NOVA SCOTIA
Securities Commission

400 – 5251 Duke Street
Duke Tower
PO Box 458
Halifax, Nova Scotia
B3J 2P8

902 424-7768 T
902 424-4625 F
1 855 424-2499 TF
nssc.novascotia.ca

**Wesley William Robinson and DRR900306 Ltd. (Re) 2021 NSSEC 5**

**IN THE MATTER OF THE *SECURITIES ACT*,
R.S.N.S. 1989, CHAPTER 418, AS AMENDED (the "Act")**

**– AND –**

**IN THE MATTER OF WESLEY WILLIAM ROBINSON and DRR900306 NS LTD.**

# DECISION

**(Sections 134, 135 and 135A of the Act)**

| | | |
|---|---|---|
| **Hearing** | May 3, 4, 6 and 12, 2021 | |
| **Decision** | August 20, 2021 | |
| **Panel** | Valerie Seager<br>Michael Deturbide<br>Ken Wheelans | Chair<br>Commissioner<br>Commissioner |
| **Submissions** | Jennie Pick | Counsel for the Director of Enforcement of the Nova Scotia Securities Commission |
| | Wesley William Robinson | For himself and DRR900306 NS Ltd. |

## TABLE OF CONTENTS

# I. BACKGROUND

## A. Introduction

[1] On May 3, 2021, a hearing commenced before a panel of the Nova Scotia Securities Commission (the "Panel") to consider the Amended Statement of Allegations of the Director of Enforcement (the "Director") dated September 18, 2020, and decide whether it is in the public interest to make:

(a) an order pursuant to section 134 of the *Securities Act*, Nova Scotia (the "Act") in relation to Wesley William Robinson ("Robinson) and DRR900306 N.S. Ltd. ("DRR") (the "Respondents") in a manner to be determined by the Commission;

(b) an order pursuant to section 135 of the Act that the Respondents pay an administrative penalty in an amount to be determined by the Commission;

(c) an order pursuant to section 135A of the Act that the Respondents pay costs in connection with the investigation and conduct of the proceedings before the Commission; and

(d) such other orders as the Commission considered appropriate.

[2] In the Amended Statement of Allegations, the Director made the following allegations:

(a) as a result of soliciting investments from, providing advice to and distributing securities to residents of Nova Scotia and elsewhere without being registered to do so the Respondents acted as a dealer and advisor in violation of section 31 of the Act;

(b) by posting materials on linkedin.com soliciting residents of Nova Scotia to invest; by advising residents of Nova Scotia and elsewhere regarding investing and buying securities; and by distributing securities to residents of Nova Scotia and elsewhere, the Respondents acted as a dealer and adviser in Nova Scotia without being registered to do so in violation of section 31 of the Act;

(c) by providing undertakings with respect to the future value of securities with the intention of effecting a trade in such securities the Respondents violated section 44(2) of the Act;

(d) by failing to disclose in sufficient detail the risks associated with investing in securities of DRR or other securities, the Respondents engaged in unfair practice and violated section 44A(2) of the Act;

(e) by promoting a high yield investment program, the Respondents made untrue and misleading statements to residents of Nova Scotia and elsewhere

that a reasonable investor would consider material in deciding whether to enter into and maintain a trading relationship with the Respondents, thereby violating sections 44A(2), 50(2) and 132B(1) of the Act;

(f) by distributing securities in Nova Scotia without having filed a prospectus or preliminary prospectus with the Commission and without available exemptions in Nova Scotia securities laws, the Respondents violated section 58(1) of the Act;

(g) by engaging in a practice and course of conduct relating to securities that the Respondents knew or ought reasonably to have known perpetrated a fraud on investors the Respondents violated part 3.1(1)(b) of National Instrument 23-101 *Trading Rules* and section 132A(1)(b) of the Act;

(h) by continuing to post or causing to post materials on linkedin.com and elsewhere online promoting and soliciting investments from Nova Scotians and other Canadians between December 16, 2019 and the present and by distributing securities to, soliciting investment from and providing information about securities to DL and GS in 2020 the Respondents violated Nova Scotia securities laws including provisions 1, 2, 4 and 5 of the temporary order issued on or about December 16, 2019 against the Respondents pursuant to section 134(1)(a), 134(1)(b)(ii), 134((1)(c), 134(1)(e)(i), 134(1)(g), 134(2) and 134(3) of the Act (the "Temporary Order") and provisions 1, 2, 4 and 5 of the orders issued on or about January 5, 2020, June 4, 2020 and July 27, 2020 (the "Extension Orders"); and

(i) the Respondents' conduct was contrary to the public interest and undermined investor confidence in the fairness and efficiency of the public markets.

[3] The Hearing was originally scheduled to commence February 10, 2021. On January 5, 2021 the Panel receive correspondence from Mr. Brian Awad, Q.C., the Respondents' counsel, advising that the Supreme Court of Nova Scotia had on December 8, 2020 issued an order (the "Court Order") in the matter *Good AI Capital GP, LLC v. Wesley Robinson et al.* (Hfx No. 502294), pursuant to an *ex parte* motion and the common law test for Mareva injunctions, restraining the Respondents from dealing with their assets, subject to the terms of the Court Order. Mr. Awad stated that due to the Court Order, the Respondents were requesting a postponement of the Hearing because they were unable to prepare for it since, for example, they were unable to pay legal counsel without being in contempt of the Court Order and were focused on dealing with the Court Order.

[4] The Director provided the Panel with submissions regarding Mr. Awad's request on January 6, 2021. The Director opposed the postponement but also proposed new dates for the Hearing if the Panel decided to grant a postponement.

[5] Although Mr. Awad's request did not fully comply with Part 11 of Rule 15-501 – *General Rules of Practice and Procedure* (the "Rules"), given the circumstances

of the request the Panel agreed to waive the formal requirements of the Rules and proceed with the motion.

[6] In the interests of expediency, the Panel heard the motion as a written hearing. Mr. Awad and/or Robinson were asked to provide a written reply to the Director's submissions by 5:00 p.m. on January 20, 2021. The Panel asked that the following matters be addressed in their reply:

(a) what steps the Respondents had taken since the Court Order was entered to address the matter (ideally by affidavit evidence);

(b) how long a postponement the Respondents were seeking and their position on the Director's alternative submission regarding new dates; and

(c) whether the Respondents would attend and be self-represented at the Hearing, whether adjourned or not.

[7] In response to the Panel's request, Robinson provided a brief email submission. No further submission was received from Mr. Awad or any other counsel on behalf of the Respondents.

[8] On January 25, 2021, the Panel issued an order postponing the Hearing and extending the Temporary Order (the "Motion Order"). Written reasons were issued on February 10, 2021.

[9] The Motion Order set out new deadlines for the delivery of disclosure required pursuant to Part 8 of the Rules. The Director provided the Panel and the Respondents with the required disclosure. No disclosure or submissions were received from the Respondents.

[10] Robinson advised the Panel by email on January 19, 2021 that he would not be participating in the Hearing. Section 7.1 of the Rules provides that if a notice of hearing has been served on the parties in a hearing in accordance with the Rules and a party does not attend at the hearing, the hearing may proceed in that party's absence and the party is not entitled to any further notice of the hearing without the leave of the Panel. The Panel received the affidavit of Ms. Jennie Pick regarding service of the Amended Notice of Hearing on the Respondents and was satisfied that the Amended Notice of Hearing had been served in accordance with the Rules. Accordingly, the Panel elected to proceed with the Hearing in the Respondents' absence.

[11] The Hearing proceeded with both witness and documentary evidence, including the transcript of an interview of Robinson by Mr. Will McDonald, an investigator with the Commission, held on May 24, 2020 pursuant to a Notice to Summons dated May 20, 2020 (the "Interview").

[12] On May 4, 2021 an additional Extension Order was issued.

## B. **The Evidence**

### **KH**

[13] The evidence regarding KH was provided by Mr. McDonald based on his investigation of a complaint submitted by KH to the Commission on July 15, 2016. KH, an Ontario resident, met Robinson through distant family connections. In 2014 KH received a lump sum settlement of $25,000 as a result of a lawsuit. KH and Robinson began corresponding and Robinson offered KH an investment opportunity for the settlement funds where he would:

(a) "guarantee [KH's] principal";

(b) "use the principal to buy a "Standby Letter of Credit, issued by a major international bank", which Robinson described as "really creative stuff, but not wild and crazy like investing in speculative things"; and

(c) with the "group", trade the "bank instrument over and over again, compounding the return".

Robinson advised KH that "if you (example) send me $25K (which I'll put on top of mine by (example) July 31, I'll give you $50,000 by the end of Sept."

[14] Robinson advised KH that she would be "piggybacking" on a trading platform in which Robinson was already participating, and that if for any reason the underlying transaction did not perform, he would personally see that she recovered her $25,000 investment.

[15] KH transferred $25,000 to Robinson's personal bank account on August 29, 2014. Prior to that transfer, this account had a balance of $38.30. Shortly after the transfer, funds were transferred out of that account to personal credit card accounts in Robinson's name, which appear to have been used for transactions of a largely personal nature. There were no additional deposits to the bank account to which KH's funds were transferred, and so the amount applied to Robinson's personal credit card accounts could only have been funded by KH's deposit.

[16] To date, KH has not been repaid her principal or any return on her initial investment.

[17] In the Interview, Robinson confirmed that he had received $25,000 from KH and deposited it in his account. He described the transaction as KH "taking part in the hard cost of securing the financing that I was doing. So it was not an investment per se." Robinson stated that he had already sent his contribution to the trading platform that was the subject of the investment in one lump sum, and characterized KH's contribution as reimbursing him for a portion of his contribution.

[18] Robinson stated that he contributed between USD$1 million and $10 million himself in the underlying trading platform and that the transaction was done

offshore in a company of which he did not have beneficial ownership. In the Interview Robinson was extremely vague as to the mechanics of the trading platform transaction and the parties involved, and he admitted that he had no documents regarding this transaction. He refused to name the offshore company involved in the transaction. He admitted that no prospectus had been issued to KH with respect to her involvement in the transaction. He confirmed that KH had not been paid either her initial investment or any return on that investment and attributed that to a personal disagreement with KH.

**BS**

[19] The evidence regarding BS was provided by Mr. McDonald and testimony from BS. The matter was initially referred to Mr. McDonald by the Halifax Regional Police, to whom BS had made her original complaint on November 29, 2017.

[20] BS is a Nova Scotia resident. BS met Robinson through her then-partner who was a friend of Robinson. BS was seeking financing for a business opportunity she and her then-partner intended to pursue. Robinson presented BH with a loan opportunity which he described as using his own offshore capital to pledge assets and secure bank guarantees which he would monetize, hedge and then lend to finance business opportunities. To facilitate the transaction, BS was asked to pay DRR, Robinson's "NS holdco" and the intended lender, an upfront USD$150,000 bank facility fee.[1] Robinson advised BH that Barclays Bank would reimburse this fee to Robinson and Robinson would reimburse BS if the loan transaction did not close within 60 days.

[21] As part of the transaction, Robinson provided BS with a funding agreement to be entered into between DRR and BS' transacting company pursuant to which (i) DRR agreed to lend the BS company $15 million; (ii) the BS company must pay an upfront bank facility fee of USD$150,000 to DRR to facilitate the transaction; (iii) DRR agreed to transfer the bank facility fee to a lawyer in Switzerland to be held in escrow (a copy of the escrow agreement between the Swiss lawyer and DRR was attached to the funding agreement); and (iv) if the transaction was not completed DRR would reimburse the bank facility fee to the BS company.

[22] The funding agreement stated that "The Bank Facility involves Barclays Bank in Zurich and London, and [DRR's] securing of a financial instrument and having it monetized, thereby enabling cash to be deployed without [DRR] having to liquidate its own long term holdings", although the specific role of Barclays Bank in the transaction was unclear.

[23] The funding agreement included a promissory note of DRR in favour of the BS transacting company pursuant to which DRR promised to pay USD$150,000 plus simple annual interest of 1%. The promissory note was stated to be issued "to

[1] The Respondents appear to have used the terms "bank facility fee" and "bank transmission fee" interchangeably. For consistency, we have used the term "bank facility fee" throughout.

provide comfort to the borrower" and was intended to secure the reimbursement obligation relating to the bank facility fee as set out in the funding agreement.

[24] The funding agreement and related documents were either unexecuted or executed only by BS and/or BS' company. However, it is clear from subsequent events that all parties intended that these documents were finalized and would govern the transaction.

[25] In accordance with Robinson's instructions BS transferred USD$150,000 to a bank account in the name of DRR on September 21, 2017. The authorized signing authority for that account was Robinson. Prior to the deposit of the USD$150,000, the account had a balance of $4.59. Shortly thereafter there were several withdrawals and internet transfers made from that account by the Respondents, including a transfer to Robinson's son's account and a transfer to a lawyer's account in Florida, in all cases contrary to the terms of the escrow agreement.

[26] In November 2017 BS was advised by Robinson that the transaction would not proceed, and Robinson discussed with BS possibilities for moving forward with either an alternative deal or salvaging the original deal. None of these came to fruition and ultimately BS elected not to move forward and requested reimbursement of the bank facility fee. Robinson made various representations about delays relating to the flow of funds required to facilitate the reimbursement. Ultimately, no loan transaction was ever concluded and the USD$150,000 bank facility fee was never repaid to BS.

[27] In the Interview Robinson attributed the failure of the transaction to delays by BS and her partner in processing documentation. He confirmed that he received the USD$150,000 from BS. He stated that it was not transferred to the Swiss lawyer to be held in escrow, as he had represented to BS would happen and as required by the funding agreement, but was instead transferred to a trustee in Florida with whom he was no longer able to communicate. He claimed he was the victim of fraudulent transactions by third parties. He acknowledged he had not repaid BS the bank facility fee and suggested he would do so if BS "took back all the accusations and whatnot". He confirmed he had not provided BS with a prospectus or offering memorandum regarding the transaction.

**JE**

[28] The evidence relating to JE was provided by Mr. McDonald. This evidence was based on a complaint made in January 2019 by JS, whose business involves connecting people who need capital with people who provide capital. JE was a client of JS and was looking for capital to fund some of his business enterprises, including a hotel in St. Kitts and Nevis.

[29] JS had found Robinson online via his LinkedIn account and introduced JE to him. Robinson offered to lend USD$3 million to JE for the purpose of his business ventures, subject to JE providing some up-front money. JE met with Robinson in Halifax to discuss the opportunity.

[30] JE entered into a funding agreement with DRR dated October 30, 2018 pursuant to which (i) DRR would lend JE's company USD$3 million via cumulative preference shares; (ii) the JE company must pay an upfront bank facility fee of USD$60,000 to DRR to facilitate the transaction; (iii) DRR would transfer the bank facility fee to a lawyer in Switzerland to be held in escrow (a copy of the escrow agreement between the Swiss lawyer and DRR was attached to the funding agreement); and (iv) if the transaction was not completed DRR would reimburse the bank facility fee to the JE company.

[31] The funding agreement stated that "The Bank Facility involves Barclays Bank in Zurich and London, and [DRR's] securing of a financial instrument and having it monetized, thereby enabling cash to be deployed without [DRR] having to liquidate its own long term holdings", although the specific role of Barclays Bank in the transaction is unclear.

[32] The funding agreement included a promissory note of DRR in favour of the JE company pursuant to which DRR promised to pay USD$60,000 plus simple annual interest of 1%. The promissory note was stated to be issued "to provide comfort to the borrower" and was intended to secure the reimbursement obligation relating to the bank facility fee as set out in the funding agreement.

[33] The funding agreement, the escrow agreement and the promissory note used in the transaction with JE were substantially the same as the documents used in the transaction between DRR and BS.

[34] In accordance with Robinson's instructions JE transferred the amount of the bank facility fee to a DRR bank account. The authorized signing authority for that account was Robinson. Prior to the deposit that account was overdrawn $23.74. Shortly after the deposit a significant amount of the funds were withdrawn from the account and used for expenses unrelated to the transaction with JE, some of which appeared to be personal expenses of Robinson.

[35] As of July 23, 2020, the date of Mr. McDonald's interview with JS, JE had not received any financing from DRR and had not received reimbursement of the USD$60,000 bank facility fee.

[36] No prospectus or offering memorandum was issued by the Respondents in respect of the transaction with JE.

[37] In the Interview, Robinson stated he agreed to provide JE with financing by having him piggy-back on a larger transaction Robinson was involved in. He stated that when the larger transaction failed to close, the piggybacking transaction could not close either. He stated that in fact Barclays Bank was not involved in the transaction, but rather a different facility out of Geneva that Robinson refused to disclose as it was a "proprietary relationship".

[38] Robinson confirmed he received the USD$60,000 from JE. Robinson admitted that at least a portion of these funds were used for personal expenses but stated that

he sent USD$60,000 to his Geneva investment bank from another account in the Caribbean . He characterized this as “So I received money from [JE] in my left hand. I’ve paid the investment bank with my right hand. So everything squares.” He stated he was unsure if he could provide proof of the payment he made from the Caribbean account as “its an account that I do not have beneficial ownership of.” He confirmed that the funds were not placed in escrow as required by the funding agreement. In a follow up to an undertaking provided at the Interview Mr. Robinson declined to disclose the name of the Geneva investment bank or information about the Caribbean account from which he claimed he had sent the USD$60,000.

**DL**

[39] The evidence regarding DL was provided by Mr. McDonald. Mr. McDonald’s investigation of the matter was initiated by a complaint made by DL on August 10, 2020.

[40] DL was introduced to Robinson in March 2020 through an investors conference organized in Boston. Because of the COVID 19 pandemic, the conference was held virtually.

[41] Robinson agreed to provide USD$10 million of capital to Good AI Capital Fund 1, L.P. (“GAIC”), a limited partnership of which DL’s company, Good AI Capital, LLC was the general partner. The transaction was to be structured as an investment by Robinson Capital International LLC (Robinson Capital), a Florida company of which Robinson was the Chairman and CEO, and was conditional on GAIC paying an upfront bank facility fee.

[42] GAIC and Robinson Capital entered into a funding agreement pursuant to which (i) Robinson Capital would provide USD$10 million of equity capital to GAIC; (ii) GAIC would pay Robinson Capital an upfront fee of USD$100,000, the purpose of which was first stated to be to “reimburse Robinson Capital’s earlier payment to secure GAIC’s position”, although it is subsequently referred to as a bank facility fee; and (iii) if the transaction was not completed Robinson Capital would reimburse the bank facility fee to GAIC.

[43] The funding agreement stated that “The Bank Facility involves the Geneva based investment bank, hard assets provided by [Robinson Capital], the securing a loan of those assets, thereby enabling cash to be deployed without [Robinson Capital] having to liquidate its own long-term holdings”, although the specific investment bank is not named.

[44] The funding agreement included a promissory note of Robinson Capital in favour of GAIC, pursuant to which DRR promised to pay USD$100,000 plus simple annual interest of 1%. The promissory note was stated to be issued “to provide comfort to the borrower” and was intended to secure the reimbursement obligation relating to the bank facility fee as set out in the funding agreement.

[45] The funding agreement and the promissory note used in the transaction with DL were similar to the documents used in the transactions with BS and JE. However, in this case Robinson Capital was to advance the funds through capital contributions to GAIC.

[46] As evidence of its ability to finance the transaction, Robinson provided DL with two one-page loan agreements between IntaCapital Swiss SA and DRR Co. Robinson also provided DL with a United States document, Form W—8BEN Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals), indicating Robinson's place of residence as Halifax, Nova Scotia.

[47] On Robinson's instructions, the USD$100,000 bank facility fee was transferred by GAIC to DRR's account. The funds were to be transferred to a Geneva investment bank although there is no evidence this occurred. In fact, some of the funds were transferred to other accounts controlled by Robinson and used for purposes not related to the transaction with GAIC.

[48] Robinson Capital did not make the capital contributions required to be made by it under the limited partnership agreement as contemplated by the funding agreement. It did not reimburse GAIC the USD$100,000 bank facility fee.

[49] No prospectus or offering memorandum was issued by the Respondents in respect of the transaction with DL.

**GS**

[50] The evidence regarding GS was provided by Mr. McDonald, based on his investigation of a complaint submitted to the Commission in August 2020 by GS's lawyer, and by GS at the Hearing.

[51] GS was introduced to Robinson through an investors conference held in March 2020. It seems likely that this is the same conference where DL was introduced to the Respondents although we were not presented with evidence confirming that. The conference took place in Boston, but because of the COVID 19 pandemic Robinson met with GS virtually. At that time Robinson advised GS that he was located in Nova Scotia.

[52] As a result of the virtual discussion and correspondence, Robinson, as Chairman and CEO of Robinson Capital, agreed to provide USD$25 million of capital to GS's business, Black Oak X-Force, LLC ("BXF"). Robinson represented to GS that he was a billionaire and advised GS that his proprietary hedging strategies enabled him to generate the cash he used to fund other businesses. Robinson did not provide details as to the mechanics of these hedging strategies. Robinson offered to lend BXF USD$25 million, conditional on the payment of an upfront bank facility fee of USD$550,000 which was required to facilitate the transaction.

[53] BXF entered into a funding agreement with Robinson Capital in March 2020 pursuant to which (i) DRR would lend BXF USD$25 million; (ii) BXF agreed to pay an upfront bank facility fee of USD$550,000 to Robinson Capital to facilitate the transaction; and (iii) if the transaction was not completed DRR would reimburse the bank facility fee to BXF.

[54] The funding agreement stated that "The Bank Facility involves the Geneva based investment bank, hard assets provided by Robinson Capital, the securing a loan on those assets, thereby enabling cash to be deployed with [Robinson Capital] having to liquidate its own holdings", although the specific Geneva based investment bank was not identified.

[55] The funding agreement included a promissory note of Robinson Capital in favour of BXF, pursuant to which Robinson Capital promised to pay USD$550,000 plus simple annual interest of 1%. The promissory note was stated to be issued "to provide comfort to the borrower" and was intended to secure the reimbursement obligation relating to the bank facility fee as set out in the funding agreement.

[56] The funding agreement and the promissory note used in the transaction with DS were substantially the same as the documents used in the transactions with BS, JE and DL.

[57] As instructed by Robinson, BXF transferred the USD$550,000 bank facility fee to an account held by DRR in Nova Scotia. GS testified that he was told by Robinson that the funds representing the bank facility fee would be sent to a Geneva based investment bank.

[58] Shortly after the funds were deposited in the DRR account a significant portion of them were transferred to a bank in London and smaller amounts were transferred to individuals or businesses that based on the evidence are unrelated to the transaction with GS.

[59] At no time did GS or BXF receive a prospectus or offering memorandum on or behalf of Robinson, Robinson Capital or DRR.

[60] Robinson Capital did not provide the funding to BXF as contemplated by the funding agreement. When it became apparent the financing would not be forthcoming, GS and his counsel attempted to negotiate a repayment schedule for the bank facility fee with Robinson but were not successful. GS has not received reimbursement of the bank facility fee.

## C. THE RESPONDENTS

[61] During the events involving the Complainants, DRR was an active Nova Scotia Limited Company, registered with the Registry of Joint Stock Companies in Nova Scotia, with a registered office in Halifax Nova Scotia. Robinson was the director, president, secretary and recognized agent of DRR.

[62] Neither Robinson nor DRR were or are registered as an adviser nor were or are they registered to trade or distribute securities in Nova Scotia or elsewhere in Canada at least since Robinson's registration as a mutual fund salesperson was canceled in 1997.

[63] DRR has not filed a prospectus or preliminary prospectus with the Commission nor were any receipts for the same issued by the Commission.

[64] DRR has not filed any reports of trades with the Commission relying on exemptions in Nova Scotia securities laws to distribute or sell securities in Nova Scotia.

[65] Robinson maintains a personal account on linkedIn.com which describes in vague terms his business, investing philosophy and lending process. The LinkedIn page includes a link to a November 2019 interview of Robinson entitled "Compassionate capitalist will share how he created his wealth and how he invests". At the end of the interview, Robinson invites anyone interested in his "2020 opportunities" to contact him through linkedIn.com and receive an information document.

[66] The LinkedIn account includes a direct link to the website of Robinson Capital, a company based in Florida of which Robinson is a director. Viewers of the LinkedIn account are not restricted from accessing the Robinson Capital website. The Robinson Capital website includes a statement that the company does not make private equity or private debt placements into any Canadian entities or companies operated by Canadian persons. Upon clicking "I understand and wish to proceed anyway", access is automatically granted to the Robinson Capital website.

[67] The Robinson Capital website describes its lending process, including the requirement for borrowers to pay an upfront bank facility fee which will be forwarded to an investment bank to initiate the transaction. The website states that that a promissory note in respect of the bank facility fee is issued as additional protection for the borrower.

## III. ISSUES

### A. Hearsay

[68] The burden of proof upon the Director in proceedings under the Act is that of civil proceedings, which is to say that we must be satisfied on a balance of probabilities that the allegations have been proven.

[69] The evidence relating to the allegations involving KH, JE and DL was provided by Mr. McDonald based on his investigation of complaints made by KH and DL and, in the case of JE, by JS, a business associate of JE. None of KH, JE or DL appeared as a witness. Much of the evidence relating to these contraventions was therefore hearsay.

[70] Section 14.1 of the Rules states that a Commission hearing panel is not bound by the rules of evidence and the primary test for the admission of evidence is its relevance to the allegations in the Statement of Allegations.

[71] Commission hearing panels' approach generally with respect to hearsay is to allow admissibility, but determine, in the circumstances of each case, how much weight to place on the hearsay evidence based on the reliability of the evidence and the indicia of reliability that are present. In its decision in *Quintin Earl Sponagle and Trevor Wayne Hill*, August 4, 2011 (*Sponagle*), a Commission hearing panel considered the admissibility and reliability of hearsay in the context of a hearing involving unfair practice, misrepresentation, unregistered activity and illegal distribution. In *Sponagle* the respondents did not participate. No witnesses were called other than the two Commission investigators who relied upon transcripts and documents which had been collected as part of their investigation. The hearing panel determined that the documents, reports, affidavits and transcripts presented by the Commission's investigators were relevant to the allegations and even though the hearing panel did not hear from witnesses in person, thus enabling an assessment of credibility, and even though the evidence was not subject to cross examination, the evidence overall presented a coherent, consistent story.

[72] In the current case, the evidence as a whole as it relates to KH, JE and DL is corroborated, coherent and consistent, with many indicia of reliability. Documents and emails accepted as exhibits support the narrative set out in the complaints. In the case of KH and JE, Robinson, in his interview with Mr. McDonald, corroborated the basic facts of the transaction and does not contradict the evidence of either KH or JE. Robinson also confirmed that KH did not receive back her original investment, nor the return promised to her, and JE had not received the loan promised to him or a return of the up front "financing fee" he had paid. The transaction involving DL took place after Robinson's interview with Mr. McDonald, but the documents provided by DL to Mr. McDonald, the characterization of the transaction in the written complaint and the bank records produced by Mr. McDonald are consistent with the transactions and documents provided in the case of BS, JE and GS.

[73] BS and GS appeared as witnesses at the Hearing. The Panel finds both of them were forthright and credible witnesses whose oral evidence was supported by the exhibits. In addition, much of BS' evidence was internally consistent with, and corroborated by, Robinson in his Interview. The Interview occurred prior to the events involving GS, and so Robinson was not asked about that matter. However, GS's testimony was clear and forthright and the transaction and documents he described were consistent with the documents and the details of transactions involving other Complainants. The evidence established overall a clear and consistent pattern of behaviour.

[74] For the reasons set out above we accept the evidence presented to us as set out in this decision, including hearsay evidence involving KH, JE and DL.

[75] The transcript of the Interview, which is also hearsay, was submitted by the Director as evidence in the Hearing. Similar transcript evidence was considered by the Ontario Securities Commission (OSC) in *John Alexander Cornwall et al.*, 2007 ONSEC 18 (CanLII). The OSC admitted the interview transcripts on the basis that they are admissible for the truth of their contents and as admissions against interest, a longstanding exception to the hearsay rule. We accept as evidence the Interview on the same basis.

[76] Robinson, for himself and DRR, participated in the Interview but elected not to participate in the Hearing. He also refused to answer several questions during the Interview and did not respond to a number of undertakings that were requested. He did not produce disclosure in advance of the Hearing, as required by the Rules. He attributed his failure to attend the Hearing to an inability to afford a lawyer, principally because of the Mareva injunction brought against him by DL.

[77] In *Sponagle*, the hearing panel drew a negative inference from the respondent's non-participation to the effect that he was "unable to provide evidence to the Commission that would refute the allegations against him or explain the propriety of his actions." This principle was articulated by the OSC in *Money Gate Mortgage Investment Corporation (Re)*, 2019 ONSEC 40 (CanLII), where the respondents in that matter did not participate in the hearing process. The hearing panel noted that an inference may be drawn that a party who fails to testify does not have evidence that would be helpful to that party if two conditions are met: (1) that a prima facie case is made out against the party who failed to testify, and (2) that there is insufficient explanation for that failure.

[78] The Respondents were granted an adjournment of the Hearing to address the implications of the Mareva injunction. However, notwithstanding the adjournment, they declined to participate in the Hearing, attributing it in part to lack of funds to pay counsel. As noted in the Motion Order, "While the Commission must balance the interests of fairness to unrepresented parties, there is no absolute right to representation and it is up to the Respondents to use the additional time granted to them to their best advantage".

[79] Based on the foregoing, we conclude that an adverse inference against the Respondents is justified and will refer to this finding as appropriate below.

[80] Based on the Interview, it appears that the Respondents' defence to the allegations in the complaint was either that the transactions described did not involve securities or, even if they did, the transactions themselves were not subject to the jurisdiction of the Commission as they did not take place in Nova Scotia. We will address these issues below.

### B. **Do the Complaints involve "Securities"?**

[81] The Director submits that the Respondents distributed instruments that are "securities" as defined in the Act.

[82] Section 2(1)(aq)(v) of the Act states the securities include “any bond, debenture, note or other evidence of indebtedness”.

[83] The Director submits that the promissory notes distributed by the Respondents in the transactions with BS, JE, DL and GS (the “Note Complainants”) are evidence of indebtedness and are therefore securities, whether or not the notes were issued as part of an underlying transaction. The Director relies on the Ontario Court of Appeal decision in *Ontario Securities Commission v. Tiffin*, 2020 ONCA 217 (CanLII) (*Tiffin*) and the OSC decision in *Energy Syndications Inc. et al.,* 2013 ONSEC 24 (CanLII) to support these propositions.

[84] The promissory notes issued to the Note Complainants were intended to secure repayment by the Respondents of the upfront bank facility fee paid by the Note Complainants. In some cases, the notes were issued by DRR, in others by Robinson Capital. Robinson was the CEO of Robinson Capital and the operations and finances of DRR and Robinson appear inextricably linked. The notes were substantially the same in all cases, and included a promise to repay the amount of the bank facility fee upon the happening of certain events. The notes evidence acknowledgement of respective indebtedness to the Note Complainants and were intended to give comfort to the Note Complainants that their money was not at risk if the loan transactions were not completed.

[85] In *Tiffin*, the Ontario Court of Appeal considered whether a loan or a promissory note is “evidence of indebtedness” within the meaning of the Ontario *Securities Act* (the “Ontario Act”). In that case the promissory notes were issued by the respondents in that matter to individuals from whom they had borrowed money. The court held that the promissory notes were securities and specifically rejected the “family resemblance” analysis used in the United States in making that determination. The court held that:

> In brief, the definition of security in the [Ontario] Act is sufficiently broad to capture the promissory notes at issue here. While American law is a useful source of persuasive precedent in the securities context, the family resemblance test applied by the trial judge does not assist in the interpretation of the Act. The definition of security adopted by the appeal judge is supported both by the plain text of the Act and the logic of the regulatory scheme.

[86] Although the promissory notes issued by the Respondents were part of an underlying loan transaction *Tiffin* confirms that the legislative intent of securities legislation means that there is no requirement to look at the intent behind the promissory note, and thus the underlying transaction. The evidence of the indebtedness is itself the test.

[87] The language in the Ontario Act and the Act regarding evidence of indebtedness constituting a security is substantially the same.

[88] Shortly after the Hearing, the Commission issued a decision of a hearing panel in the matter of *Douglas G. Rudolph, Peter A.D. Mill, Cfg*Cn Ltd. (also known as Canglobe Financial Group), and Canglobe International Capital Inc. (Re)*, 2021 NSSEC 3 (CanLII) ("*Rudolph")*. In that case, the hearing panel considered the issue of whether promissory notes are "securities". The hearing panel agreed with *Tiffin* and found that "it would be inappropriate and undesirable in the face of clear and unambiguous statutory language to interpret the definition of "security" to exclude the promissory notes".

[89] We find that the promissory notes issued to the Note Complainants were "securities" as defined by the Act.

[90] The Director also submits that the arrangement between the Respondents and each of the Complainants were investment contracts and therefore securities as defined in section 2(1)(aq)(xiv) of the Act.

[91] The term "investment contract" is not defined in the Act. The leading Canadian case relating to the interpretation of the term is *Pacific Coast Coin Exchange v. Ontario Securities Commission*, 1977 CanLII 37 (SCC), [1978] 2 SCR 112 (*Pacific Coast*), in which the Supreme Court of Canada (SCC) held that an investment contract consists of four elements:

(a) an investment of money

(b) in a common enterprise

(c) with an expectation of profit

(d) derived significantly from the efforts of others.

[92] KH gave $25,000 to the Respondents for investment purposes.

[93] The investment was a common enterprise with the Respondents. Robinson described the investment opportunity to KH as "a piggy back opportunity (on top of what I am doing)". In the Interview, he stated that "KH could not do it [the investment] on her own because of economies of scale. So she's taking advantage by jumping on to what we're doing and being able to participate."

[94] KH expected to realize a profit on the investment. Robinson promised KH a 100% return – "if you (for example) send me $25,000 (which I'll put on top of mine by (for example) July 31, I'll give you $50,000 by the end of Sept".

[95] The investment return was to be derived significantly from the efforts of others. KH's only obligation was to forward the money to the Respondents, after which her role was entirely passive and dependent on the Respondents' efforts to trade an underlying bank instrument "over and over again, compounding the return."

[96] The Respondents subsequently attempted to characterize the transaction as a "favour". In the Interview, Robinson stated "I'm borrowing money and giving her $50,000 back as … as really a gift." This transaction was not presented to KH as a favour nor does the evidence, including Robinson's own comments in the Interview, support this interpretation.

[97] We find the arrangement between the Respondents and KH was an investment contract and was a security as defined in the Act.

[98] The Director submits that the transactions with the Note Complainants were also investment contracts and that the necessary elements of an investment contract were as follows:

(a) Investment of money: each Note Complainant was required to pay an upfront bank facility fee to enable the Respondents to lend money to the Complainant;

(b) Common enterprise: the bank facility fee was to be used by the Respondents in some unspecified manner involving the Respondents' proprietary trading platform and hedging strategies to generate the funds that the Respondents would then lend to the Note Complainants. The success of the Respondents' upstream efforts and the success of the transactions with the Note Complainants were interwoven – the Note Complainants would only receive their loans if the Respondents were able to generate sufficient funds upstream to fund the loan;

(c) With an expectation of profit: the Note Complainants entered into the transactions expecting that a loan will be made to them. The loan, or expectation of the loan, is the profit; and

(d) Derived significantly from the efforts of others: The loan transaction would not proceed unless the Respondent's upstream transaction was successful. The success of the upstream transaction was entirely dependent on the efforts of the Respondents.

[99] The Director acknowledges that a basic loan transaction would not necessarily cross the line into securities jurisdiction but submits that because the Note Complainants have provided up front money to a process over which they have no control and because the loan is contingent on an underlying investment process (the proprietary trading platform/hedging strategy), an investment risk and a resulting investment contract has been created.

[100] The Act is intended to be broadly interpreted and applied. However, we find the characterization of the arrangements with the Note Complainants as an investment contract is a bridge too far. There is no evidence that the Note Complainants viewed the transaction, and particularly the payment of the upfront facility fee, as an "investment" rather than a fee for service. The funding agreements themselves refer to the fee as "enabling the transaction to commence." Indeed, the evidence

of GS is that USD$50,000 of the USD$550,000 fee he paid was to be used for expenses, and he understood that the remainder represented a fee for Robinson's services to do what he needed to do to provide BXF with the loan.

[101] It is clear from the evidence that all four Note Complainants viewed their transactions as a commercial lending arrangement, not as an investment. The success of an upstream transaction by the Respondents was indirectly a *condition* of the lending arrangement, but it was not the purpose of the transaction nor was it in fact an investment risk borne by the Note Complainants. The Note Complainants were ultimately indifferent as to the source of the loan funds or the manner in which the Respondents obtained them. If the upstream transaction was not successful, but the Respondents nevertheless sourced the funds for the loans by an entirely different means and advanced the loan, the Note Complainants would have viewed the transaction as successful. If the Respondents did not have sufficient funds to make the loans, the bank facility fee was to be returned to the Note Complainants, with nominal interest, and so they would have been made whole.

[102] Indeed, the evidence does not support a conclusion that the Note Complainants' decisions to transact with the Respondents were based on the merits or specific mechanics of the upstream transaction. Rather, the evidence supports the conclusion that the decisions to transact with the Respondents were based on the issuance of the promissory note and the Respondents' representations that that *either* a loan would be made *or* reimbursement of the upfront bank facility fee, as secured by the promissory note, would occur. The issuance of the promissory note was an inducement that was central to the Note Complainants' up-front advance of funds. The "investment risk" in these transactions was not whether or not the Respondents' underlying transaction would be successful, but whether or not the promissory note would be repaid if it was not.

[103] The transactions also did not depend entirely on the efforts of the Respondents. The funding agreements were a critical component of the transactions and these agreements required significant effort on the part of the Note Complainants. They were expected to repay the loan in its entirety, including with interest, albeit nominal in many cases.

[104] The investment contract argument relies on the premise that the agreement to provide the loan was the expected "profit". In *Kustom Design Financial Services Inc., Re*, 2010 ABASC 179 (CanLII) (*Kustom)* (affirmed on appeal in *Synergy Group (2000) Inc. v. Alberta (Securities Commission)*, 2011 ABCA 194 (CanLII)), it was argued that the profit from an investment contract was in that case the economic return to be derived from a tax deduction scheme. In agreeing with that analysis, the Alberta Securities Commission stated:

> In interpreting "profit" we take a broad, liberal view of the concept, consistent with other securities regulatory decisions considering whether a particular transaction falls within the definition of a "security".

> In our view, profit need not be a direct monetary benefit, restricted to common forms of profit such as interest, dividends or capital appreciation. Rather the concept of profit ought to encompass all types of economic return, financial benefit or gain. In this case, the primary benefit purchasers expected to receive from purchasing the units in the Synergy Tax Program was, in substance, clearly a financial benefit, even though described as tax losses. Purchasers made an investment in the Synergy Tax Program - they risked financial loss to gain certain potential financial advantages. We are of the view that the purchasers in the Synergy Tax Program fully expected to benefit financially or "profit" by receiving back more than the principal of their investment in the form of a tax refund or reduction in taxes payable.

[105] The Director argues that the loans being offered by the Respondents, which the Director describes as unconventional lending not available through other sources and the provision of an opportunity for capital where it could not be found elsewhere, are the financial benefit – the "profit" - that is being offered by the Respondents.

[106] We do not accept this broad interpretation. First, there is no evidence that the Note Complainants here were not able, or would not have been able, to raise capital from other sources. The transaction offered to the Note Complainants was attractive because of its terms, not because they had no other options. Secondly, all commercial transactions involve some element of economic return, financial benefit or gain – whether that be money, goods or services. To characterize the expectation that a loan created by a commercial lending agreement, an agreement that clearly states the loan is conditional on the happening of certain events, as an expectation of "profit" could bring many commercial transactions not currently intended to be covered by the Act within the ambit of securities legislation. There are many legitimate lending transactions not currently subject to the jurisdiction of securities legislation and we do not believe it is incumbent on us to engage in a wholesale interpretation of the Act to encompass them. The unique element of this arrangement is that the Respondents required an upfront fee and issued a promissory note to induce the borrower to transact. It is this element that brings the transaction within the ambit of the Act.

[107] The *Rudolph* decision*,* issued after the Hearing, also dealt with the definition "investment contract". In that case, the investors were issued promissory notes in exchange for their investment, which was often characterized as a "loan" or "bridge financing" . The *Rudolph* hearing panel found that these transactions did constitute investment contracts. However, there are several characteristics that distinguish the transactions in *Rudolph* from the Respondents' transactions in this case. In *Rudolph,* the funds raised by the respondents were marketed as an investment and the investors had an expectation of profit, in the form of cash returns, on the money they invested. There were no contractual obligations imposed on them once they advanced the funds; their involvement was entirely passive. In the current case, the Note Complainants paid a transaction fee in

expectation of conditionally receiving a commercial loan that would be fully repayable by the Note Complainants with interest. As such, the fundamental characteristics of an investment contract are not present.

[108] We agree that the transaction needs to be looked at as a whole. In this case the Respondents extracted cash from the Note Complainants, issuing a promissory note to induce them to advance the funds, did not use the funds from the Note Complainants for the purposes for which they were stated they would be used (and in many cases used the funds for personal transactions) and did not follow through on either a loan or payment of the amount owing under the promissory note. The transactions as whole are more appropriately viewed under the lens of fraud.

## IV. ALLEGED CONTRAVENTIONS

### A. Section 31(1) – Unregistered Dealing

[109] Section 31(1) of the Act provides that no person or company shall act as a dealer unless they are registered as a dealer.

[110] "Dealer" is defined in section 2(1)(i) of the Act as "a person or company engaging in or holding himself, herself or itself out as engaging in the business of trading in securities.

[111] A "trade", as defined in section 2(1)(as) of the Act, includes any sale or disposition of a security for valuable consider and any act, advertisement, solicitation conduct or negotiation, directly or indirectly in furtherance of a trade.

[112] Neither of the Respondents is registered with the Commission as a dealer.

[113] The Respondents sold securities (an investment contract, in the case of KH, and promissory notes, in the case of BS, JE, DL and GS) for valuable consideration.

[114] The Respondents also engaged in acts in furtherance of a trade, including accepting money from investors for investment purposes (KH), entering into agreements with the Note Complainants relating to the issuance of the promissory notes, and soliciting prospective investors personally, via a website, LinkedIn accounts and investor conferences, to participate in transactions resulting in the issuance of promissory notes.

[115] The Respondents' activities were carried out for a business purpose. DRR appears to exist for the sole purpose of promoting and selling securities as part of a capital raising process designed to benefit the Respondents. The Respondents sold or disposed of securities regularly, for valuable consideration, with frequency and repetition. The Respondents have made, over a period of several years, and continue to make, representations on on-line platforms for the purpose of soliciting investors. As noted by the OSC in *In the Matter of First Federal Capital (Canada) Corporation and Monte Morris Friesner* 2004 CarswellOnt 396 (*First Federal*):

> "The use of a web site on the internet to solicit investors and to offer advice, in and of itself, may be suggestive of a business purpose. The distribution of a recommendation to a large number of potential investors, such as through the use of the Internet or other forms of advertisement, has also been held to be reflective of a business purpose…."

[116] There is no evidence that the Respondents relied on any exemption under the Act that would permit unregistered dealing.

[117] We find that the Respondents acted as dealer when they were not registered as a dealer in respect of all Complainants, contrary to section 31(1)(a) of the Act. We find the contravention to be ongoing pursuant to the continued advertising and solicitation of investors via the Respondent's online platforms.

### B. **Section 31(2) – Unregistered Advising**

[118] The Director alleges the Respondents breached the Act by contravening section 31(2) of the Act.

[119] Section 31(2) of the Act prohibits a person or company from acting as an adviser unless registered as an adviser.

[120] Neither Respondent is registered as an adviser under the Act.

[121] Section 7.2 of 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (31-103CP) provides that the provision of advice is caught by the registration requirement if the advice is tailored to an investor's specific circumstances. Section 8.25 of 31-103CP notes that, generally, advice is not considered to be tailored if it is online or given at a conference but only if that advice does not claim to be tailored to the specific needs of potential advisees.

[122] In *Tri-West Investment Club, et al.* 2001 BCSECCOM 1013, the British Columbia Securities Commission (BCSC) referred to *Robert Anthony Donas,* [1995] B.C.S.C. 14 Weekly Summary 39, wherein the BCSC observed;

> As indicated by the definition of advice, the nature of the information given or offered by a person is the key factor in determining whether or not that person is advising with respect to investment in or the purchase or sale of securities. A person who does nothing more than provide factual information about an issuer and its business activities is not advising in securities. A person who recommends an investment in an issuer or the purchase or sale of an issuer's securities, or who distributes or offers an opinion on the investment merits of an issuer or an issuer's securities is advising in securities.

[123] In offering an investment opportunity to KH, the Respondents tailored their advice to the particular circumstances of KH, including KH's lack of knowledge regarding

capital markets, limited capital available for investment, need for financial security and ability to access investment returns promptly.

[124] In the case of the Note Complainants, there is no evidence that the Respondents provided tailored advice specific to their investment needs. The only variable in these transactions was the amount of the underlying loan that triggered the issuance of the promissory note. The evidence does not support a conclusion that the Respondents advised as to what would be the appropriate amount to borrow - rather, in most cases the Note Complainant determined the amount required. Most of the communications in these transactions related to the actual mechanics of how the investment would be completed.

[125] The Director referred the Panel to a number of instances on the Respondent's' website as evidence of the provision of advice. In our view, much of that language is general advertising, is not tailored to the needs of specific investors and falls within the ambit of section 8.25 of 31-103CP. The Director cited language on the website that suggests the Respondents are offering to provide advice in a tailored way, but the evidence before us does not support a conclusion that that occurred.

[126] We find that in the case of KH, the Respondents acted as an adviser when they were not registered as an adviser, contrary to section 31(2) of the Act. We find that there was no breach of the adviser registration requirement in the case of BS, JE, DL or GS.

### C. **Section 44(2) – Undertaking Relating to Future Value**

[127] Section 44(2) of the Act provides that no person or company, with the intention of effecting a trade in a security, shall give an undertaking relating to the future value or price of the security.

[128] In *Portfolio Capital Inc. et al*, 2015 ONSEC 5 (CanLII), the OSC stated, with respect to a similar provision in the Ontario Act:

> … a simple representation with respect to the future price of a security is not sufficient to constitute a breach of subsection 38(2) of the Act.… The Commission has repeatedly stated that, while an undertaking is more than a mere representation, it may amount to something less than a legally enforceable obligation, and can include representations amounting to promises, guarantees or assurances of future value….

[129] The Respondents issued an investment contract to KH and guaranteed that her initial investment would be doubled in 60 days.

[130] The securities in the case of the Note Complainants were promissory notes, not investment contracts. Notwithstanding that a promissory note is a security, we are not of the view that section 44(2) of the Act is intended to include a promise to pay under a promissory note as an undertaking relating to future value.

[131] The Director also submitted that the promise to provide the loans under the funding agreements entered into with the Note Complainants amounted to guarantees that the funds would be provided as a result of the Respondents' proprietary methods and thus was a representation as to future value. Since we have found that the funding agreements themselves did not constitute investment contracts and they are not otherwise securities, they are not within the ambit of the Act. In any event, the fact that the promissory notes were issued to cover the contingency that the loans would not be advanced belies the suggestion that the loan funding was guaranteed.

[132] We find that the Respondents breached section 44(2) in the case of KH. We find that the Respondents did not breach section 44(2) in the case of BS, JE, DL and GS.

### D. Section 44(A)(2) – Unfair Practices

[133] The Director alleges that by failing to disclose in sufficient detail the risks associated with investing in securities of DRR or other securities, the Respondents engaged in unfair practice and violated section 44(A)(2) of the Act.

[134] Section 44(A)(2) of the Act provides that no person shall engage in an unfair practice. "Unfair practice" is defined non-exhaustively in section 44A(1), and includes putting unreasonable pressure on a person to purchase a security, taking advantage of a person's inability or incapacity to reasonably protect their self-interest, and imposing terms on a securities transaction that are manifestly inequitable.

[135] In *Sponagle*, the hearing panel held that the schemes engaged in by the Respondents in that matter were fundamentally dishonest, relied on lies made through web materials or agents in order to mislead and coerce investors, and intimidated investors through confidentiality provisions, disclaimers and threats to deprive the investors of benefits. The totality of this conduct was found to be an unfair practice.

[136] In *In the Matter of Jean-Smaille Germeil and FPE Trading* (27 March 2019), a Commission hearing panel found that it was unfair practice to fail to discuss risk with investors, to represent unrealistic returns, to fail to provide investors with details of the transactions and investments allegedly made on behalf of investors and to co-mingle investors funds into personal bank accounts held by a respondent and to use those funds to pay a respondent's personal expenses.

[137] The Director submits that the Respondents' unfair conduct is evidenced by the following:

(a) Taking advantage of KH's lack of knowledge regarding investment transactions and putting unreasonable pressure on KH to invest with Robinson, including promising a 100% return on her investment in 60 days.

(b) Representing to BS, JE and GS, and generally to the on-line public, that monies advanced as fees to the Respondents would be used to generate financing, when bank records indicate the monies were used for other purposes;

(c) Representing to BS and JE that Barclays Bank and a Swiss escrow agent would be involved in the transaction when they were not;

(d) Insisting on unusual confidentiality and secrecy, including warning BS against contacting the investment bank allegedly involved in the financing transactions and refusing, when asked, to provide JE and GS with references about past transactions; and

(e) Co-mingling Complainants' funds with the Respondents' personal funds and using at least a portion of the funds received from KH, BS, JE, DL and GS for personal expenses, in all cases without their knowledge or permission.

[138] We agree with the Director that the Respondents contravened section 44(A)(2) of the Act with respect to each of the Complainants.

[139] In the case of KH, the Respondents took advantage of an unsophisticated investor with limited investment knowledge, promising unachievable returns through a vaguely described investment scheme. Robinson admitted in the Interview that KH's funds were used for personal transactions.

[140] In the case of the Note Complainants, the Respondents issued promissory notes in order to induce those complainants to enter into the transaction and advance funds to the Respondents. The Respondents then used those funds for purposes other than that promised, including personal purposes, and failed to honour the promissory notes. In the case of BS and JE, Robinson's evidence in the Interview as to why the promissory notes were not honored was specious and self-serving, and his claim that "proprietary" arrangements prevented transparency as to the specific nature of the transactions had an air of unreality. We draw an adverse inference from the Respondents' failure to adequately explain the reasons for the failed transactions, the failure to comply with undertakings provided in the Interview and the failure to appear at the Hearing, and find that the Respondents' conduct as a whole was designed to delude the Note Complainants into believing they were entering into a straightforward, secured business transaction when that was not the case.

[141] The fact that the transactions, in the case of DL and GS, were entered into with Robinson Capital, a non-resident entity incorporated outside Canada, is not determinative. Robinson, as President and the sole contact with whom the Note Complainants dealt, is a resident of Nova Scotia and was clearly the directing mind behind the transactions. The bank facility fees were deposited directly in or transferred to accounts controlled by the Respondents, and at least some of the funds were used for personal expenses of Robinson and DRR. The business and financial affairs of the Respondents and Robinson Capital were inextricably linked.

### E. Section 58(1) – Distribution Without a Prospectus or Exemption

[142] Section 58(1) of the Act provides that no person or company shall distribute securities without having filed a preliminary prospectus and prospectus with the Commission, unless an exemption is available under the Act.

[143] Section 2.1(l) provides that a distribution includes, among other things, a trade in securities of an issuer that have not been previously issued.

[144] The Respondents distributed securities to KH (investment contract) and BS, JE, DL and GS (promissory notes). No preliminary prospectus or prospectus was provided to any of them in respect of these distributions.

[145] No evidence was provided as to the reliance by the Respondents upon an exemption from the prospectus requirements for these distributions.

[146] We find the Respondents have contravened section 58(1) of the Act with respect to each of KH, BS, JE, DL and GS.

### F. Sections 50(2) and 132B(1) – Misleading Statements

[147] The Director alleges that by promoting a high yield investment program the Respondents made untrue and misleading statements to residents of Nova Scotia and elsewhere that a reasonable investor would consider material in deciding whether to enter into and maintain a trading relationship with the Respondents, thereby violating sections 50(2) and 132B(1) of the Act

[148] Section 50(2) of the Act provides that a person shall not make a statement about something that a reasonable investor would consider important in deciding whether to enter into a trading relationship with the person if the statement is untrue or omits information necessary to prevent the statement from being false or misleading.

[149] Section 132B(1) of the Act prohibits a person from making a statement that they know is misleading or untrue and that would reasonably be expected to have a significant effect on the value of a security.

[150] In the case of KH, Robinson made a number of representations to KH that the evidence shows affected KH's decision to invest with Robinson and her expectations regarding return on her investment. She relied on statements as to his experience and history of investing in successful schemes similar to that which he described to KH, his guarantee of a 100% return on her investment and his promise to return her funds in full if the underlying transaction was successful. In the Interview, Mr. Robinson's statements were less than satisfactory in explaining the transaction, and he admitted, in his self-serving statement, that he was going to provide the 100% investment return as a "gift" to KH, and that he did not expect the investment opportunity he presented to KH to generate that kind of return.

[151] We find that the Respondents also violated sections 50(2) and 132B(1) of the Act with respect to the Note Complainants. The Respondents made numerous untrue statements, both orally and in documents, including those related to Robinson's financial worth, his contacts with investment banks, the underlying transactions that the Respondents intended to enter into to enable the loans to be made, and how the funds advanced to the Respondents would be used. The Note Complainants relied on these statements, which presented the Respondents as sophisticated, experienced and trustworthy investors in international capital markets, to advance the funds that resulted in the issuance of the promissory notes. These statements also led them to believe that the promissory notes they were issued had value, and would be repaid as promised. This was not the case.

### G. Part 3.1(1)(b) of National Instrument 23-101 *Trading Rules* and Section 132A of the Act – Fraud

[152] The Director alleges that by engaging in a practice and course of conduct relating to securities that the Respondents knew or ought reasonably to have known perpetrated a fraud on investors the Respondents violated Part 3.1(1)(b) of National Instrument 23-101 *Trading Rules* (the "Trading Rules") and section 132A(1)(b) of the Act.

[153] Section 132A(1)(b) of the Act provides that a person shall not engage in conduct relating to securities that perpetrates a fraud on any person or company.

[154] Section 3.1 of the Trading Rules is substantially the same as section 132(A)(1)(b) of the Act. The legislative language of the Act and the Trading Rules states that a person or company shall not, directly or indirectly, engage or participate in any act, practice, or course of conduct relating to securities that the person or company knows or reasonably ought to know perpetrates a fraud on any person or company.

[155] In *F.H. v. McDougall*, 2008 SCC 53 (CanLII), [2008] 3 SCR 41 ("*McDougall*"), the Supreme Court of Canada observed that different approaches had been taken by courts and administrative tribunals in evaluating evidence, and heightened standards had often been applied when allegations against a defendant were particularly serious, including in cases of professional misconduct and fraud. The Supreme Court made it clear that there is only one civil standard of proof for all allegations in administrative proceedings, namely, that that the matter must be decided on the balance of probabilities. In doing so, the evidence must be scrutinized "with care" and the panel must be satisfied "whether it is more likely than not that an alleged event occurred" (*McDougall*, at para. 49).

[156] The OSC in *Maple Leaf Investment Fund Corp. et al.*, 2011 ONSEC 31 (CanLII) has held that the standard of proof applicable in OSC proceedings is the civil standard of the balance of probabilities**.** This standard of proof also applies to section 126.1(1)(b) of the Ontario Act*,* which prohibits conduct relating to securities that a person or company knows or reasonably ought to know would perpetrate a fraud.

[157] Fraud will be established by proof of:

> 1. the prohibited act, be it an act of deceit, a falsehood or some other fraudulent means;
>
> 2. deprivation caused by the prohibited act, which may consist of actual loss or knowledge that the victim's pecuniary interests are at risk;
>
> 3. subjective knowledge of the act referred to above; and
>
> 4. subjective knowledge that the act could have as a consequence the deprivation of another.
>
> (*Money Gate Mortgage Investment Corporation (Re)*, 2019 ONSEC 40 (CanLII)).

[158] The panel in *Maple Leaf* held that, on a balance of probabilities, the course of conduct in that case was fraudulent. Such conduct included high pressure sales tactics; lack of opportunity to obtain independent financial or legal advice, even notwithstanding the natural prudence of some of the investors; the fact that the security purportedly provided to the investors was non-existent and the documentation was largely inconsistent with the oral representations made to the investors by the respondents; and the fact that once received, the funds provided by investors were transferred to bank accounts controlled by and frequently used in a manner that was contrary to the representations made to the investors by the Respondents. Once investors had made their investments, they had an increasingly difficult time obtaining reliable information or verifying the status of their investments (paras. 347-350).

[159] The panel in *Maple Leaf* concluded that “awareness can be inferred from the totality of the evidence; direct evidence as to the accused's specific knowledge at the time of the fraudulent acts is not required. A sincere belief or hope that no risk or deprivation would ultimately materialize does not vitiate fraud… a sanguine belief that all will come out right in the end is not a defence.” (paras. 319-321).

[160] The panel in *Rudolph* similarly concluded, from evidence presented, that it was reasonable for the panel to infer fraudulent conduct. Unfulfilled promises, evidence of procrastination, manipulation and abuse of trust allowed the panel to conclude that one of the defendants had misappropriated funds.

[161] In considering the evidence before us, we draw an adverse inference from the Respondents’ failure to adequately explain the reasons for certain of the failed transactions in the Interview, the failure to comply with undertakings provided in the Interview and the failure to appear at the Hearing. The Respondents have not offered any reasonable explanation, or indeed any explanation in the case of the complaints occurring after the Interview, in response to the allegations in the complaints.

[162] We find that the totality of the evidence clearly indicates that the Respondents have perpetrated fraud against each of KH, BS, JE, DL and GS. KH was promised that her money would be invested to generate substantial returns. The Note Complainants were promised that the upfront fees they paid to the Respondents would be used to arrange debt financing or their monies would be returned, a promise backed up by a promissory note, if that financing was not completed. There is no evidence that the Respondents actually performed any of these transactions. Instead, the evidence presented indicates that the Respondents' representations were patently false, and that the Complainants' monies were used fraudulently for the Respondents' personal use. The Respondent Robinson preyed upon KH and BS, who were relatively unsophisticated investors. They have suffered severe financial hardship due to the Respondents' fraudulent promises. Although JE, DL and GS were more sophisticated investors, they, too, lost significant amounts through the Respondents' fraudulent schemes.

[163] Fraud is also an offence under the *Criminal Code*, R.S.C., 1985, c. C-46. One of the complainants in the current matter, BS, originally made her complaint to the Halifax Regional Police, which subsequently forwarded the complaint to an investigator at the Commission. The Commission can investigate, hold hearings, and impose certain monetary sanctions on individuals who violate securities laws. However, the Commission does not have the authority to sanction individuals for offences under the *Criminal Code.* It is incumbent on the police to investigate white collar crime issues, which could possibly result in charges for fraudulent activity. Too frequently allegations of financial impropriety are automatically passed to the Commission for final resolution when the scope and strength of the criminal law and process may be applicable and appropriate.

## H. Contrary to the Public Interest

[164] The Director alleges that the Respondents' conduct was contrary to the public interest and undermined investor confidence in the fairness and efficiency of the public markets.

[165] As described above, the Respondents carried on numerous activities which detrimentally affected the integrity of Nova Scotia's capital markets, including dealing in securities without registration, trading in securities without a prospectus and engaging in misrepresentation, unfair practices and fraud.

[166] We find that the Respondents' conduct was contrary to the public interest and undermined investor confidence in the fairness and efficiency of the public markets.

## I. Submissions of Respondents

[167] Although the Respondents did not attend the Hearing, it appears, based on the Interview, that had they done so one of their defenses to the allegations would have been that, with the exception of BS, the transactions that are the subject of

the Complaints did not involve Nova Scotian investors and were not subject to the jurisdiction of the Commission.

[168] National Policy 47-201 *Trading Securities Using the Internet and Other Electronic Means* states that a person is considered to be trading in a local jurisdiction if they post on the Internet a document that offers or solicits trades of securities, and that document is accessible to persons or companies in that local jurisdiction. However, such activities are not considered trading in the local jurisdiction if the document contains a prominently displayed disclaimer expressly identifying the jurisdictions is which the offering/solicitation is to be made and reasonable precautions are taken by the person offering/soliciting trades through the document posted on the Internet not to sell to anyone resident in the local jurisdiction.

[169] The Respondents' online account did include a disclaimer that a potential investor was merely asked to read before clicking a link to access the website of Robinson Capital. However, no evidence was provided as to any other precautions, reasonable or not, taken by the Respondent to ensure they did not sell to anyone resident in Nova Scotia. In fact, the transaction with BS, which was virtually identical (except as to amounts) with the transactions the Respondents engaged in with JE, DL and GS, makes it clear that the Respondents were prepared to enter into the promissory note transactions described on the Robinson Capital website with Nova Scotia residents.

[170] In *XI Biofuels Inc. et al.*, 2010 ONSEC 6 (CanLII), the respondents in that case argued that the Province of Ontario did not have jurisdiction to regulate extra-provincial trading activities under the Ontario Act. The Ontario Superior Court of Justice rejected that argument, referring to *Gregory & Co. Inc. v. Quebec Securities Commission et al.*, 1961 CanLII 75 (SCC), [1961] SCR 584, where the Supreme Court of Canada referred to the Quebec securities legislation as follows:

> The paramount object of the Act is to ensure that persons who, in the province, carry on the business of trading in securities or acting as investment counsel, shall be honest and of good repute and, in this way, to protect the public, in the province or elsewhere, from being defrauded as a result of certain activities initiated in the province by persons therein carrying on such a business.

[171] The court went on to say:

> The appellants in the present case focus on the fact that the trades with investors occurred outside the province. However, that does not prevent the [Ontario Securities] Commission from asserting jurisdiction on the facts of the present case. As *Gregory* makes clear, and contrary to what the appellants assert, a province is not limited to protecting the interests of domestic investors from unfair or fraudulent activities. Provincial securities legislation can also be applied to regulate corporations or individuals within the province in

> order to protect investors outside the province from unfair, improper or fraudulent activities. Where the Commission is regulating trades that have an extra provincial character, the question is not the location of the investors; rather, it is whether there is a sufficient connection between Ontario and the impugned activities and the entities involved to justify regulatory action by the Commission.

[172] The Respondents' connection to Nova Scotia in this matter includes the following:

(a) DRR is an active Nova Scotia Limited Company, with a registered office in Halifax;

(b) As the director, president and recognized agent of DRR, Robinson's civic address is also in Halifax. Robinson cited this to be his primary address as recently as 2020 in tax documents provided to DL;

(c) BS is a resident of Nova Scotia and met with Robinson in Nova Scotia;

(d) Robinson met with JE for the first time in Nova Scotia and DRR was the transacting party with JE. The promissory note issued to JE is governed by Nova Scotia law and expressly provided that all disputes related to it were to be brought in a Nova Scotia court;

(e) Robinson informed GS that he was residing in Nova Scotia at the time of their transaction, including his initial solicitation conversation with GS. The promissory note expressly provided that all disputes related to the promissory note issued to GS may be brought in Nova Scotia courts;

(f) Robinson was resident in Nova Scotia at the time of the transaction with DL, as evidenced by his income tax documents provided to DL. The promissory note issued to DL expressly provided that all disputes related to the promissory note may be brought in Nova Scotia courts;

(g) All the Complainants paid the Respondents through bank accounts held by the Respondents in Nova Scotia; and

(h) The Respondents' online activities are accessible by Nova Scotians.

[173] We agree with the Director that the Commission has jurisdiction in this matter with respect to all the Complainants.

### J. Temporary and Extension Orders

[174] The Director alleges that by continuing to post materials online promoting and soliciting investments from Nova Scotians since December 16, 2019, and by distributing securities to, soliciting investment from and providing information about securities to DL and GS in 2020, the Respondents violated Nova Scotia securities laws including provisions 1, 2, 4 and 5 of the Temporary Order and provisions 1,

2, 4 and 5 of the Extension Orders. These provisions required the Respondents to cease acting as a dealer or adviser without registration, cease trading in securities, cease disseminating information to the public pertaining to the trading of securities and cease acting as a registrant or promoter.

[175] We find the Respondents have breached provisions 2, 4 and 5 of the Temporary Order and Extension Orders and have breached provision 1 of the Temporary Order and Extension Orders with respect to dealing. Since we have found that the transactions involving BS, JE, DL and GS did not involve advising, we do not find that component of the provision to have been breached.

## III. CONCLUSIONS

### A. Conclusion

[176] For the reasons set forth above we find that the Respondents, Wesley William Robinson and DRR:

(a) acted as a dealer without being registered to do so in violation of section 31 of the Act with respect to all Complainants;

(b) acted as an adviser to KH without being registered to do so in violation of section 31 of the Act;

(c) violated section 44(2) of the Act with respect to KH by providing undertakings with respect to the future value of securities with the intention of effecting a trade in such securities;

(d) engaged in an unfair practice with the each of the Complainants in violation of section 44A(2) of the Act;

(e) violated sections 50(2) and 132B(1) of the Act with respect to each of the Complianants;

(f) violated section 58(1) of the Act with respect to each of the Complainants;

(g) perpetrated a fraud on each of the Complainants in violation of part 3.1(1)(b) of National Instrument 23-101 *Trading Rules* and section 132A(1)(b) of the Act; and

(h) violated provisions 1, 2, 4 and 5 of the Temporary Order and 1, 2 4 and 5 of the Extension Orders.

### B. Submissions on Penalty

[174] We will receive written submission on penalty. We request that the Director deliver submissions on penalty to the Panel by September 10, 2021, the Respondents deliver submissions on penalty by September 24, 2021 and the Director deliver rebuttal, if any, by October 1, 2021.

**DATED** at Halifax, Nova Scotia, this 20th day of August, 2021.

**NOVA SCOTIA SECURITIES COMMISSION**

Valerie Seager
Chair

Michael Deturbide
Commissioner

Kenneth Wheelans
Commissioner

### B. Submissions on Penalty

[174] We will receive written submission on penalty. We request that tl submissions on penalty to the Panel by September 10, 2021, deliver submissions on penalty by September 24, 2021 and th rebuttal, if any, by October 1, 2021.

**DATED** at Halifax, Nova Scotia, this 20th day of August, 2021.

**NOVA SCOTIA SECURITIES COMMISSION**

Valerie Seager
Chair

Michael Deturbide
Commissioner

Kenneth Wheelans
Commissioner