profile reports obtained from the Ministry of Government Services. At Ex. 5-3, Tab 6 is the report obtained on Networth Financial Group Inc., incorporated January 12, 2004, the officers and directors being Mark Scott and Sharon Scott. At Ex. 5-1, Tab 4 is a certificate of incorporation issued by Industry Canada pertaining to LeveragePro Inc. Shown are three directors, Carlton Lewis, Sedwick Hill and Andrew Tronchin. The latter director was not connected to the Prosporex activity, according to Mr. Field.

[31] At Ex. 5-1, Tab 7 is a Corporations Canada certificate for Prosporex Investment Club Inc., showing mailing address of 1315 Lawrence Avenue East and the two directors as Carlton Lewis and Mark Scott.

[32] Mr. Field was asked about Networth Marketing Solutions. He confirmed that this was the name of the Prosporex Investments Inc. bank account.

[33] Mr. Field was then referred to Ex. 5-3, Tab 8 which he identified as a client profile received from TD Bank Group regarding Prosporex Investment Club Inc. The document related to a bank number 5218997 and a transit number of 241 and the account is operated as Networth Marketing Solutions. Three directors are identified, Messrs. Lewis, Scott and Hill.

[34] Mr. Hill searched the registration section of the Commission which revealed no record for Prosporex Investment Club Inc., LeveragePro Inc., nor Networth Financial Group Inc. as having been registered under the *Securities Act*.

[35] Mr. Field's attention was then drawn to bank accounts operated by some of the corporate Respondents. At Ex. 5-1, Tab 5 are TD Bank documents for LeveragePro Inc. at an address of 1315 Lawrence Avenue East, unit 404. It is a client profile for two accounts, both with a transit number of 241 with account numbers 5215807 and 5211372. Two signatures were required to sign cheques. Messrs. Lewis and Hill are shown as directors and signatories. Mr. Tronchin appeared as one of three signing authorities for account number 5211372 along with Messrs. Lewis and Hill, but Mr. Field never saw his signature on any cheques. Account number 5211372 received the monies from AGF which funded the clients' investments in Prosporex. In most cases, the funds that left the LeveragePro accounts went to the two main Prosporex accounts.

[36] Mr. Field then referred to Ex. 5-1, Tab 9 for bank accounts in the name of Prosporex Investment Club Inc. at 1315 Lawrence Avenue East, Suite 404. The inquiry screen covers two accounts both with the same transit number 241, two accounts numbered 7301708 and 5217796, both Canadian dollar accounts. Three directors are named with signing authority, Messrs. Lewis, Scott and Hill. These were the accounts that received the monies from LeveragePro and from which various disbursements were made.

[37] Mr. Field's investigation turned up an account called Global Fin Net, a New Zealand bank account. Mr. Scott was the sole signing authority. Mr. Field recalled that slightly under \$3 million from the Prosporex account was directed to Global Fin Net. He also recalled from his examination of the records that there were some transfers from Global Fin Net to Deutsche Bank of \$1 or \$2 million.

[38] During the course of his testimony, Mr. Field read into the record excerpts of the compelled testimony of Messrs. Lewis, Scott and Hill, pursuant to s. 13 of the *Act*.

[39] Mr. Field asked Mr. Hill if he had any ownership in Prosporex:

Q: I take it you were an owner but there just wasn't a formal agreement about the percentage that you owned. Is that fair?

A: Right. That's fair.

(Tr. Vol. 1, p. 89, ll. 2-16)

[40] Mr. Field asked Mr. Lewis about the ownership of Networth Marketing Solutions:

Q: You were an owner of Networth Marketing, it says, Solutings, but I think we can correct that, right? This is a company that you were a partner –

A: I am a director, one of the directors.

Q: Were you not also a part owner?

A: Well, you could say so, yes.

Q: You were, in fact, a part owner with Sedwick Hill and with Mr. Scott, right?

A: Right.

(Tr. Vol. 1, p. 95, ll. 8-11)

[41] Mr. Field asked Mr. Scott who had signing authority on the New Zealand Bank account:

Q: And who had signing authority on the New Zealand account, sir?

A: I did.

Q: Were you the sole person with authority?

A: Yes.

(Tr. Vol. 1, p. 120, ll. 12-17)

[42] Mr. Field read in several excerpts from his examination of Mr. Lewis, in which Mr. Lewis acknowledged:

- he was a representative for AGF.
- he signed many AGF RRSP loan applications on behalf of AGF.
- that loan funds went from AGF to LeveragePro.
- that money went from LeveragePro to Prosporex.
- that the Forex product promoted by Prosporex was not an eligible investment for an RSP.

(Tr. Vol. 1, pp. 1137-146)

[43] Mr. Field read in excerpts from his examination of Mr. Hill in which Mr. Hill acknowledged:

- he knew some of the proceeds of AGF loans were invested in Forex.
- he knew Prosporex was not an RSP eligible investment.

(Tr. Vol. 1, p. 143-144)

[44] Excerpts from Mr. Field's examination of Mr. Lewis were read, in which Mr. Lewis acknowledged:

- he went to Jamaica to start a client care service for Prosporex.
- he received \$120,000 to cover expenses for the Jamaican office

(Tr. Vol. 2, pp. 32, 34, 35)

[45] We find that funds advanced from AGF were intended for eligible investments in an RSP. Instead, the funds were generally advanced by LeveragePro to Prosporex. Prosporex was not an RSP and, as admitted by Messrs. Lewis, Scott and Hill, it was not an eligible investment for an RSP. In some instances, funds advanced to LeveragePro were then invested in a theatrical production or, in one instance, to purchase IT technology for Prosporex. Neither of these recipients were RSPs or eligible investments for an RSP.

Christine George

[46] Staff called Christine George, a Chartered Accountant, a specialist in investigative forensic accounting and a Certified General Accountant. She joined the Commission in April,

2008 and was assigned to the Prosporex investigation in August, 2009. Her evidence is found in Tr. Vol. 5, pp. 82-177 and Tr. Vol. 6, pp. 26-136.

[47] Ms. George's role was to review any accounting information that was obtained during the investigation, as well as the banking records and to do an analysis of the flow of funds. She was asked to comment on the business records that were available from the Respondents. She replied: "Very little financial records or business records at all were provided by the Respondents for my analysis of the flow of funds." Ms. George testified that she would have expected to find bank statements, brokerage records, analysis of profit, cheques, deposits and supporting information relating to transactions. She received none of these from the Respondents.

[48] Ms. George stated that she did obtain bank statements as well as supporting cheques and receipts for transactions over \$2,000 on the LeveragePro accounts and the Prosporex accounts. Her task was to analyze the transactions as disclosed on the bank statements and records. She explained that a decision was made to focus on transactions over \$2,000 because of the large number of transactions in the various accounts. She was thus unable to reconcile every single dollar that was received or disbursed by Prosporex or LeveragePro

[49] Ms. George's attention was directed to her will-say statement filed as Ex. 2. At Tab 2 of Ex. 2 may be found a document described as "Use of Funds Summary", titled Schedule 2, where reference is made to an unknown payment of \$1 million. Ms. George explained that during the cross-examination of Mr. Field, she realised that the unknown payment related to a transaction of \$1 million for "iTrade". She concluded that Schedule 2 in Tab C of Ex. 2 should have reflected that transaction by removal of the item described as "unknown payment of \$1 million".

[50] This amendment to Schedule 2 at Tab C of Ex. 2 required an amendment to two other documents in Ex. 2. At Tab C a new entry dated March 25, 2008 showed an investment in a Forex enterprise identified as iTrade FX of \$1,018,000 approximately. Total invested in Forex businesses on Tab C therefore amounted to \$4,759,996.88 including currency exchange.

[51] Finally, Schedule 1 found at Tab 1 of Ex. 2 entitled "Financial Summary" was amended to reflect the amounts invested in Forex businesses to be \$4,759,997 reflecting the identified \$1 million transfer to iTrade. The amended Schedules 1 and 2 and the amended Tab C were filed together as Ex. 11.

[52] Tab 1 of Schedule 1 of Ex. 2, as amended by Ex. 11, shows AGF loans received by LeveragePro from AGF totalling \$28,928,498. Ms. George then referred to Tab A of Ex. 2 which contains a list of the 1,757 clients who borrowed money from AGF and directed the funds to LeveragePro, for the purpose of investing in Forex funds. The entries at Tab A are backed up and verified by the list of clients provided by AGF to the Commission, found at Ex. 5-11, Tab A. In further confirmation, banking records of LeveragePro showing the receipt of funds from AGF may be found in Ex. 5-9, Tab B-1.

[53] In subsequent questioning from Staff counsel, Ms. George was able to relate any name found in the AGF list of clients to both the bank statement details for the AGF transfers found in

Tab A of Ex. 2 and the banking statements found in Ex. 5-9, Tab B-1. She explained that it was the combination of the bank statements, the funding memo's and the list from AGF that permitted her to do this.

[54] Ms. George's attention was then directed to amended Schedule 1 found at Ex. 2, Tab 1 and the reference to AGF loans received for Mackenzie Investments, totalling \$3,893,100. Ms. George said she summed up all the payments to Mackenzie listed at Tab B of Ex. 2 which information was derived from the LeveragePro bank account 241-5211372. Further, in Ex. 5-11, Tab B, are all the cheques to Mackenzie Investments that support the Schedule at Tab B of Ex. 2.

[55] The foregoing calculations permitted Ms. George to conclude that LeveragePro received in excess of \$25 million, as shown on amended Schedule 1 in Ex. 11. Ms. George then identified those Forex brokers using internet searches to see who the various companies were that were receiving payments from Prosporex. They are found at the amendment to Tab C, Ex. 11.

[56] At Ex. 5-11, Tab C are the Toronto Dominion Bank records of wire payments made to the various Forex brokers.

[57] Having determined what Ms. George found to be the amounts invested in Forex she then wanted to establish where the remaining funds, approximately \$20 million went. As shown on Ex. 11, amended Schedule 1, total funds from AGF not invested in Forex were calculated by Ms. George to be \$20,275,401.

[58] Ms. George was questioned about the amended Use of Funds Summary, Schedule 2, Ex. 11. She first dealt with the payments to Sedwick Hill personally, as confirmed by the material found in Tab D, Ex. 5-11. Numerous payments were made by Prosporex Investment Club Inc. to Mr. Hill and others by NetWorth Marketing Solutions. The latter is actually Prosporex Investment Club Inc., operating as NetWorth Marketing Solutions. Prosporex and/or NetWorth Marketing Solutions had three signing authorities, Messrs. Lewis, Scott and Hill. The LeveragePro signing officers were Messrs. Lewis and Hill. From Ms. George's examination of the cheques, it appeared to be the case that indeed those named persons were the signers of those cheques.

[59] Ms. George noted payments to Fortress Financial Insurance Agency Inc. in the net amount of \$119,620. The cheques and banking documents supporting this conclusion may be found at Tab E of Ex. 5-11. The first document is a corporation profile report showing Sedwick Anthony Hill to have been the only officer and director. There follow cheques payable to Fortress Financial from LeveragePro and Prosporex Investment Club Inc. in the net amount of \$119,620.

[60] Next, Ms. George identified payments to 2169945 Ontario Inc. in the net amount of \$14,800. The source of her information may be found in Tab F of Ex. 5-11, including a corporation profile report for 2169945 Ontario Inc. with Mr. Hill as a director and president and his wife as director and secretary. There follow cheques payable to 2169945 Ontario Inc. and returns to the company leaving a net payment of \$14,800.

[61] Ms. George described the entry for a theatre transaction on Schedule 2 of Ex. 5-11. Through information received, she learned that Mr. Hill may have purchased a theatre at 186 Spadina Avenue in Toronto. Following a corporate search, Ms. George learned that it was purchase by Mr. Hill through his company 2169945 Ontario Inc. The documents detailing the purchase and subsequent mortgage of this property by the company may found at Tab G of Ex. 5-11. After following the details of the transactions, as revealed by the material in Tab G, Ms. George concluded that the net payment to 2169945 Ontario Inc. to acquire the theatre property was \$92,685.

[62] In concluding her analysis of the funds paid to Sedwick Hill and his companies, Ms. George described payments to Ysis Entertainment (“**Ysis**”) and Umoja, which she calculated to be \$1,712,768 as more particularly detailed in Tab H of Ex. 5-11., where listings of payments in relation to Ysis and Umoja may be found. Cheques to Ysis were issued by both Prosporex Investment Club Inc. and LeveragePro. Comparing the signatures on the cheques with the signature cards found at Tab S covering both accounts, we find the cheques to have been signed by Carl Lewis and Sedwick Hill, two of the three authorized signing officers.

[63] Turning to Mark Scott, Ms. George explained the entries on Schedule 2, Ex. 11 showing monies flowing to him or for his benefit. She noted that he personally received \$57,723 as confirmed by the records contained in Tab I, Ex. 5-11. All but two of the cheques were issued by Prosporex, these two being issued by NetWorth Marketing Solutions on its TD Canada Trust account at 1315 Lawrence Avenue East.

[64] NetWorth Financial Group Inc. received \$37,000 all from cheques issued from Prosporex Investment Club Inc. NetWorth was incorporated by Sharon Scott and shows Mark Scott as a director and general manager. The documents detailing the payments to NetWorth may be found at Tab J at Ex. 5-11.

[65] Finally, Ms. George explained the entry of the offshore account in New Zealand which she calculated received a net amount of \$1,421,200. Details of the transactions may be found at Tab K of Ex. 5-11. During Ms. George’s review of the bank statements, she noted three payments by wire that went to a New Zealand account in the name of Global Fin Net, totalling \$2,896,200. Specific wires are listed in Tab K of Ex. 5-11. The bank statements relating to the New Zealand account and the complete transaction documentation are in Ex. 5-9., Tab C. There were four transactions where funds were returned to the Prosporex accounts from Global Fin Net, also disclosed in Tab K of Ex. 5-11. The result was that \$1,421,200 was transferred to New Zealand and not returned. Ms. George further testified that the majority of those funds were sent to Deutsche Bank but she was unable to determine what if anything occurred to them after that transfer. Ms. George attributed the transfers to New Zealand to Mr. Scott because as far as she was able to ascertain, he had sole signing authority. She found no evidence that the monies transferred to New Zealand were subsequently invested in Forex type funds.

[66] Turning to Mr. Lewis, Ms. George first explained her calculation of funds going to Mr. Lewis personally in the amount of \$533,258. Payments were made from August 2007 to September 2008 and the back up material for those payments may be found in Tab L in Ex. 5-11.

[67] Mr. George explained the entry of personal expenses attributed to Carlton Lewis by noting that the re lines on the cheques appeared to relate to matters such as dental fees. The personal expenses totalled \$20,717.

[68] There were a number of cheques payable to Carl Lewis referencing the set up of an office in Jamaica and the attendant expenses. These sums totalled \$370,000 and the back up documentations may be found in Tab N of Ex. 5-11. Ms. George testified that she had seen no evidence to support the actual expenses alleged to have been paid. Indeed, in the entire investigation she never saw any documents that showed business expenses of the Prosporex operation. All she had were the cheques obtained from the bank. There were no bills, no invoices, no accounts paid, nothing of that kind.

[69] Ms. George was asked about the entry on Schedule 2 of "Other Payments to Jamaica", totalling \$400,000. She said she found two wires from the U.S. Prosporex account, one to a law firm in Jamaica for \$300,000 and the other to a Jamaican company also called Prosporex Limited Inc. Back up information for other payments to Jamaica may be found at Tab N in Ex. 5-11.

[70] Ms. George then dealt with items found in Tab O of Ex. 5-11 relating to payments to promoters of off-shore "non-Forex" investment schemes. As an example, she identified a cheque to Global Wealth Development Inc. in trust for \$1 million dated April 11, 2008. (Tab O, p. 428) At pp. 429, Ms. George identified a cheque from Prosporex to K.K. Handa for U.S. \$1,500,000. At pp. 430-431 \$650,000 was transferred to Trillion Stars.

[71] Insofar as cash payments of \$548,588 are concerned, they are shown on Schedule 2. Ms. George identified these as cheques made out to cash with no ability to determine the ultimate use of those funds. She was unable to identify who actually received the cash.

[72] The entry for office expenses including commissions other than to Respondents total \$2,309,917 all Ms. George had to go on was the name on the cheque in order to classify the payment as office expenses.

[73] Finally with respect to Schedule 2 payments to or for investors of \$5,338,866, this represented funds returned to investors or paid by way of "interest" to investors during the course of their investments. Thus, of the total funds from AGF not invested in Forex, Ms. George was able to identify \$19,504,677.

[74] Ms. George was cross-examined by each of Messrs. Lewis, Scott and Hill. There were two areas of questioning that were common to all three cross-examinations. The first area included questions as to why Staff did not try to follow funds that were sent by the three Respondents to identify non-Forex payees. For example, Mr. Scott asked why the funds he sent to Deutsche Bank were not pursued. Her response was, "I think at this point it was up to the Respondents". (Tr. Vol. 6, p. 116, ll. 20-21) Her response was both unsurprising and sensible - if the funds were ultimately invested in Forex, surely the Respondents would know the details.

[75] The second area of enquiry involved invitations to Ms. George to speculate on how the payees may have employed the funds they received. For example, Mr. Lewis invited Ms.

George to speculate on what a hypothetical office in Jamaica would cost to set up and operate. She sensibly refused the invitation.

[76] What the cross-examinations did demonstrate was Ms. George's mastery of her material. When asked to connect a named individual with a specific cheque, she was able, without hesitation, to identify the exhibit number, tab and page number. We were impressed with her preparation and professionalism throughout her testimony.

[77] We accept her evidence as to the source and destination of funds that passed through the control of Messrs. Lewis, Scott and Hill.

Trudy Thai Huynh

[78] Ms. Huynh completed high school and some college courses. She had no experience or training in the field of securities. Her evidence may be found in Tr. Vol. 3, pp. 31-157.

[79] Ms. Huynh worked for NetWorth Financial Group, that is to say, Mark Scott. She helped Mr. Scott set up the Prosporex program. She described NetWorth Marketing Solutions as a company used to market the Forex program, although she was not employed by that company.

[80] She described the business activity of Prosporex as designed to introduce clients to Forex investments. She said Mark Scott, Sedwick Hill and Carl Lewis were involved in running the Prosporex and were often at 1315 Lawrence Avenue East where she worked.

[81] Ms. Huynh applied to AGF and was approved for a loan that was disbursed to LeveragePro. In the ordinary course it would be then invested in Forex through Prosporex. The funds she borrowed were used to purchase IT technology for Prosporex. Her husband also invested by borrowing money through AGF.

[82] Ms. Huynh's responsibilities included taking in the membership applications. She put them into a system, assigned a membership number and handled administrative duties and also marketing responsibilities. She referred people she knew to the Prosporex program. Although she started in early 2007, things didn't pick up until June or July 2007.

[83] People had an opportunity to invest in Prosporex in two ways. If they opted to invest on an annual basis, the returns would be compounded on the principal and added to the principal once a year. If people chose to invest on a monthly basis, their return would be calculated and disbursed at the end of each month. This latter option was chosen by many people who borrowed money from AGF, on the understanding that the monthly payments would be more than sufficient to cover their payments on the AGF loan.

[84] Meetings were held every Thursday at the Lawrence Avenue premises where presentations were made to prospective investors. At first, these were mostly friends and family of the people working there. Later on, the circle of investors widened considerably. Ms. Huynh agreed that she would be the point of contact for clients of Prosporex, for the most part. Also working in the office were Lindy Lavoie and Patricia Chasteau.

[85] Also working in the office were Gladstone White and Ezra Douse. Ms. Huynh described their activity as referring people to Prosporex. There was a method of payment for referrals composed of three levels. If someone referred an investor into the program he or she would receive a \$100 referral fee. If that new investor referred someone into the program he or she would receive \$100 and the original referee would receive \$50. If a further person was referred into the program by the second referee that person would receive \$100, the first referee would receive \$50 and the original referring person would receive \$25. Ms. Huynh said the referral fee system was designed to bring in more clients and that the system worked. She was in charge of keeping track of the referrals and paying the appropriate referral fees as they became due.

[86] During the time Ms. Huynh worked at Prosporex, Prosporex paid out monthly returns to monthly investors. The amount was to be determined by how well the trading accounts performed. She would be given the rate of return for the month at the month-end and would enter that rate into the system which would generate interest on all of the monthly accounts or annual accounts. The rate of return was given to her verbally by one of Messrs. Lewis, Scott and Hill. Once the system calculated the amounts to be paid cheques were issued which required at least two signatures of the three directors, Messrs. Lewis, Scott and Hill. An example of an annual account kept by Ms. Huynh may be found at Ex. 5-1, Tab 22, p. 238. The document shows an initial investment of \$4,320 on July 10, 2007, a further deposit on October 12, 2007 of \$18,300 and compounding interest monthly to September 1, 2008 showing a balance of \$54,000 approximately. The account is for the investor S.L. who was called later in the hearing.

[87] Ms. Huynh was asked if the interest rates assigned monthly trended in any particular direction as the program continued into 2008. She said that when the program first started the rates were relatively high, as high as 14% when it started. Closer to the end of the program, the lowest rate was 5%. The 5% rate resulted in phone calls from clients who were required to make monthly payments to AGF and whose resulting lower monthly returns were insufficient to cover that monthly payment.

[88] Ms. Huynh acknowledged that she helped investors fill out the generic loan applications. An example is found at Ex. 5-5, Tab 6, p. 113, with the name of S.L. at the top. Ms. Huynh said that once this document was filled in, one of the accredited FSCO agents working for LeveragePro would transpose the information into an application to AGF.

[89] Ms. Huynh was referred to another document in Ex. 5-5, Tab 10, pp. 120-127. The document was provided to the Commission by investor S.L. The document is a sales promotion including an introduction, a detailed overview of the Forex, an example of a Forex trade and answers to frequently asked questions. Also included at pp. 125-126 is a "first year target" yielding factor showing that an initial investment of \$1,000 compounded weekly at 5% would be worth \$12,642 at the end of one year and \$167,832.63 at the end of two years.

[90] Ms. Huynh concluded her testimony by saying that she left Prosporex in September of 2008 because of the pressure of the calls coming in from clients. Returns were low and insufficient to cover the loans taken from AGF. This led to many complaints.

[91] In cross-examination by Mr. Lewis, Ms. Huynh acknowledged that she went to Jamaica to set up the software and train the staff that were answering phone calls. She saw no indication of sales being conducted there, but rather client maintenance and general inquiries. It was made clear to her that Prosporex wouldn't accept any investors outside Canada.

[92] Ms. Huynh confirmed that the loan she took out from AGF was to purchase software for Prosporex. She said it was fair to say that the ground work for NetWorth Financial Group, the documentation and the forms that were put together were prepared with her assistance and that she and Mark had all those things put in place before Prosporex. She acknowledged she came up with the name Prosporex.

[93] Ms. Huynh acknowledged that she had expertise in both the WebEx and Megasol software and that her job included providing training, troubleshooting, answering a lot of client inquiries and filling in applications that needed to be submitted. She agreed with Mr. Lewis that since the beginning she was very instrumental in making the whole organization work. Cross-examination concluded with this exchange:

Q: So one final question, Ms. Huynh. In your honest opinion, do you think Prosporex was set up with the intent to deceive or defraud anyone?

A. Absolutely not. If it was, I wouldn't have introduced my family and my friends, and I think that the concept, if it was done in the right way, would have been great. Unfortunately, you know, sometimes you get in over your head and then you get too far where you can't turn back, and I think that's exactly what happened to you three guys.

[94] In cross-examination by Mr. Scott, Ms. Huynh described his role for Prosporex as doing pretty much everything in the initial stages. Closer to the end, she said Mr. Scott did a lot of research. She said his main role was working with the WebEx software and building the process into the system. Ms. Huynh could not remember a month when Mr. Scott told her what the interest rate was to be for a particular month.

[95] In cross-examination by Mr. Hill, Ms. Huynh could not remember any occasion when Mr. Hill asked about the records or information of the New Zealand account. She confirmed that the Prosporex agreement made it clear that there were risks involved. The participation agreement contained a clause that said an investor could lose part or all funds contributed. The investor was warned not to contribute more than could affordably be lost. She said that she had never seen Mr. Hill do any presentations to investors.

[96] Mr. Hill took Ms. Huynh to her compelled testimony and Ms. Huynh confirmed her answers in that testimony to the effect that Mr. Hill never referred people into the program, never signed any cheque in her presence and that if the credit card was necessary for some type of

purchase that it was Mr. Hill's credit card that was used. She confirmed that she didn't think that Mr. Hill was paid referral fees.

[97] When questioned about the theatre production Umoja, Ms. Huynh replied that she heard that Mr. Hill was running a production for Umoja. She also recalled Mr. Hill assisting and trying to put a list of clients together so as to try and recover some of the funds to settle the client accounts.

[98] We accept Ms. Huynh's evidence as it relates to the operation of the office, the referral system and the method of payment to the investors. We reject her opinion that there was no intention to deceive or defraud investors.

Patricia Chasteau

[99] Ms. Chasteau's background is in real estate in which she worked for twenty years. She has no education or training with respect to securities and has never worked in the securities field as a seller or advisor. Her compelled testimony is found in Ex. 5-6, Tab A and a transcript of her evidence is found in Tr. Vol. 3, pp. 159-210 and Tr. Vol. 4, pp. 5-45.

[100] Ms. Chasteau and her son Victor both borrowed money to invest Prosporex. They were assisted in their loan applications to AGF by Mr. Lewis. It was Mr. Lewis that suggested that Ms. Chasteau work for Prosporex and she began in October 2007.

[101] At first, Ms. Chasteau was supposed to see where she fit in. As it turned out, her help was needed in the calculation of the monthly payouts. That was the area where she spent most of her time. She described it as a difficult job because of the volume of calculations that were required. Usually she got the rate from Mr. Lewis, but only after he had spoken to Mr. Hill. She testified there was never any month where there was no return until September 2008. She never saw any actual trading records that showed the results of what the traders were doing although she had asked to see them. The job was described to her as part-time but it quickly developed into a full-time position. Sometimes she was required to stay late in order to do the work necessary to get the interest payment cheques prepared and signed. In addition, there were many phone calls from people wanting to know what the rates were for the month, when the cheques would be ready and when they could pick up a cheque.

[102] She was asked about the Umoja program. Her understanding was that there were 17 to 20 people out of the Prosporex program who invested some of their money in the Umoja program. She recalled about \$330,000 was returned to the people in the Umoja program. She also recalled that it was Mr. Hill who asked her to pay interest to the Umoja investors from Prosporex. Most of those people got the money from AGF but instead of putting it into Forex, they gave it to Mr. Hill to put into the Umoja program. Ms. Chasteau said that towards March or April of 2008 she was told by Mr. Hill to pay interest to the Umoja investors from Prosporex. Her understanding was that the investors had been told that they would get their money back together with interest. They were paid as though they were monthly Prosporex investors.

[103] Ms. Chasteau remained with Prosporex until March 2009. However, in September 2008, Prosporex stopped making monthly payments to investors. Cheques were made up for those persons entitled to receive interest on September 15 but Ms. Chasteau understood, they were never mailed. For the preceding six months there were many phone calls from investors expecting cheques. Mr. Hill told Ms. Chasteau that he had spoken to the brokers who were supposed to be sending money either next week or next month. Whatever Mr. Hill told her, Ms. Chasteau passed on to dissatisfied investors. During that six-month period the calls became vicious. People were making threatening remarks. Ms. Chasteau said she tried to help them and that was one of the reasons she stayed as long as she did at Prosporex.

[104] In cross-examination by Mr. Lewis, several propositions were put to Ms. Chasteau. She agreed that Mr. Scott was in charge of the back office operations, including the debit cards, the security features for the investors' accounts, and the software. Mr. Hill was responsible for how traders were doing, what trade accounts were set up, how he was doing with the account he was trading, etc. There was a basic understanding that Mr. Hill was dealing with the traders and he was the one to report on those activities. Mr. Lewis' responsibilities were to ensure that the operation was running smoothly, when to hire people and putting them in the right place to do the day-to-day activities.

[105] In the course of answering questions about Umoja Ms. Chasteau confirmed that Mr. Lewis was telling Mr. Hill to stop putting money into Umoja. Several times she heard Mr. Lewis telling Mr. Hill that Umoja was a mistake and that the Prosporex money should not be invested in Umoja. She agreed with Mr. Lewis' statement that he had no involvement in authorizing Mr. Hill or co-operating with Mr. Hill in putting Prosporex money in Umoja. Ms. Chasteau said "I know Umoja was basically Sedwick and you had always been against it..." (Tr. Vol. 3, p. 200, ll. 8-9). Ms. Chasteau said no money came back from Umoja while she was at Prosporex.

[106] Mr. Lewis asked Ms. Chasteau if it appeared that he did not have total control of Prosporex because of the partners. Ms. Chasteau confirmed that that was how she saw it. Mr. Scott had no questions for Ms. Chasteau.

[107] Mr. Hill cross-examined Ms. Chasteau. His first questions were directed to the production of Umoja in which he attempted to have Ms. Chasteau confirm that Mr. Lewis may have initially been in favour of putting Prosporex funds in Umoja. Ms. Chasteau insisted that she would not have been at Prosporex during the period of which Mr. Hill was speaking. She continued to confirm that Mr. Lewis was upset about the investments in Umoja.

[108] Mr. Hill then turned to the RSP loan from AGF taken out by Ms. Chasteau.

[109] Ms. Chasteau was asked about the requirement to re-pay the AGF loans. She confirmed that loans in the larger amounts began with a period of perhaps nine months when no payments were required. Loans such as she took out for \$2,500 required monthly payments starting at the end of the following month. She confirmed that most of the phone calls she had received inquiring after interest owing to investors concerned loans in the smaller amounts.

[110] Ms. Chasteau confirmed to Mr. Hill that he had never asked her to calculate any referral fees owing to him. However, she did remember paying him referral fees at the same time that she paid Mr. Lewis.

[111] Mr. Hill directed Ms. Chasteau to her compelled testimony in Ex. 5-6, Tab 1, p. 32, where Ms. Chasteau was asked about the calculations for the payment of monthly interest to investors. Ms. Chasteau testified that she got the number for the monthly interest payments from Mr. Lewis or Mr. Hill but it was apparent that they both discussed the payment and sometimes disagreed. Her view was that Mr. Lewis was suggesting a higher interest rate than Mr. Hill was prepared to accept. Mr. Hill, who knew how the Forex funds were doing, was not prepared to agree to an interest rate for which no funds were available.

[112] We accept Ms. Chasteau's evidence as it relates to the Umoja program. We find there were investors who borrowed money from AGF and gave it to Mr. Hill to invest in Umoja. We find further that Mr. Hill instructed Ms. Chasteau to pay the Umoja investors interest from Prosporex funds.

Carmen Williams

[113] Staff called Carmen Williams, a former employee of Prosporex as well as an investor. Ex. 5-4 contains a transcript of her voluntary interview and attached exhibits. Her evidence may be found in Tr. Vol. 6, pp. 8-88.

[114] Ms. Williams has completed a nursing program and is currently employed as a nurse. As a result of her experience at Prosporex she wrote the Ontario Securities Commission. The letter is found at Ex. 5-4, Tab 1. It sets out in considerable detail what she learned about the Prosporex program while working there. She wrote the letter because at the end of 2008, investors were not getting any returns and were told different stories explaining why this was so. She was besieged with phone calls from investors asking what was wrong and she couldn't get in touch with Messrs. Lewis or Scott to help her. She felt she had to write the letter because she didn't know what other steps to take.

[115] She confirmed that the information in her letter is accurate in accordance with what she remembers during her employment there. She became an investor by going with a friend to 1315 Lawrence Avenue East where she learned about Prosporex in a presentation given by Mark Scott on the subject of Forex trading. She received documentation showing that "if you invested \$1,000 it would return \$167,000 within two years." She thought it was a great opportunity and learned there was a lender that would advance the funds necessary for Forex trading.

[116] Ms. Williams identified a document at Ex. 5-4, Tab 2 as her membership agreement in NetWorth Financial Group. At Tab 3, she identified her Prosporex participation agreement which explained the two account types, a monthly payout of up to 20% of her contribution payable monthly from net profits and an annual renewable account in which earnings are described as being compounded weekly from net profits. The document points out that an investor can lose part or all of the funds contributed and that potential investors should not

contribute more than they can afford to lose. Prosporex is described as simply managing the pooling of members' funds to participate in Forex trading. The document identifies Angela Curry as the person who referred Ms. Williams to Prosporex. Ms. Curry, a friend of Ms. Williams submitted her loan application to AGF as her agent. She put \$5,000 into an annual account and \$10,000 into what she described as the "Umoja" program".

[117] Ms. Williams had seen the production the year before and really liked it. When she got to Prosporex she learned that Sedwick Hill was planning to bring Umoja back but needed investors in order to do this. She said that Carl Lewis was against him bringing the program back, stating that it was already a million dollars or more in debt and that there was no point in throwing good money away. This explained why investors like Ms. Williams put money into Umoja because if Carl Lewis was not going to support funds being contributed to Umoja, others would have to help. She said she had a verbal understanding that at the end of one year her \$10,000 would be paid off and she would receive \$15,000 in cash. This was told to her by Sedwick Hill. She added that she was a witness to a conversation between Carl Lewis and Sedwick Hill and their disagreement over funding Umoja.

[118] At the end of 2007 Mr. Hill told Ms. Williams that Umoja didn't make any money and her loan could not be paid back. She was instructed to take the \$10,000 entry and re-deposit the money into Prosporex. She was given no money to do this, she just "put it in the system". She chose to describe herself as \$10,000 monthly investor. She remembers receiving three or four interest cheques following her entry as a Prosporex investor.

[119] Ms. Williams then described her work experience at Prosporex between June and September of 2007. Her primary function was to input clients' information into the Prosporex system. It was a clerical role and included preparing cheques and mailing them to the monthly investors.

[120] Ms. Williams described how, at the end of each month, Patricia Chasteau would call Mr. Hill or Mr. Lewis and ask the amount of the percentage to be paid out that month. Mr. Lewis would say "I'll call Sedwick" as the percentage was coming from Mr. Hill. Ms. Chasteau and Ms. Williams would then write up the cheques and put them in the mail. When there were cheques to be signed she brought them to either Carl Lewis or Sedwick Hill.

[121] Starting in July and August, 2007, there were a lot of people joining; presentations were taking place two or three times a day. There were a lot of loan applications to be signed, requiring additional agents to come on board and sign off on the loan applications. The fees paid to the agent's was 5% of the loan amount divided 2% for the agent and 3% for Messrs. Lewis, Hill and Scott. On occasion, she prepared the cheques for the commission payments.

[122] Although Ms. Williams' full time employment ended in September of 2008, she continued to come into the office until the office closed in December. Patricia Chasteau was always there and she would keep her updated as to what was going on. People were asking questions about when they would get paid and their response was always to the effect that

something would happen next week or something was coming, but in the meantime no one was getting paid.

[123] When the office closed, she remembers calling Mr. Lewis and telling him that Prosporex was under investigation. Mr. Lewis told her to get Angela Curry and to come to the office immediately. They went to the office where they found Ezra Douse, Gladstone White and Carl Lewis in the course of photocopying documents and storing them in boxes. She and Angela Curry joined in. The original Prosporex documents were then taken to Ms. Williams' house in Angela Curry's van and stored in her basement, seven or eight boxes in total. This was done at the request of Carl Lewis. At some point Ms. Williams told the OSC that she had the boxes and assisted in transferring them to enforcement staff.

[124] Ms. Williams' evidence concluded with a description of the losses of her members of family who invested in Prosporex. Her daughter lost \$10,000, her mother \$50,000 and her uncle \$50,000. She added that these losses caused severe credit problems for these members.

[125] In cross-examination Mr. Lewis first established that Ms. Williams had worked at Nesbitt Burns for almost 20 years. She acknowledged she was fired because she was accused of stealing and subsequently charged. Ms. Williams further acknowledged that she was not coerced to invest in Umoja and that Mr. Lewis had nothing to do with her decision. She acknowledged that when she was trying to get in touch with the principals of Prosporex Mr. Lewis was in Jamaica. She tried to call him but didn't get through.

[126] Mr. Lewis suggested that Ms. Williams took files from LeveragePro's office after the program was closed and she agreed. She took additional files from the office after the transfer of the seven boxes to her basement. Her understanding was that she was allowed to do this because it was an "ongoing process". Any additional documents she took she put in a box. Whatever documents she had were turned over to the Commission. Nobody at the Commission instructed her to come into the office and take documents. We understood from her evidence that these were not original documents but documents which she copied and then transferred. She added that her understanding was that the documents from Prosporex were moved to an office in Markham called Dominion Royal. She asked Mr. Lewis if he got permission or did anybody get permission or a warrant to move those documents.

[127] Mr. Lewis asked Ms. Williams if boxes that were transferred to her basement were stored there because the principals of Prosporex wanted to hide those documents. In her opinion, that was the case; she believed that they were being hidden from Revenue Canada.

[128] Mr. Scott asked Ms. Williams if her statement to the Commission, as disclosed in her will-say Statement were based on facts or based on personal opinions. She replied "Both, I think".

[129] Mr. Scott asked which company was charging the 5% fee for arranging the loan. Ms. Williams replied although Prosporex didn't issue the loan, once the loan came in, a 5% fee for each account was charged by Prosporex.

[130] Ms. Williams acknowledged that she heard talk around the office of taking Umoja to perform in Jamaica. However, she denied that she ever heard that Mr. Lewis was exploring this idea. She never heard Mr. Lewis agreeing to Umoja anywhere.

[131] Mr. Hill took Ms. Williams to her application to AGF for her loan and her voluntary interview on that subject. She agreed with Mr. Hill that some of the information filled in on her application was untrue. She said this happened with a large number of loan applications that in order to get approval from AGF the agents would increase or make up information on the clients form. She said she was aware that she was lying on the application in order to get the loan. When Mr. Hill suggested to her that she wasn't sure when she was lying and when she wasn't, she replied, "Yeah, me neither with you".

[132] While Ms. Williams may not have been a completely trustworthy witness (she falsified the details of her AGF loan application), we nevertheless accept her evidence relating to the transfer of documents from Lawrence Avenue East to her basement and subsequently to the Commission. Her evidence on this point was confirmed by Allister Field.

Ezra Douse

[133] Staff called Ezra Douse who worked for Prosporex from August/September 2007 to March 2008. Mr. Douse gave a compelled interview that may be found at Tab A of Ex. 5-10. His evidence may be found at Tr. Vol. 4, pp. 49-95.

[134] Mr. Douse confirmed he was associated with two investment clubs in the last several years, Prosporex Investment Club and Dominion Investments. Previously he had worked as a self-employed fire systems specialist. He had no education or training in the field of securities.

[135] As a result of his involvement with Dominion Investments Mr. Douse and Mr. Albert James settled with the Ontario Securities Commission. They accepted responsibility for inappropriate actions that harmed certain investors in Dominion. Dominion Investments made investments in foreign exchange. Both Mr. Douse and Mr. James were able to repatriate to Canada some funds from a foreign exchange account and made those funds available to investors who had suffered losses.

[136] In June 2007, Mr. Douse met with Carl Lewis at 1315 Lawrence Avenue East and subsequently attended a sales presentation at that address. The presentation was made by Mark Scott and trading in Forex was described with a return of somewhere between 10% to 20%. Mr. Douse was shown some promotional material at Tab 3 of Ex. 5-5 containing information about Prosporex and Forex trading. Mr. Douse described the material as typical of the documents that would be available at presentations and taken away by investors.

[137] Mr. Douse decided to invest and signed an application found at Ex. 5-10, Tab 4. He invested \$2,500 initially and later added to that amount. He chose to invest both as a monthly investor and as an annual investor. His application for an AGF loan may be found at Ex. 5-10, Tab 6. He had been told that if investors weren't able to come up with the funds, there might be a way to apply for a loan that could be applied to the investment. This was part of the

presentation that he heard made by Mr. Scott. Mr. Lewis helped him to fill out the loan application.

[138] Mr. Douse's wife, Patricia Douse, also invested. He took advantage of what has been referred to as a "cash-back aspect of the AGF loan program". Mr. Douse explained this as a situation where they needed some money and they would take it and invest it later on in the company but in the interim they would use the money for other purposes. Mr. Lewis explained the process to him.

[139] Mr. Douse began to refer investors to the program perhaps as many as 30 or more. He received \$100 per referral, which involved mainly friends and friends of friends. He was convinced that the program had merits and was working.

[140] Subsequently he asked Mr. Lewis if he could work for Prosporex and conduct some of the presentations. He was hired at a weekly salary of \$500, subsequently raised to \$700. He described the job as pretty much full time about September of 2007 and conducted many presentations on behalf of Prosporex. It was his observation that new members availed themselves of the AGF program for the most part. He never presented Umoja as an investment opportunity.

[141] Mr. Douse was terminated sometime in late March of 2008. He was told presentations were no longer necessary at the office. New members were not being taken on. Mr. Douse left Prosporex and subsequently joined Albert James at the Dominion Investments Club.

[142] In cross-examination, Mr. Lewis reminded Mr. Douse that they first met in 1978 at the police academy in Jamaica. Mr. Douse told Mr. Lewis that he had never seen him do a presentation to prospective investors in the formal sense, but may have seen him talking to people about the program.

[143] Mr. Douse confirmed to Mr. Lewis that on occasion he travelled outside the office to make presentations but never did so without first seeking office permission. He confirmed that the referral system that paid \$100 for a first referral and subsequently \$50 and \$25 arising from subsequent referrals as described earlier in these Reasons.

[144] Mr. Douse was asked if he remembered assisting and photocopying documents for the purpose of sending them to the Jamaican office. Mr. Douse confirmed that he did so. He also said that second copies of the documents were to be taken to the house of Carmen Williams. He remembered Mr. Lewis talking to him about the creation of a "virtual" office and he also remembered that there were thoughts of relocating the office to protect the files from disappointed investors. He believe in Prosporex and what he was presenting to the potential investors 100%. He thought that the program was legitimate and said he would not present something that he didn't believe in.

[145] Mr. Scott had no questions for Mr. Douse.

[146] Mr. Hill put several questions to Mr. Douse, the answers to which do not assist the panel.

J.J.

[147] Staff called J.J. who has been employed as dental assistant for the last 31 years. J.J. is married to A.J. who has health issues following a stroke in March of 2008. A transcript of her voluntary statement to Commission may be found in Ex. 5-5 and her testimony is in Tr. Vol. 4, pp. 96-148.

[148] J.J. learned of Prosporex through Patrick Hyman. She called a number he gave her and spoke with someone by the name of Patricia. She and her husband, A.J. received an appointment to go to 1315 Lawrence Avenue East where they heard a presentation given by someone named Ezra. The presentation called for investment offshore that would return 10% a month on an investment of \$50,000. It was a convincing demonstration that persuaded J.J. and her husband. There was no way they could lose. Subsequently they printed documents from the Prosporex website which may be found at Tab B-7, Ex. 5-5. J.J. said her husband reviewed the website documents and told her the investment was “okay”.

[149] J.J. emptied her savings account and invested almost \$10,000 in Prosporex. Her husband borrowed \$70,000 secured by a mortgage on their house with CIBC, and invested \$50,000 in Prosporex. At Tab B-5 may be found a transmittal document of \$50,000 from A.J. to the Bank of New Zealand showing a beneficiary bank account number and the name of the account in Global Fin Net Limited. J.J. testified that Patricia Chasteau gave them both a number to take to the bank, to open an account and to deposit the money in that account. Her understanding of why it was going to New Zealand was because the presenter had told them the money was going offshore. At Tab B-3, a similar transfer was made for the funds that J.J. invested in Prosporex from her savings.

[150] J.J. said they were told that every month they would receive a cheque or she could phone and pick it up at the Prosporex offices. The cheque would represent the interest from the money they invested. When they checked the website, they saw a statement of their account with Prosporex showing what J.J. should have been receiving for the month but the only payment she ever received was \$24.42 on August 27, 2008. When the other cheques said to have been sent did not arrive, J.J. called the office and tried to get an explanation from Ms. Chasteau. She was told the cheques were there but not signed because “big boss didn’t get a chance to deal with the money”. J.J. and her husband, A.J. visited the Prosporex offices many times through November and December of 2008 and early 2009. They got Mr. Hill’s number from Ezra Douse and spoke with him “many, many, many” times. They were told there were financial problems, there had been a financial crash. In short, J.J. and her husband never received any satisfaction from Prosporex despite their many attempts to recover their investments. They sold their RRSPs to pay the bank on the mortgage placed on their home. Ultimately they lost their home which had to be sold. They had lost their RRSP savings. Their adult daughter had to withdraw from university because she could no longer afford the tuition. The daughter could no longer live with her parents because the apartment they were forced to rent was too small to accommodate her. She moved in with her older sister. J.J. described her husband as in a total state of depression. In short, they lost everything.

[151] In cross-examination, Mr. Lewis established that it was Mr. Ezra Douse who did the presentation to the couple. J.J. said that he [Ezra Douse] probably represented returns on the investment in the percentages but she concentrated on the numbers because they were more interesting to her. Mr. Douse said for example that people he recommended that invest \$50,000 got back \$10,000 per month. J.J. confirmed they did not consult a financial advisor before investing in Prosporex. In February 2008 A.J. was employed until his stroke in March of the same year. The stroke happened before he invested his money in Prosporex. J.J. said she never met Carl Lewis or Mark Scott but did meet with Sedwick Hill.

[152] Mr. Lewis drew J.J.'s attention to a document at Tab B-1 of Ex. 5-5, headed "NetWorth Marketing Solution's, Membership Agreement" with the typed signature of J.J. at the bottom. J.J. did not remember ever seeing the document and pointed out that her signature wasn't there but just her name in type. She denied that anyone, including Mr. Douse, discussed with her the risks in investing in Forex.

[153] In cross-examination, Mr. Scott produced a document in Ex. 5-5, Tab A-10, p. 120 and following, an exhibit in the examination of another witness, S.L. The Chair directed Mr. Scott to ask the witness if she had ever seen it before and she replied that she had not. She was then asked if she had ever seen the document on Prosporex letterhead obtaining information about Prosporex and instructions on how to log on to the Prosporex website. The document appears to be one of the documents which A.J. viewed online and J.J. confirmed this to be so. She further acknowledged that their decision to invest may have been influenced by the document but that it was Mr. Douse's presentation that was the most persuasive.

[154] In cross-examination by Mr. Hill, J.J. was asked if it was a prudent thing to have done, to take a loan and put it all in something like Prosporex. J.J. replied "it was a stupid thing to do but you guys convinced us to do it". That ended Mr. Hill's cross-examination.

S.L.

[155] Staff called S.L., a legal assistant with a large downtown Toronto law firm for over 15 years. She said that she had very little education or training in the realm of securities but she does have some investments including an RSP. She became involved as an investor in the Prosporex Investment Club. Her voluntary interview with the OSC may be found in Ex. 5-5, Tab A and her testimony may be found in Tr. Vol. 4, pp. 149-185.

[156] She learned of Prosporex through a girlfriend and went to three presentations at 1315 Lawrence Avenue East before deciding to join. She learned about Forex trading and that she could invest her money into something called an annual and a monthly, and that she would make money in doing so. Mark Scott was the presenter at the first seminar she attended. Tab 8-10 of Ex. 5-5 was produced to S.L. and she recognized the document as something handed out at the seminar. She confirmed that the only investment product that was discussed at the seminar was Forex. She also acknowledged that she knew that Prosporex didn't self-trade but that it put the funds with experienced traders and brokerage firms. She said she met Carl Lewis, never met

Sedwick Hill and did meet Mark Scott at her first seminar. She had no understanding that any of those persons would be doing the Forex investing themselves.

[157] In July of 2007, S.L. invested \$5,000 in the annual program. Based on the documentation she saw she believed the value of \$1,000 could possibly turn into \$167,000 in two years. Therefore, she said that \$5,000 would turn into \$800,000. She was asked if her investment increased in value, she replied that according to the Prosporex account it did increase every month.

[158] S.L. was asked to look at Tab A-17 at Ex. 5-5, specifically at p. 136. S.L. noted the entry at August 10, 2007 showing an opening balance of \$4,320. She acknowledged she knew that there would be a fee plus currency exchange on her original \$5,000 investment which, in her mind, accounted for the sum of \$4,320. The document showed her that her initial investment grew at the approximate rate of \$450 per month in the first three months.

[159] At that point, S.L. decided to increase her investment and, relying on the information given to her by Carl Lewis, she decided to borrow \$50,000 from AGF through an RSP loan. Mr. Lewis recommended putting \$30,000 in the monthly and \$20,000 in the annual program. For the \$30,000 if it earned 10% in month, she said she would receive a \$3,000 cheque which would be more than enough to make the loan payments on the AGF loan. Mr. Lewis recommended that she do this. Looking again at p. 136 of Tab A-17 the account statement reflects the deposit of \$19,300 and a balance as of September 1, 2008 of \$54,000.19. S.L. understood that the money was available at Prosporex for her to withdraw if she needed to. Later in her evidence, in her response to a question from the Chair, S.L. acknowledged that the annual program required to leave the funds in for two years.

[160] S.L. was referred to Tab A-24 of Ex. 5-5 showing copies of five cheques from NetWorth Marketing Solutions payable to her for the months of April, May, June, July and August, 2008. The sums paid represent interest on her \$30,000 ranging from 5% to 10%. As far as S.L. was concerned her investment was doing very well because she was making more than enough to pay the loan to pay AGF and have money left over for herself. However, in August of 2008, she saw an email on the Prosporex website that mentioned that the company was winding down.

[161] By letter dated February 9, 2009 S.L. received a letter from the "Prosporex Team" apologizing for the delay in settling her account and saying that difficulties were close to a resolution. Ultimately, S.L. lost the ability to service the loan to AGF with drastic results for her credit rating. She continues to have an obligation to AGF. In cross-examination by Mr. Lewis, S.L. agreed that if all the projections that were produced to her had materialized she would be sitting very well financially speaking. She agreed that based on the initial returns the investment scheme looked very promising. She acknowledged that the projected amounts were not guarantees but, based on what she saw in the documents, she believed it to be so.

[162] Mr. Scott had no questions for S.L.

[163] Mr. Hill asked her if there was a penalty for getting out of the two-year program. She believed that there was such a penalty and that it was 50% of her investment.

Judy Goldring

[164] Staff called Judy Goldring, chief operating officer and general counsel of AGF Management. Counsel referred her to documents contained in Ex. 5-6; her testimony may be found in Tr. Vol. 5, pp. 6-81.

[165] Ms. Goldring described AGF as a wholly-owned subsidiary of AGF Management. AGF had a loan program for borrowers to invest the funds into an RSP. AGF operates through advisors or registered representatives who are qualified to apply for clients for funds to be invested in an RSP eligible product.

[166] Ms. Goldring was referred to Ex. 5-1, Tab 6, an AGF Distribution Agreement with LeveragePro Inc. Her understanding was that LeveragePro was registered with Financial Services Commission of Ontario (FSCO). Part of the document was an authorization form for a Multi-fund Option which allowed a dealer to invest the proceeds of a loan on the borrower's instruction into vehicles other than AGF investments. This option required the funds to be invested in eligible investments to support an RSP program.

[167] LeveragePro provided AGF with a bank account into which the borrowed funds would be transferred and the funds would be invested in accordance with the distribution agreement in the Multi-fund Option. The representations made under the Distribution Agreement were that LeveragePro would invest in appropriate eligible investments in accordance with the borrower's instructions.

[168] Ms. Goldring explained that both LeveragePro and its employees were required to be registered with FSCO either as an insurance agent or as a representative mutual fund dealer.

[169] Ms. Goldring was referred to a document found at Ex. 5-1, Tab 15, an AGF RSP Loan Application. This document requires the signature of the registered advisor and the client borrower. Ms. Goldring was referred to a document found at Ex. 5-1, Tab 26. The document was described as an internal accounting record maintained by the Respondents tracking AGF advances. The document indicates that several borrowers received a "cash back" sum of money from funds advanced for the purposes of eligible investments for RSPs. From October 1, 2007 to September 4, 2008 the document shows over \$900,000 transferred to various loan applicants for their own purposes by way of "cash back". Ms. Goldring said she had no knowledge of these transfers and that they would not constitute an appropriate use of the funds for the loan program.

[170] In November 2008, AGF noted a growing amount of arrears in the book of business related to LeveragePro. It discontinued its funding relationship and arranged a meeting with Sedwick Hill. Mr. Hill told Ms. Goldring that there were "aggressive investment strategies" used for the funds that were not necessarily RSP eligible. Mr. Hill estimated these inappropriate investments amounted to 50% or 60% of the book of business with AGF, which amounted to approximately \$26 million.

[171] Subsequent to the meeting, AGF became aware of a letter on Prosporex letterhead dated December 11, 2008 addressed to a Prosporex client, found at Ex. 5-4, Tab 7. The letter says that someone from a director of Prosporex met with the president of AGF and further, that funds owing to AGF could be directly wired by the borrower to the AGF bank account payoff loans. In response, the President of AGF wrote Mr. Hill saying he was shocked about the content of the letter of December 11, 2008. He described the letter as containing serious misrepresentations about the meeting between them. He directed the removal of the AGF logo from the LeveragePro website.

[172] Ms. Goldring was briefly cross-examined by Mr. Lewis. The cross-examination did not assist the Panel.

[173] Mr. Scott had no questions for Ms. Goldring.

[174] Mr. Hill had several questions for Ms. Goldring in cross-examination. Mr. Hill produced examples of loans to two different people, one for \$2,500 and one for \$50,000.

[175] Mr. Hill then attempted to get Ms. Goldring to agree that AGF loaned money to people other than people who were supposed to invest the funds in an RSP program. This exchange of questions and answers continued for a considerable time but the Panel were left with the conclusion that Ms. Goldring's understanding was that the loans submitted to AGF for RSP purposes had to be dispersed in accordance with the applicable legislation for qualified investments in RSPs.

[176] At the conclusion of the cross-examinations Counsel for Staff read into the record certain questions and answers from Mr. Hill's compelled interview found in Ex. 5-2, p. 59 question 286 and following. Mr. Hill acknowledged that as of September 2007 he knew that some of the proceeds of the AGF loans were invested in Prosporex, an ineligible investment.

IV. WITNESSES CALLED BY THE RESPONDENTS

Winston James

[177] Staff closed its case on Tuesday, January 18, 2011. Mr. Lewis proposed to call witnesses, the first being Winston James. His evidence may be found in Tr. Vol. 7, pp. 7-27.

[178] Mr. James said he became a member of Prosporex Investment Club in July of 2007 as a result of a presentation he witnessed at the Prosporex offices given by Patrick Hylton. He chose to invest in the two year program and understood that it involved Forex trading. He thinks he introduced three people to the program and was paid a referral fee of \$100 for the initial referral.

[179] At the end of one year, Mr. James got a return on his investment of \$3,000 and left \$1,000 in for another year. He concluded his examination-in-chief by saying he was satisfied with his investment return after the one year. Neither Mr. Scott nor Mr. Hill had any questions for Mr. James.

[180] In cross-examination by Ms. Daley, Mr. James could not recall if Mr. Lewis completed his application for a loan from AGF. He knew that the sum of money would be deducted from his loan of \$2,500 leaving a net amount for investment of \$2,000. Under questioning from Ms. Daley, Mr. James remembered that it was his brother Albert who referred him into the Prosporex program. He acknowledged he knew that his brother set up a foreign exchange investment club of his own called “Minion”, although he did not invest any money in that program.

[181] Mr. Lewis’ re-examination did not assist the Panel.

Eric Boateng

[182] Sedwick Hill called Eric Boateng. His evidence may be found in Tr. Vol. 7, pp. 29-47.

[183] With the consent of all parties, Mr. Hill called his witnesses to accommodate Mr. Lewis’ difficulty with his own witnesses’ availability. Eric Boateng has a mutual fund license, a license to sell life insurance and property and casual insurance, and is an accountant. He contracted with LeveragePro to do some business including investing with Mackenzie as well as some RRSP loans. He attended a number of meetings at the Prosporex office and estimated that 90% of the ones he attended were conducted by Mr. Hill. Mr. Lewis would also be there. His understanding was that Messrs. Hill and Lewis were the directors of LeveragePro. He said he was aware that he was able to do both RSP loans and investment loans in applications to AGF. As it turned out, all of the loans he did were invested with Mackenzie. He never took any interest in the Forex program. He confirmed that the meetings he attended with other agents, never discussed the Prosporex or Forex program and Mr. Hill never spoke or encouraged anyone to participate in the Prosporex or Forex program.

[184] In cross-examination, Mr. Lewis asked Mr. Boateng how he learned about LeveragePro. He was asked about the commission he would receive from Mackenzie which would be split with LeveragePro. The split varied but he was well satisfied with his arrangement with LeveragePro.

[185] In cross-examination by Ms. Daley, Mr. Boateng denied any knowledge of the Prosporex activity and confirmed he put none of his clients in Prosporex. He and knew nothing about cash backs from RSP loans.

[186] Ms. Daley asked Mr. Boateng if he understood his responsibility to make sure that he direct his clients towards proper mutual fund products that fit their needs. He confirmed that he did. He confirmed that he understood that if a loan application was made for an RSP loan he had to ensure the loan proceeds went into an RSP product. That was his responsibility and that’s what he did, by placing clients’ funds with Mackenzie.

Marijan Dugec

[187] Called by Mr. Hill, Mr. Dugec described himself as a mechanical engineer with Forex trading as his personal hobby. His evidence may be found in Tr. Vol. 7, pp. 48-113. In addition, a series of documents were produced to him during his examination by Mr. Hill found in Ex. 13.

[188] Mr. Dugec related a tale which, in terms of gullibility run wild, far outstripped anything related by Prosporex investors. He approached Messrs. Hill and Scott with an investing proposition promoted by one Rick Boros, involving trading in Forex. After receiving information from friends in Florida, Mr. Dugec went directly to Chicago where Mr. Boros' company, Pilatus, was located. He told us:

Office was a big house where was all offices, about – between 20 and 30 people, I didn't count, and they did a lot of Forex exchange all over the world and they had these beautiful rooms with all the screens and the programs, people's running. It was very impressive.

(Tr. Vol. 7, p. 54, ll. 11-15)

[189] Mr. Dugec explained that the program for investing with Pilatus called for a minimum of \$2 million. Mr. Hill had access to \$1.5 million and needed to borrow a further \$500,000 to join the program. Acting on instructions from Pilatus transmitted by Mr. Dugec, Mr. Hill wired \$1.5 million to Kulbushan Handa in Vancouver. Mr. Dugec described Mr. Handa as the Canadian representative for Pilatus. The transfer is confirmed in the evidence of Ms. George, the Staff forensic accountant. Mr. Handa's coordinates and a copy of his passport are found on p. 3 of Ex. 13.

[190] At the same time NetWorth Marketing Inc., over the signature of Mr. Hill, signed a promissory note for USD \$500,000 in favour of Davis Enterprises located in Lombard, Illinois. A copy of the note is found on p. 9 of Ex. 13 and confirmation of payment of the note is found at p. 10, Ex. 13. Strangely enough, instructions for the payment of the note transmitted by Mr. Dugec required payment to James L. Morris, jr., a lawyer in Sherman Oaks, California. Difficult as it is to believe, the evidence of Ms. George confirmed a transfer of \$500,000 to Mr. Morris.

[191] The next event was an e-mail with attachments from Mr. Dugec to Mr. Hill dated July 14, 2008. Attached at pp. 12-13 was something identified as "profit analysis". The profit analysis purports to show weekly trades (undated) showing a "value invested" of \$2 million and a profit on the investment of \$10,166,000. It further shows 20% to be deducted in favour of M. Dugec of \$2,033,200 and a net worth investment payout, presumably to Mr. Hill and his company, of \$6,132,800, leaving \$2 million remaining invested in Pilatus. To this date, nothing has been received. Mr. Dugec said, "Payout didn't happen."

[192] Mr. Dugec went to Chicago and spent three days with Mr. Boros, who made all kinds of promises of payment. Shortly thereafter, Mr. Dugec suffered a heart attack and required surgery. The balance of the pages in Ex. 13 reveal a litany of promises made by one Mike Myers, described in the evidence as a colleague of Mr. Boros, which were never fulfilled. It was Mr. Dugec's understanding that Rick Boros was charged and convicted of fraud and received a sentence of 10 years.

[193] This evidence is led to establish that some of the investors' funds in Prosporex were invested in Forex trading and we see no reason to find otherwise. The sum of \$2 million was indeed transferred pursuant to the instructions communicated by Mr. Dugec to Mr. Hill.

[194] In cross-examination, Ms. Daley asked Mr. Dugec if he ever saw with his own eyes evidence that Mr. Boros had in fact traded with the \$2 million. Mr. Dugec confirmed that he never saw any such evidence .

Martin Squires

[195] Mr. Hill called Martin Squires, who has been a life insurance agent for over 15 years as well as a mutual fund advisor. He has worked with Mr. Hill over the years in a number of different companies. He is licensed by both the OSC and FSCO. His evidence may be found in Tr. Vol. 7, pp. 115-133.

[196] He said he worked with Mr. Hill at Lawrence Avenue East towards the end of 2007 as an assistant in connection with mutual funds. He answered phones, contacted Mr. Hill's clients, filled out applications and faxed information to the Keybase Financial head office. He also did one application with LeveragePro with the funds going to Mackenzie. He did no loans with AGF in relation to LeveragePro. He introduced no one to the Prosporex Forex opportunity. Mr. Squires concluded his examination-in-chief by confirming a proposition put to him by Mr. Hill that overall Mr. Hill's clients were very happy with their investments, returns and performance.

[197] During Ms. Daley's cross-examination of Mr. Squires, he basically confirmed what he had related to Mr. Hill in his examination-in-chief.

Joan Chalmers

[198] At the conclusion of the evidence Mr. Lewis inquired if it would be possible to recall Ms. Williams as he wished to raise the propriety of allowing Staff to collect the boxes stored at her house, as well as Mr. Lewis' contention that she took other documents from the office and delivered to enforcement staff.

[199] In the course of pursuing this inquiry both Mr. Lewis and Mr. Hill were permitted to question Mr. Field, the investigator and as well, Ms. Joan Chalmers of the Commission staff was called to be examined by Messrs. Lewis and Hill.

[200] Questions directed to Ms. Chalmers attempted to learn from her if she had encouraged or directed Ms. Williams to deliver documents to enforcement staff. Having reviewed Mr. Field's evidence and Ms. Chalmers' evidence we were satisfied that there was no evidence that Staff directed Ms. Williams to furnish them with documents other than those that she volunteered to produce. We therefore rejected Mr. Lewis' motion to recall Ms. Williams and that concluded the hearing on the merits, save for closing submissions.

V. CLOSING SUBMISSIONS

Submissions of Staff Counsel

[201] Staff counsel filed written submissions of 55 pages in length. In oral submissions, Staff counsel did not deviate in any material way from the written submissions.

Submissions of Mr. Lewis

[202] Mr. Lewis filed a written version of his submissions on the merits hearing. He also made oral submissions. Although having been cautioned not to testify, it was necessary for the Chair to remind Mr. Lewis he was making statements that were not supported by the evidence. This is understandable since, as Mr. Lewis himself acknowledged, he is not a lawyer.

[203] The theme of Mr. Lewis' submissions was that he was not responsible for the failure of Prosporex and should not be found to have contravened the *Act*. Most of his submissions centered on blaming Mr. Hill, and to a lesser extent, Mr. Scott, for the Prosporex losses.

[204] Mr. Lewis concluded his submissions:

So, in conclusion, I think careful examination of the testimony of the entire proceeding that took place would show that Mr. Hill and Mr. Scott, as I said, to a certain extent, is responsible for the entire \$25 million, take away the expenses, that came from AGF to Prosporex and I think he should be held responsible and be charged for fraud in this matter to the greatest extent of the law, and that's my submission, Mr. Chair.

(Transcript Volume 11, September 12, 2011, p. 74, ll. 3-10.)

Submissions of Mr. Scott

[205] Mr. Scott made oral submissions. He asked us to consider sections 8 and 24(2) of the *Canadian Charter of Rights and Freedoms*. He said that Carmen Williams had no right to deliver the documents in her basement to Staff unless Staff first obtained a warrant.

[206] We reject this submission. Staff did not seek the documents – they were transferred voluntarily by Ms. Williams.

[207] Mr. Scott made no further submissions.

Submissions of Mr. Hill

[208] Ms. Hagel, counsel for Mr. Hill, made oral submissions on his behalf. In addition, she had filed written arguments. The thrust of her submissions were that the Prosporex program was entirely under the control and management of Messrs. Lewis and Scott, and that Mr. Hill had nothing to do with Prosporex.

[209] Ms. Hagel submitted that the terms of the distribution agreement between LeveragePro and AGF contemplated a variety of lending programs in addition to RSPs. This is so. However, the AGF application forms filled out by borrowers all indicate the loan proceeds would be invested in a RSP composed of qualified investments.

[210] She further submitted that by not auditing the course of the loans, AGF was the author of its own misfortune.

[211] Neither of these submissions assisted the Panel.

[212] Ms. Hagel submitted that there was no evidence to connect Mr. Hill to Prosporex as a director or owner. However, Mr. Hill was one of three signing officers and acknowledged in his compelled testimony he was a one-third owner.

[213] Ms. Hagel submitted that the \$1.7 million transferred from Prosporex to Ysis Corporation, owned by Mr. Hill, was a legitimate investment. This submission ignores the fact that the AGF funds were to be placed in an RSP holding qualified investments. There was no evidence that Ysis was an RSP. Indeed, nor was there any evidence it was an eligible investment for an RSP.

[214] Ms. Hagel submitted that the \$1.1 million from Prosporex held in Mr. Hill's personal account at TD Waterhouse was held in trust for Prosporex. This submission was based on Mr. Hill's cross-examination of Ms. George in which he posed three questions in the form of "if such were so", then it would follow that Mr. Hill didn't receive the money for his personal use. We reject this submission.

[215] It was Mr. Hill, together with Mr. Lewis, that set the rate used to calculate the amount to be paid to investors on the monthly plan. Our review of the evidence compels us to find that Mr. Hill was involved in Prosporex as much as Messrs. Lewis and Scott and received hundreds of thousands of dollars from Prosporex for himself and his enterprises.

VI. AMENDMENT TO THE STATEMENT OF ALLEGATIONS

[216] During Ms. Daley's opening submission, she alerted the Panel that she would be seeking several amendments to para. 29 of the Statement of Allegations. The amendments involved adjusting dollar amounts as a result of Ms. George's investigations. We find the amendments to be relatively minor. We accept Ms. George's evidence and amend the Statement of Allegations as follows:

- (i) Para. 29(c) is amended to change the amount of \$1.4 million to \$1,704,422 to or for the benefit of Sedwick Hill.
- (ii) Para. 29(d) is amended to change the amount of \$1,419,600 to \$1,712,768 to or for the benefit of Ysis.
- (iii) Para. 29(e) is amended to change the amount of \$595,000 to Lewis personally, to \$553,975 to or for the benefit of Carlton Lewis.
- (iv) Para. 29(f) is amended to change the amount of \$57,000 to \$94,723 to or for the benefit of Mark Scott.

(v) Para 29(g) is amended to change the existing text by adding the following sentence: “The net impact of the above on the Prosporex Investment Club investors was \$1,421,200.”

(vi) Para. 29(j) is amended in its entirety to read as follows: - “Paid \$770,000 to establish a business in Jamaica, of which \$370,000 was paid directly to Carlton Lewis.”

[217]

VII. ANALYSIS

(1) Did all the Respondents engage in fraudulent conduct contrary to s. 126.1(b) of the *Act*?

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

126.1 a person or company shall not, directly or indirectly, engage or participate in any act, practice or course of conduct relating to securities or derivatives of securities that the person or company knows or reasonably ought to know,

...

(b) perpetrates a fraud on any person or company. 2002, c. 22, s. 182.

[219] In several recent cases the Commission has accepted the definition of fraud established by the British Columbia Court of Appeal in *Anderson v. British Columbia (Securities Commission)* (2004) BCCA 7 at para. 27 [*Anderson*], leave to appeal denied [2004] S.C.C.A. No. 81:

... 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 consent

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).

[220] It is important to note that in Ontario, as it is in British Columbia, the legislature has chose to impose liability under the *Act* where a person “ought reasonably to know ... that their

conduct perpetrates a fraud on any person or company”. Commission cases adopting the definition of fraud in *Anderson* include *Re Al-Tar Energy Corp* (2010), 33 O.S.C.B. 5535; *Re Lehman Cohort Group Inc.* (2010), 33 O.S.C.B. 7041; and *Re Global Partners Capital* (2010), 33 O.S.C.B. 7783.

1. The *Actus Reus* of Fraud

[221] The *actus reus* requires proof of (a) a dishonest act involving “deceit, falsehood or other fraudulent means” which (b) causes detriment or deprivation to the victim. A “deprivation” includes circumstances where a mere “risk of prejudice” is caused to the victim’s economic interests. (*R. v. Théroux*, [1993] 2 S.C.R. 5, at paras. 16 and 27)

[222] To find “deceit” or “falsehood” the trier of fact must determine whether there was an actual representation that a situation was of a certain character, when, in reality, it was not. (*Théroux*, above, para. 18)

[223] “Other fraudulent means” include all other dishonest situations which cannot be characterized as “deceit” or “falsehood”. The issue is “determined objectively, by reference to what a reasonable person would consider to be a dishonest act.” It describes underhanded conduct which has the effect, or which creates a risk of such a loss, the conduct is wrongful if it constitutes conduct which reasonable decent persons would consider dishonest and unscrupulous.

[224] Courts have found “other fraudulent means” to include the concealment of important facts, the unauthorized diversion of funds and the unauthorized taking of funds or property. (*Théroux*, above, at paras. 17-18)

[225] The unauthorized use of an investor’s funds constitutes “other fraudulent means.” (*R. v. Currie*, [1984] O.J. No. 147 (Ont. C.A.) pp. 3-4)

[226] The element of “deprivation” is satisfied on proof of: (i) actual loss to the victim; (ii) prejudice to a victim’s economic interest; or merely (iii) the risk of prejudice to the economic interests of a victim. (*Théroux*, above, at paras. 16-17)

[227] “Prejudice” may be established by proof that a victim faced a risk of economic loss even if no loss took place. If through an act of dishonesty, someone makes an investment or borrows money, even if that action did not cause an actual loss, it constitutes prejudice.

2. The *Mens Rea* of Fraud

[228] The *mens rea* of fraud requires a person to be aware of the risk posed to another’s interests. The subjective awareness can be inferred from the evidence. It may be also established by evidence showing that the perpetrator was “wilfully blind” or “reckless” as to the conduct and the truth or falsity of any statements made. (*Théroux*, above, at paras. 26 and 28)

[229] A sincere belief or hope that no risk or deprivation would ultimately materialize does not establish an absence of fraud:

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

(*Théroux*, above, at paras. 24, 35, 36)

[230] For a corporation, it is sufficient to show that its directing minds know or reasonably ought to have known that the corporation perpetrated a fraud to prove a breach of subsection 126.1(b) of the *Act*. (*Al-Tar*, above, para. 221; *Lehman*, above, para. 99; *Global Partners*, above, para. 245).

[231] We find examples of the *actus reus* of fraud as follows:

(a) Messrs. Lewis, Scott and Hill, together with the Respondent companies they controlled, had sole control of the bank accounts and diverted approximately \$20 million to uses other than Forex investments, of which \$5.3 million was returned to investors.

(b) Messrs. Lewis, Scott and Hill, together with the Respondent companies they controlled, transferred significant sums to themselves without ever offering an explanation for those transfers. Ms. George identified these transfers: (i) to Mr. Lewis, \$0.92 million; (ii) to Mr. Scott, \$1.5 million; and (iii) to Mr. Hill, \$3.4 million. (Ex. 11, Schedule 2)

(c) Messrs. Lewis, Scott and Hill deceived investors by telling them they were earning monthly profits of 5% to 11% from the Prosporex Forex program. These falsehoods caused investors to increase their position and attracted new investors.

(d) Messrs. Lewis, Scott and Hill, together with the Respondent companies they controlled, deceived AGF by diverting advanced funds to entities other than an RSP created to hold qualified investments, contrary to the terms of the RSP loan applications.

[232] We find examples of the *mens rea* of fraud as follows:

(a) Messrs. Lewis, Scott and Hill knew that directing approximately \$14.7 million (\$20 million minus \$5.3 million) to non-Forex entities put investors'

funds at risk. They were the directing minds of the Respondent companies who acted in that behalf.

(b) Messrs. Lewis, Scott and Hill knew that transfers to themselves of \$5.28 million approximately put investors' funds at risk. They were the directing minds of the Respondent companies who acted in that behalf.

(c) Messrs. Lewis, Scott knew that making payments of fictitious profits to investors would attract new investors. Each of Messrs. Lewis, Scott and Hill knew that Prosporex was not an RSP created to hold qualified investments for the AGF advances. They were the directing minds of the Respondent companies who acted in that behalf.

[233] We find each of the Respondents to have contravened s. 126.1(b) of the *Act*.

(2) Did all the Respondents make misleading or untrue statements that they knew or reasonably ought to have known would reasonably be expected to have a significant effect on the market price or value of the investments made in Prosporex?

[234] Section 126.2(1) provides:

“126.2(1) Misleading or untrue statements – A person or company shall not make a statement that the person or company knows or reasonably ought to know,

(a) in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement not misleading; and

(b) would reasonably be expected to have a significant effect on the market price or value of a security.”

[235] We decline to make a finding with respect to s. 126.2(1). The conduct establishing the Respondent's breach of s. 126.1(b) encompasses the conduct that would establish those breaches. See: In the Matter of *Sulja Bros.* (2010), 33 O.S.C.B. 10173.

[236] Moreover, Staff made no submissions on the question of how, if at all, the Respondents' misleading statements would reasonably be expected to have a significant effect on the market price or value of a security.

(3) Did all Respondents engage in unregistered trading of securities and unregistered advising in securities, contrary to s. 25(1)(a) and (c) of the *Act*?

[237] The definition of “security” contained in the *Act* includes “any investment contract”.

(*Securities Act*, s.1(1), item (n) under the definition of “security”)

[238] The Supreme Court of Canada has held that an investment contract is a scheme involving the investment of money in a common enterprise, with profits to come solely from the efforts of others. The concept of an investment contract entails a common enterprise in which investors advance money to a promoter which in turn manages those funds to the intended benefit of the investors. Control of the operation or enterprise lies with the promoter. The key to success of the venture is in the efforts of the promoter.

(*Pacific Coast Coin Exchange of Canada Ltd. v. Ontario Securities Commission* [1978] 2 S.C.R. 112, Staff’s Brief of Authorities, Volume 1 at Tab 1) (“***Pacific Coast***”)

[239] This Commission considered the *ratio* of *Pacific Coast* and concluded:

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.

(*White (Re)* (2010) 33, OSCB 1569)

[240] We find that the Prosporex Investment Club investments as offered by the respondents meets the definition of an investment contract. The Prosporex Participation Agreement, which all investors were required to sign, expressly stated that it is an agreement “for the purpose of participating collectively in the pooling of funds into Managed Foreign Currency Trading Accounts and sharing in the profits and loss of this initiative”. We find the respondents’ role was that of a promoter: namely to “manage the pooling members to participate in this income generating service through our relationship with highly experienced traders and brokerage firms”.

(Exhibit 5-1, Tab 13)

[241] The NetWorth respondents were equally involved in promoting the Prosporex investment contracts. All would-be investors in Prosporex were required to become members of NetWorth before participating in the investment contracts sold by Prosporex. The literature distributed by the Respondents expressly stated: “NetWorth Financial Group welcomes you to the Prosporex

Investment Club Inc.”, thereby linking NetWorth to the investment contracts issued by Prosporex.

(Exhibit 5-1, Tab 3 and Tab 10)

[242] Section 25(1)(a) of the *Act* as it existed during the Relevant Period provided:

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.

[243] Section 25(1)(c) of the *Act* as it existed during the Relevant Period provided:

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.

[244] The definition of “trade” or “trading” as defined in section 1(1) of the *Act* includes:

- (a) any sale or disposition of a security for valuable consideration whether the terms of payment be on margin, instalment or otherwise, ...
- (e) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of the foregoing.

[245] An act constitutes an act in furtherance of a trade if there is a sufficient proximate connection between the act and the trade in securities:

There is no bright line separating acts, solicitations and conduct indirectly in furtherance of a trade from acts, solicitations and conduct not in furtherance of a trade. Whether a particular act is in furtherance of an actual trade is a question of fact that must be answered in the circumstances of each case. A useful guide is whether the activity in question had a sufficient proximate connection to an actual trade. (*Re Costello* (2003), 26 O.S.C.B. 1617 at para 47)

[246] Solicitation or direct contact with investors is not required for an act to constitute an act in furtherance of a trade. (*Re Lett* (2004), 27 O.S.C.B. 3215 at paras. 48-51 and 64; *Re Allen* (2005) 28 O.S.C.B. 8451 at para. 85)

[247] This Commission has held that a respondent who accepts investors' funds for the purpose of an investment carries out an act in further of a trade. (*Re Lett*, above, at paras. 48-51 and 64; *Re Allen*, above, at para. 85; *Re Limelight*, above, at para. 133)

[248] The following conduct constitutes acts in furtherance of trade:

- (a) depositing investor funds to a bank account;
- (b) providing subscription agreements to investors and conducting sales information sessions;
- (c) setting up web-based sites pertaining to the investment and/or posting misleading statements thereon which investors rely upon when making their investment. (*Re Al-Tar Energy Corp. et al* (2010), 33 OSCB 5535 at para. 85; *Re Momentas Corp.* (2006), 29 OSCB 7408 at para. 77)

[249] The Commission has found that it must adopt a contextual approach and assess "the totality of [a respondent's] conduct and the setting in which the acts have occurred" to determine whether non-registrants have acted in furtherance of a trade. The primary focus of this assessment is the effects the acts in question had on the persons to whom the acts were directed. (*Re Momentas Corp.*, above, at para. 77)

[250] From the time Messrs. Lewis and Scott incorporated and operated Prosporex Investment Club Inc. with Mr. Hill, they did little else but engage in activities which constituted acts in furtherance of trade. They created handouts lauding the benefits of Forex trading through Prosporex; they established business premises at 1315 Lawrence Avenue East where they conducted sales presentations; they created agreements which investors were required to sign in order to invest in Prosporex; they explained to investors how to borrow RSP loans from AGF and invest the proceeds of those loans in Prosporex; they maintained and operated bank accounts into which they directed investor funds; they hired and instructed office staff to carry out the operation; they paid incentives to recruit new investors.

[251] We are not satisfied on the evidence that the Respondents were "advising" in relation to securities, contrary to s. 25(1)(c) of the *Act* as it existed during the Relevant Period.

[252] None of the Respondents was registered under the *Act* to trade in securities. No evidence was received indicating that any of the Respondents was entitled to an exemption.

[253] We find each of the Respondents to have contravened ss. 25(1)(a) of the *Act*.

- (4) Did all Respondents engage in an illegal distribution of securities contrary to s. 53(1) of the *Act*?**

[254] Section 53(1) of the *Act* provides:

53(1) 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 has been filed and receipts have been issued for them by the Director.

[255] 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 has not been previously issued [...]”

[256] The prospectus requirement plays an essential role in the protection of investors. It ensures that prospective investors have the information necessary to make informed investment decisions. (*Al-Tar Energy Corp. et al*, above, para. 136)

[257] We find that many hundreds of investment contracts were issued to Prosporex investors, documented only by Prosporex Participation Agreements. This satisfies the “trading” element of the above definition. None of the investment contracts had been previously issued. They were promoted as new investments.

[258] We find no prospectus or preliminary prospectus was ever filed in relation to the Prosporex Investment Club securities nor did the Director issue any receipt to qualify the sale of securities by Prosporex and the other Respondents. No evidence was received indicating that any of the Respondents was entitled to an exemption.

[259] We find the sale of Prosporex investment contracts to be a distribution of securities without a preliminary prospectus being filed and receipts obtained, all contrary to section 53(1) of the *Act*. We find all the Respondents participated in this distribution.

(5) Did all Respondents act contrary to the public interest?

[260] Based on the foregoing findings, we find all Respondents acted contrary to the public interest.

VIII. CONCLUSION

[261] We conclude:

- (1) All the Respondents engaged in fraudulent conduct contrary to s. 126.1(b) of the *Act*;
- (2) All the Respondents engaged in unregistered trading of securities contrary to s. 25(1)(a) of the *Act*;

(3) All the Respondents engaged in an illegal distribution of securities contrary to s. 53(1) of the *Act*; and

(4) All the Respondents acted contrary to the public interest.

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

Dated this 27th day of October, 2011

“James D. Carnwath”

James D. Carnwath

“Margot C. Howard”

Margot C. Howard

SCHEDULE "A"

