

ALBERTA SECURITIES COMMISSION

DECISION

Citation: 1205676 Alberta Ltd., Re, 2010 ABASC 237

Date: 20100520

1205676 Alberta Ltd., operating as "Front Row Tickets", 660648 Alberta Ltd., operating as "S & I Holdings" and "S & I Holdings (Ticket Today)", Windy Ridge Investments Ltd., Jason Allan Hunt, Sam Sakai Tamura, Anthony Pittarelli, Giovanna Campanelli-Pittarelli, Robert Claire Pilling, Daniel Neil McLeod, Jamie Craig Creason and Jimmy Ross Creason

Panel:

Glenda A. Campbell, QC
Allan L. Edgeworth, P. Eng.
Glen D. Roane

Appearing:

Derek Vermette and Richard Finn
for Commission Staff

Lawrence Ben-Eliezer

for 1205676 Alberta Ltd., operating as
"Front Row Tickets", Jason Allan Hunt,
Anthony Pittarelli and Giovanna
Campanelli-Pittarelli

John D. Blair, QC

for 660648 Alberta Ltd., operating as
"S & I Holdings" and "S & I Holdings
(Ticket Today)" and Sam Sakai Tamura

S. Allan Low, QC and Michael Lee
for Robert Claire Pilling

Daniel Neil McLeod
for himself

Jamie Craig Creason
for himself and Windy Ridge Investments
Ltd.

Jimmy Ross Creason
for himself

Dates of Hearing:

7, 10, 14 and 15 December 2009; and 9 March
2010

Date of Decision:

20 May 2010

I. INTRODUCTION

A. The Hearing

[1] These are our decision and reasons on allegations made in an amended notice of hearing (the "Notice of Hearing") dated 26 May 2008 and issued by Staff ("Staff") of the Alberta Securities Commission (the "Commission") against 1205676 Alberta Ltd., operating as "Front Row Tickets" ("Front Row"), 660648 Alberta Ltd. ("660648"), operating as "S & I Holdings" and "S & I Holdings (Ticket Today)" (660648, S & I Holdings and S & I Holdings (Ticket Today) are collectively referred to as "S & I"), Beaune Investments Ltd. ("Beaune Investments"), Windy Ridge Investments Ltd. ("Windy Ridge"), 687576 Alberta Ltd. ("687576"), 1029724 Alberta Ltd. ("1029724"), Jason Allan Hunt ("Hunt"), Sam Sakai Tamura ("Tamura"), Anthony Pittarelli ("Pittarelli"), Giovanna Campanelli-Pittarelli ("Campanelli-Pittarelli"), Robert Claire Pilling ("Pilling"), Justin David Beaune ("Beaune"), Daniel Neil McLeod ("McLeod"), Jamie Craig Creason ("Jamie Creason"), Jimmy Ross Creason ("Jimmy Creason") and Alan Yip Jang ("Jang"). Staff decided not to pursue allegations against Beaune, Beaune Investments and 687576. Allegations against Jang and 1029724 were severed and to be heard by a different panel of the Commission. Accordingly, we delete the names of those five respondents from the style of cause for this decision and do not refer to allegations against them set out in the Notice of Hearing. We refer to the remaining respondents collectively as the "Respondents".

[2] Staff alleged in the Notice of Hearing that the Respondents, or some of them: breached section 75 of the *Securities Act*, R.S.A. 2000, c. S-4 (the "Act") by conducting trades in Front Row securities without requisite registration or registration exemptions from mid-2005 to at least June 2007 (the "Relevant Period"); breached section 92(4.1) of the Act by making certain misleading or untrue statements to investors; breached section 110 of the Act by engaging in distributions of Front Row securities without the requisite prospectus or prospectus exemptions during the Relevant Period; failed to comply with section 6.1 of National Instrument 45-106 *Prospectus and Registration Exemptions* ("NI 45-106") (presumably by not filing reports of exempt distribution with the Commission); and breached section 93.4(1) of the Act by withholding information from Staff. Staff also alleged that the misleading statements and failure to comply with registration and prospectus requirements comprised conduct contrary to the public interest. Staff advised that they were not pursuing the allegations that Front Row, S & I, Hunt, Tamura, Pittarelli, Campanelli-Pittarelli, Jamie Creason and Jimmy Creason had withheld information from Staff. Staff apparently also decided not to pursue the allegations of failing to file reports of exempt distribution with the Commission.

[3] At the hearing (the "Hearing") into the merits of Staff's allegations set out in the Notice of Hearing, Front Row, Hunt, Pittarelli and Campanelli-Pittarelli were represented by the same counsel. Due to his own scheduling difficulties – accommodated to a reasonable degree by the panel in the interest of fairness to those Respondents – their counsel was present (by teleconference or in person) for portions of the Hearing and not present for other portions. S & I and Tamura were represented by counsel, as was Pilling. McLeod, Jamie Creason, Jimmy Creason and Windy Ridge were not represented by counsel and were not present for the entire Hearing. Jamie Creason represented himself and Windy Ridge.

[4] At the commencement of the Hearing, Staff entered into evidence statements of admission from S & I and Tamura dated 30 November 2009 (the "S & I and Tamura

Admissions"), Pilling dated 30 November 2009 (the "Pilling Admissions") and McLeod dated 1 December 2009 (the "McLeod Admissions"). Entered later during the Hearing were admissions of Pittarelli dated 8 December 2009 (the "Pittarelli Admissions") and Campanelli-Pittarelli dated 9 December 2009 (the "Campanelli-Pittarelli Admissions"). We refer to the S & I and Tamura Admissions, the Pilling Admissions, the McLeod Admissions, the Pittarelli Admissions and the Campanelli-Pittarelli Admissions collectively as the "Statements of Admissions".

[5] Although considerable agreement was reached between Staff and many of the Respondents, the panel must reach its own decision on the merits of all of Staff's allegations. The Hearing therefore continued with testimony from a Staff investigator and five investor witnesses, as well as additional documentary evidence. Included in the documentary evidence are transcripts of Staff investigative interviews of some of the Respondents: an interview of Hunt conducted on 7 August and 4 September 2007 (the "Hunt Interview"); an interview of Tamura conducted on 29 May, 9 August and 5 September 2007 (the "Tamura Interview"); an interview of Pittarelli conducted on 10 August and 6 September 2007 (the "Pittarelli Interview"); an interview of Campanelli-Pittarelli conducted on 7 September 2007 (the "Campanelli-Pittarelli Interview"); an interview of Pilling conducted on 15 August and 18 September 2007 (the "Pilling Interview"); an interview of McLeod conducted on 6 June 2007 (the "McLeod Interview"); an interview of Jamie Creason (apparently also on behalf of Windy Ridge) conducted on 30 October 2007 (the "Jamie Creason Interview"); and an interview of Jimmy Creason conducted on 20 September 2007 (the "Jimmy Creason Interview"). We refer to these interviews collectively as the "Investigative Interviews". All of the Investigative Interviews were conducted under oath and all of those Respondents, except McLeod, were represented by counsel during their Investigative Interviews.

[6] We received written submissions from Staff and all Respondents except McLeod and, seemingly, Windy Ridge (although Jamie Creason filed written submissions, we note that he did not appear to be making those submissions on behalf of Windy Ridge). On 9 March 2010 we heard oral submissions from Staff and all Respondents but McLeod, Jamie Creason, Jimmy Creason and Windy Ridge.

[7] Our findings and the reasons for which we make those findings are set out below. Stated briefly, we find that the Respondents each contravened sections 75(1)(a) and 110(1) of the Act, and acted contrary to the public interest, in respect of trades and distributions of Front Row securities. We further find that Pilling and McLeod made statements to investors that they knew or reasonably ought to have known were materially misleading and untrue, contrary to section 92(4.1) of the Act and the public interest. This proceeding will now move to a second phase to consider what, if any, orders ought to be made against any or all of the Respondents.

B. Other Proceedings

[8] On 25 July 2007 the Commission issued an interim cease trade order (the "ICTO") directing that all trading in Front Row securities cease and that Front Row, S & I, Hunt, Tamura, Pittarelli, Campanelli-Pittarelli, Pilling and McLeod (among others) cease trading in securities (with limited exceptions) and be denied the use of all exemptions for up to 15 days. The ICTO was temporarily extended on 8 August 2007. On 12 September 2007 the ICTO was "extended

until the hearing of the matter is concluded and a decision is rendered". Accordingly, the ICTO is still in effect. Windy Ridge, Jamie Creason and Jimmy Creason were not subject to the ICTO.

[9] The Executive Director of the Commission (the "Executive Director") had earlier (in February 2007) issued "freeze orders" (the "Freeze Orders") against several of the Respondents. These Freeze Orders directed the relevant financial institutions "to hold all funds, securities, exchange contracts or other property" in specified accounts and directed certain of the Respondents "to refrain from withdrawing [the] funds, securities, exchange contracts or other property" of certain of the Respondents "from any other person or company having any of them on deposit, under control or for safekeeping". According to the Staff investigator, the frozen Front Row bank accounts (the "Front Row Funds") contained approximately US\$1.592 million and C\$326 000 and the frozen S & I bank accounts (the "S & I Funds") contained approximately US\$349 000 and C\$402 000. Further, according to the Staff investigator, all of the Front Row Funds and S & I Funds have apparently been returned, through court orders, to some of the Front Row investors.

[10] Also in evidence are a 21 August 2006 "Cease and Desist Order and Notice of the Opportunity for a Hearing" against certain of the Respondents and a 21 May 2007 "Final Order Upholding and Amending Cease and Desist Order", both issued by the Idaho Department of Finance. We note these only for the fact that they exist; we did not reach any factual conclusions based on the evidence before or findings of the Idaho Department of Finance.

C. Evidentiary Standard and Basis for Findings Made

[11] We reach conclusions on the allegations before us based on the balance of probabilities standard. As the Commission stated in *Re Kustom Design Financial Services Inc.*, 2010 ABASC 179 (at para. 5):

The appropriate standard of proof in Commission enforcement proceedings is the balance of probabilities civil standard. That standard of proof was recently clarified by the Supreme Court of Canada in *F.H. v. McDougall*, 2008 SCC 53 (at paras. 40, 45-46):

... I think it is time to say, once and for all in Canada, that there is only one civil standard of proof at common law and that is proof on a balance of probabilities. Of course, context is all important and a judge should not be unmindful, where appropriate, of inherent probabilities or improbabilities or the seriousness of the allegations or consequences. . . .

...

To suggest that depending upon the seriousness, the evidence in the civil case must be scrutinized with greater care implies that in less serious cases the evidence need not be scrutinized with such care. I think it is inappropriate to say that there are legally recognized different levels of scrutiny of the evidence depending upon the seriousness of the case. There is only one legal rule and that is that in all cases, evidence must be scrutinized with care by the trial judge.

... evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test. . . .

[12] We find relevant some of the information from the Investigative Interviews. Although we recognize that the Respondents so interviewed neither testified nor were subject to cross-examination at the Hearing, we nonetheless use that evidence, which included hearsay evidence, according to the weight we consider appropriate in the circumstances. In that regard, we note that the Alberta Court of Appeal stated in *Alberta Securities Commission v. Brost*, 2008 ABCA 326 (at paras. 35-36):

The Strategic appellants suggest that the proceedings before the Commission were prosecutorial or penal in nature and that the admission of the impugned hearsay evidence adversely affected the fairness and natural justice of the proceedings. Among other things, they complain that they did not have an opportunity to cross-examine each other or Brost. Brost says transcript excerpts from the investigative interviews of Forrest, Weeks and Regier should not have been used against him because he had no opportunity to cross-examine those individuals.

Those arguments are without merit. The proceedings before the Commission were regulatory not prosecutorial or penal in nature and the Commission did not deny the appellants an opportunity to test the impugned hearsay evidence. Any of the appellants could have applied to the Commission for a subpoena to have any of the other appellants testify: ss. 29(c) and 215 of the *Act*. No such applications were made and all of the appellants elected not to testify. In other words, the appellants chose not to challenge the reliability and content of the impugned hearsay evidence. To exclude that evidence in these circumstances would effectively exempt the appellants from the authority under the *Act* to acquire the evidence and from the evidential provisions of the *Act*. A party cannot claim he or she is exempt from the effect of the conscriptive authority of the *Act* on the basis of tactical decisions taken at hearing that are fully within their control.

II. FACTUAL BACKGROUND

[13] The facts set out here are gleaned from the oral and documentary evidence presented during the Hearing, including the Statements of Admissions and the Investigative Interviews.

A. The Respondents

[14] Front Row is an Alberta company, incorporated as 1205676 Alberta Ltd. on 21 November 2005. "Front Row Tickets" is a trade name, registered in Alberta also on 21 November 2005. The evidence indicates that, throughout Front Row's corporate existence, Hunt has been its sole director. In the Alberta corporate registry records, Front Row's registered office address in Lethbridge is the same as the address listed for Hunt as director. Front Row has never been registered to trade in securities in Alberta. No preliminary or final prospectus has ever been filed with the Executive Director for distributions of Front Row securities.

[15] 660648 was incorporated in Alberta on 5 July 1995 with Tamura and Irene Tamura as its only two directors and equal shareholders. Both "S & I Holdings" and "S & I Holdings (Ticket Today)" are trade names – the former registered on 6 June 1996 and the latter registered on 22 March 2006 in Alberta. 660648 was struck from the Alberta corporate registry on 2 January 2009 for failure to file annual returns and that was its status as of 27 November 2009. S & I has never been registered to trade in securities in Alberta.

[16] Windy Ridge, incorporated in Alberta on 12 July 2006 as Horizon Entertainment Ltd., changed its name to Windy Ridge on 21 July 2006. Although Jamie Creason was the only director listed for Windy Ridge in the Alberta corporate registry records, Jamie Creason and Jimmy Creason agreed that Jimmy Creason was to have been a director of Windy Ridge, but for

some unknown reason his appointment as such was not formalized and reflected in those records. We so find. Windy Ridge was struck from the Alberta corporate registry on 2 January 2009 for failure to file annual reports and that was its status as of 27 November 2009. Windy Ridge has never been registered to trade in securities in Alberta.

[17] Hunt, a resident of Lethbridge, Alberta, was the sole director, officer and shareholder of Front Row. Hunt played an active role in running and directing Front Row's operations. Hunt has some college education and is a licensed realtor. He has no securities industry education or background. Hunt has never been registered to trade in securities in Alberta.

[18] Tamura, a resident of Lethbridge, Alberta, was a director, officer and signing officer of S & I – its guiding mind, we find – at all material times. Tamura's wife also had signing authority for the S & I bank accounts, but apparently did not generally use her authority. Tamura is a college graduate having taken a business administration and accounting program. He has no securities industry education or background. Tamura has never been registered to trade in securities in Alberta.

[19] Pittarelli is a resident of Lethbridge, Alberta. Pittarelli has some college education but no securities industry education or background. Pittarelli has never been a director or officer of any private or public companies. Pittarelli has never been registered to trade in securities in Alberta.

[20] Campanelli-Pittarelli, a resident of Lethbridge, Alberta, did secretarial and other office work for Front Row. She has a grade nine education with no securities industry education or background. She is Pittarelli's mother. Campanelli-Pittarelli has never been registered to trade in securities in Alberta.

[21] Pilling is a resident of Cardston, Alberta. Pilling has a science degree but no securities industry education (except for "some security courses" he took in the United States in the 1990s). Pilling has never been registered to trade in securities in Alberta.

[22] McLeod is a resident of Lethbridge, Alberta. McLeod graduated in management from the University of Lethbridge. McLeod took a mutual funds course but no other securities or investment courses. McLeod was an insurance salesperson and had been a registered mutual funds salesperson in Alberta for one-year periods from 1987 to 1988 and from 1990 to 1991, but was not registered to trade in securities in any capacity in Alberta during the Relevant Period.

[23] Jamie Creason is a resident of Fort Macleod, Alberta. He, along with Windy Ridge and his father Jimmy Creason, had business dealings with Front Row. Jamie Creason is a high school graduate with no securities industry education (except for courses he took a long time ago to become a World Financial Group broker) or background. As noted, Jamie Creason was listed in the Alberta corporate registry records as the sole director of Windy Ridge throughout its corporate life. Jamie Creason has never been registered to trade in securities in Alberta.

[24] Jimmy Creason, a resident of Mountain View, Alberta, was, we find, the guiding mind of Windy Ridge in its business dealings with Front Row. Jimmy Creason has some junior college

education but no securities industry education and apparently no such background. Jimmy Creason has never been registered to trade in securities in Alberta.

B. Front Row's Business

1. Overview

[25] All of the Respondents are connected through Front Row. Front Row was in the business of purchasing large amounts of tickets ("blocks of tickets or sections") to certain events, then reselling – or attempting to resell – those tickets either privately or to other ticket brokers at higher prices to earn a profit. In the vernacular, this was a "ticket scalping" venture. The allegations before us were not related to the actual process of ticket buying and reselling.

[26] As noted, Staff's allegations centred on alleged illegal distributions during the Relevant Period of Front Row securities – essentially by the Respondents borrowing money from investors to fund the purchase of event tickets by Front Row (the "Loans") – and on alleged misrepresentations during the course of such distributions. The investors were to be paid their principal and interest (typically promised at very lucrative rates) after Front Row profited on the ticket resales and paid its expenses, including commissions.

[27] Hunt started in the ticket brokerage business in mid-2005, slightly before Front Row was incorporated. Hunt's interest in the business had been piqued by conversations he had in late 2004 and early 2005 with Pittarelli, who had apparently started out in the business in 1984 "[o]n a very, very small scale, under 20 tickets", later becoming much more active in the business. According to Hunt, Pittarelli agreed to assist Hunt with Front Row's ticket brokerage business as Pittarelli had experience in the business and "had 99[%] of the contact information".

[28] Hunt characterized his own role with Front Row as maintaining bank information, making cheques payable to Front Row investors and doing his best to ensure "everything was up to date". Hunt said that Pittarelli "probably made" the major decisions for Front Row, given his experience with brokers and in finding "the best deals and the connections to which music groups would be coming to local cities and whatnot".

[29] Pittarelli initially attempted to distance himself from Front Row, stating in the Pittarelli Interview that he had "nothing to do with Front Row" – he was not involved in owning it or "being part of that". However, later in the Pittarelli Interview Pittarelli said that, while he did not make decisions, he would make suggestions of what tickets to buy, and helped Hunt by trying to "purchase the right tickets from various brokers . . . or decide which events are the best", "but it was up to [Hunt] to make the final decision". He also characterized himself as "an independent contractor", not an employee, of Front Row. Pittarelli ultimately admitted in the Pittarelli Admissions that he "was Hunt's associate from the outset" of the Front Row operations and played "an active role in the day-to-day operations of Front Row".

[30] Hunt described how Front Row began soliciting Loans at the end of the summer of 2005:

Well, I believe that [Pittarelli] was already receiving funds in the past on a smaller scale, and I approached some friends and family to begin with, and they had helped generate some small capital, and we saw that this programme was working. And we would buy for an event four

months down the road, I can't even speculate on a dollar amount, say \$40,000, and we would have to wait four months until the event was done before we ever saw a return.

And in the meantime, we -- we had brokers calling non-stop telling us about other events. Well, we didn't have any more funds to do this, so this is when the idea came up to borrow money from people to continue operations and actually be part of some of these other events that were happening in that time span.

[31] Hunt never sought legal advice to determine if the Loans were securities or if any documentation used complied with any legislation. Various documentation was used by various of the Respondents – some more extensive and comprehensive than others. We refer to all documentation of the Loans as the "Loan Documentation".

[32] While Pittarelli was active in Front Row's operations, he also continued with his own ticket brokerage operations, so not all the money he raised was by way of Loans made to Front Row.

2. Cash Business

[33] Front Row's business was largely cash-based. Loan money came into Front Row from investors in the form of cash, cheques, money orders and wire transfers. According to Hunt, Front Row would cash investor money orders or cheques at cheque-cashing locations, then use the cash to buy "tickets from peddlers on the street that won't accept a cheque" – "some brokers were paid cash. A lot of people were paid cash". Hunt said that Front Row was willing to pay the relatively high fees charged at these locations because the money was available more quickly there than through a bank.

[34] Money received from Loans was used to purchase tickets for resale and to pay investors. Hunt stated that he would also cash cheques from the Front Row bank accounts at cheque-cashing locations, but that on three occasions he cashed cheques from investors that had been made out to him personally and used those proceeds "to purchase tickets, pay back investors". Hunt was the only person depositing money into the Front Row bank accounts (except for his wife helping on rare occasions), and he was the only signing authority for the Front Row bank accounts. Surplus money was generally not deposited into any bank accounts but rather kept at other places, described by Pittarelli as "places where Hunt stashes the money". Pittarelli said that Hunt made the policy "[n]o cash in the bank."

3. Front Row "Agents"

[35] While Hunt conceded through counsel that he "directed the distribution of [Front Row] securities to the investing public", it appears that he limited his direct interactions with most of the investors, leaving the solicitations of investors to the other Respondents. That said, Hunt personally raised Loan money for Front Row during the Relevant Period – he suggested somewhere between \$200 000 to \$250 000 – from fewer than 10 individuals (family and friends to begin with), but apparently few, if any, records were maintained. He said that those individuals were paid "[f]or the most part". Regardless of Hunt's level of personal involvement with the Loans, it is clear from the evidence – and we find – that he was Front Row's guiding mind throughout the Relevant Period.

[36] Others raising Loan money for Front Row during the Relevant Period included Tamura, Pittarelli, Campanelli-Pittarelli, Pilling, McLeod, Jamie Creason and Jimmy Creason. The roles of these Respondents were variously described – for example, "agent", "sales consultant" or "independent contractor". In the Hunt Interview, Hunt identified Tamura, Pittarelli and Campanelli-Pittarelli as "authorized agents" for Front Row. However, these labels are essentially irrelevant. As we discuss in more detail below, each of Tamura, Pittarelli, Campanelli-Pittarelli, Pilling and McLeod admitted to being actively involved in Front Row's offering of Loans and in soliciting investors to make Loans to Front Row. We also discuss below the involvement of Jamie Creason and Jimmy Creason in soliciting investors for Front Row.

[37] Hunt explained that some of those who obtained Loan money from investors for Front Row would typically take a percentage of the returns for themselves (before making the principal and interest payments to investors). Hunt did not know how much money went to such commissions, although he identified 5% or 10% as typical percentages. He appeared not to track these commission figures or percentages. Others, for example, Tamura and Pilling, seemed to have a different arrangement, receiving payments from Front Row specifically designated as commission payments.

[38] Pittarelli not only provided advice to Hunt on Front Row's ticket brokerage business but also solicited investors to make Loans to Front Row – and he admitted playing "an active role in the distribution of" Front Row securities. However, Pittarelli claimed that his primary focus or activity involved raising money from others for himself so he would have "loans to buy tickets on my behalf, mainly. I didn't do it for Front Row; that's why there [are] only six or seven contracts; that's why I can't remember specifically". Although there is some discrepancy in the Pittarelli Interview, Pittarelli did admit earning approximately \$400 000 from 2005 to 2007 from his involvement with Front Row, including soliciting and facilitating Loans from investors to Front Row. It also appears that Pittarelli recruited others – Campanelli-Pittarelli and Tamura in particular – to find investors for Front Row.

[39] Campanelli-Pittarelli also admitted that she "was actively involved in the distribution of Front Row" Loans, including soliciting and accepting money from investors. She said in the Campanelli-Pittarelli Interview that she solicited approximately 10 to 12 investors, including investor witness SG. Campanelli-Pittarelli earned commissions from the investors she brought into Front Row. She estimated that her involvement with Front Row between 2005 and 2007 led to her receiving approximately \$240 000.

[40] Tamura was a client of Pittarelli. Tamura became an investor in Front Row, ultimately providing a line of credit through S & I for use by Front Row and recruiting others to raise money for Front Row. Tamura described how he became involved in Front Row:

What happened was he [a person not involved in the Hearing] asked me if I wanted to loan Front Row Tickets some money, and I could make returns on the -- the loans, and I did.

In May of 2005, I watched it very closely to see if I was getting my returns according to what was promised to me, and in May, June, it was as promised. I did invest some more money, because the returns were coming back. I studied it and looked at it till probably September and November . . . 2005. At that time, I approached Front Row Tickets, and I -- I knew they were looking for

funding, 'cause obviously they asked me, and I asked them if I could find -- if I could borrow money from my personal friends and assist Front Row in -- in financing the tickets.

[41] According to Hunt, Tamura approached Pittarelli and Hunt with a proposition to lower the interest rates that they were then paying to investors and suggested that Tamura could also bring in investors or provide money. Tamura confirmed that, stating:

... I felt they were paying too high on interest rates or returns, especially to myself. So I -- I approached Front Row and [Pittarelli] and told him that I could probably find financing and borrow money at lesser rates where it wouldn't be so stringent on their -- on their business.

...

... I told him I could probably borrow at 5, 8[%] a month, which was considerably lower than what they were paying out, and he said, yeah, if I could [do] it, then -- that's how I started.

[42] According to Pittarelli, Tamura promoted and sold Loans to his "close friends" and others and on occasion referred investors directly to Front Row. Tamura said that he was paid "a small fee" for bringing Loan money into Front Row -- approximately \$400 000 for services to Front Row. These commissions were paid by both cash and cheques and were given to him by either Pittarelli or Hunt.

[43] Tamura and S & I played another important role in Front Row's operations. The S & I bank accounts, with the acquiescence of Tamura, were effectively used as a line of credit by Front Row to fund its operations from time to time. Tamura took payment instructions from both Hunt and Pittarelli. Tamura, through the S & I bank accounts, would lend Front Row money and, according to Hunt, Front Row would "pay him back with a profit or interest or whatever you might want to call it". Pittarelli would on occasion ask Tamura directly for cash that would come from the S & I bank accounts or for Tamura to use his credit card when Front Row needed to buy event tickets or pay investor returns. As Pittarelli described the arrangement:

... if [Hunt] was out of town, ... and there was a \$90,000 payment that needed to be done, or a draft, [Hunt] would not go to the bank sometimes to make drafts. It would take two weeks to get him to do anything.

So we'd say [to Tamura] can you go, and he would be swift, and then [Hunt] would just write [Tamura] a cheque back.

[44] Campanelli-Pittarelli confirmed that "Tamura is like a credit line for Front Row". Cash advances made by Tamura and S & I to Front Row were paid back by Hunt, Front Row or Pittarelli. Pittarelli said that he repaid to Tamura and S & I cash "in the hundreds of thousands of dollars" during the Relevant Period.

[45] According to Tamura, the S & I bank accounts contained co-mingled money -- money from Front Row investors and personal income. In the result, Tamura paid money out of the S & I bank accounts to Front Row, investors, ticket brokers and others associated with the Front Row investments, and he also used the money in the S & I bank accounts to pay his personal expenses.

[46] Tamura recruited his friend, Pilling, to find investors to make Loans to Front Row. Pilling characterized himself as a "sales consultant" for Front Row. Pilling described his understanding of his arrangement with Front Row – his role was to find investors, send the money provided under the Loans to Front Row, and receive money back from Front Row which he used to pay investors. Pilling described how he gave Loan money to and received money back from Front Row:

Initially, I was asked every time that there was a wire sent, to notify [Tamura]. He would verify it for me. And the way he verified, was to get a hold of [Campanelli-Pittarelli]. She would text [Hunt], and [Hunt] would confirm when he saw the wire appear. Then it would go in reverse, and [Tamura] would let me know. And every time those were confirmed, we made a list and we tracked it so that it was perfect.

It got so cumbersome, you know, not being able to maybe get a hold of [Tamura] immediately, and, you know, six days later, we're still trying to confirm that it's received, and so I was asked to call [Campanelli-Pittarelli] directly, and then she would text [Hunt, who] would confirm it. And so just an abbreviated process.

[47] In all this, Pilling dealt primarily with Tamura, although he did not know what, if any, position Tamura had at Front Row. He said that he initially believed Pittarelli ran Front Row but then learned it was Hunt. In the Pilling Interview, Pilling said that he had dealt with Hunt "two or three times" about the Front Row investments, spoke "fairly regularly" with Pittarelli about the Front Row investments, but had most of his discussions and received most – "95[%]" – of his instructions from Tamura (Pilling believed those instructions to Tamura came from Pittarelli). Pilling's contact with Campanelli-Pittarelli primarily involved "confirmation that funds had been received". Hunt acknowledged receiving from Pilling wire transfers of Loan money for Front Row.

[48] Pilling admitted to actively participating "in locating investors for Front Row" between December 2005 and March 2007, including some family and close friends. Pilling also admitted that his involvement in the Front Row program resulted in Loans being made from 6 Canadian investors and 87 American investors that totalled approximately C\$240 000 and US\$7.46 million, respectively. Pilling stated that he initially received 5% commissions on the money he raised, later increased by Pittarelli to 7%. Pilling received commissions of C\$80 000 and US\$216 000, which he claimed was less than half of the amount owing to him.

[49] McLeod characterized himself as an "independent agent" for Front Row. McLeod learned of Front Row and was introduced to Pittarelli; Pittarelli, in turn, introduced McLeod to the Front Row venture. McLeod, who had no employment contract or other formal arrangement with Front Row, described his role with Front Row as follows:

Basically, [I] helped to secure loans to cash flow, the purchase of tickets to concerts and sporting events. Also [I] purchased tickets from them for my own clientele, bought and sold them -- you know, sold those tickets for profit. That's primarily my involvement with them.

[50] McLeod stated that, in his Front Row activities, he dealt mostly with Pittarelli, although he also dealt with Hunt (whom McLeod understood to be Front Row's owner) and Tamura (whom McLeod thought might be a partner in Front Row). Loans made through McLeod were typically by cheque payable to Front Row or cash, which he delivered to either Pittarelli,

Campanelli-Pittarelli or Hunt. Pittarelli said that he would meet with McLeod "an average of once every one-and-a-half weeks . . . either to drop off cheques in sealed envelopes, to ask for upcoming events, purchases, and that's about it". Pittarelli described how McLeod would get money from Front Row to pay investors as follows:

He would come to my apartment, and he would meet with [Campanelli-Pittarelli]. He would drop off a list of requests. It would usually be an amount he would be requesting, and she would tell him, I will call you back in a couple of days, I'll get in touch with [Hunt], verify there. [Campanelli-Pittarelli] would then meet [Hunt], go over it, say this is what he wants, [Hunt] would make decisions, and he'd leave [Campanelli-Pittarelli] the cheques, [McLeod] would come back, and they would be done.

[51] Campanelli-Pittarelli said that any cheques and cash received from McLeod she passed on to Hunt without keeping records. Hunt acknowledged receiving from McLeod cheques representing Loan money for Front Row.

[52] McLeod admitted to "actively participat[ing] in locating investors for Front Row" between 2005 and January 2007. McLeod stated that he did not advertise or "go knocking on doors", but matters "snowballed" after he talked to a few people.

[53] McLeod also admitted that his involvement in the Front Row offering resulted in Loans being made by approximately 160 investors in Alberta, British Columbia, Saskatchewan and the United States that totalled approximately C\$3 million. He received commissions of approximately \$50 000 to \$60 000 from his soliciting activities for Front Row. McLeod took commissions out of the money he received from Front Row that exceeded the amount of the investor's return. For example, if Front Row paid a 25% return and the investor had agreed to a 22% return, then McLeod took the difference as his commission.

[54] Jimmy Creason had invested in Front Row and as a result of that experience began soliciting others to make Loans to Front Row. Jimmy Creason said that he explained the Front Row Loan program to approximately 20 people, then they decided if they wanted to invest in Front Row. Other of his statements indicated that a considerably larger number of Front Row investors made Loans through Windy Ridge. Jimmy Creason said that interest in the Front Row investment spread by "word of mouth", with members of his family being some of the first investors through him.

[55] Loan money from investors brought in through Jimmy Creason was initially sent directly to Front Row until the Windy Ridge bank accounts were set up in 2006. Investor money received by Jimmy Creason was deposited into the Windy Ridge bank accounts, then used by Front Row to purchase event tickets.

[56] According to Jimmy Creason, profits from the sale of tickets were paid, often in cash, from Front Row to Windy Ridge. Jimmy Creason would then pay the profits received to the investors. Jamie Creason confirmed that the purpose of Windy Ridge was to facilitate the "flow of funds" for ticket investing. Jimmy Creason believed that his involvement in Front Row resulted in Loans of approximately \$500 000 being made to Front Row.

[57] It appears that Jimmy Creason – not Jamie Creason or Windy Ridge – had the link to Front Row. It was Jimmy Creason who received information and instructions relating to the Front Row investments from Hunt, Pittarelli and, on occasion, Campanelli-Pittarelli. Pittarelli acknowledged that Jimmy Creason had provided investor Loan money to Front Row to be used for ticket purchases.

[58] It appears that Jamie Creason had no direct connection to Front Row; he received his instructions regarding investments made in Front Row from Jimmy Creason. Jamie Creason apparently consulted with Jimmy Creason before bringing in investors for Front Row and before making any interest or principal payments to investors. Jamie Creason said that he brought in fewer than 10 investors who made Loans to Front Row. The evidence indicates, and we find, that Jimmy Creason orchestrated Windy Ridge's involvement in Front Row's operations, with Jamie Creason playing a subordinate role, following his father's directions.

[59] Jimmy Creason claimed that he and Jamie Creason received no commissions for themselves or Windy Ridge from their soliciting activities for Front Row.

4. Record-keeping

[60] In addition to soliciting investors for Front Row, Campanelli-Pittarelli performed "secretarial work" for Front Row. Campanelli-Pittarelli described herself as having "some involvement with tickets and answering the phones". She took instructions only from Hunt. Hunt made all of Front Row's bank deposits and wrote all the cheques to Front Row investors. Campanelli-Pittarelli would sometimes pay investors their returns in cash or by cheque after receiving authorization from Hunt to do so.

[61] Hunt and Campanelli-Pittarelli disagreed on the extent of record-keeping she performed for Front Row. According to Hunt, Campanelli-Pittarelli would keep "a lot of the documents and books and ledgers". However, Campanelli-Pittarelli denied ever performing any record or bookkeeping function or keeping track of the cash or cheques that came in, or even counting the cash. She said she would accept cash or cheques from Front Row investors "[w]henever was needed", and give those to Hunt. When asked if she kept records of investors she brought into Front Row, she stated: "Not really records. Let's say I would write down the name. Let's say the person gave, [for] example, \$10,000, for how long, and as soon as the payment was finished, then I would just discard the piece of paper, let's say, where it was written down."

[62] Pittarelli claimed that Campanelli-Pittarelli did no accounting – "nowhere near any accounting" – although she wrote "down a lot of stuff". According to Pittarelli, it was Hunt who kept track of all the money coming into Front Row.

[63] It is clear that Front Row's records were largely non-existent. Those that were kept were minimal and incomplete at best.

5. Money Loaned

[64] Staff alleged in the Notice of Hearing that during 2006 approximately \$40 million (C\$28.978 million and US\$11.124 million) was raised from about 200 Front Row investors. In

written argument, Staff clarified that they believed the total amount of Loans to Front Row during the Relevant Period likely exceeded \$20 million, although Staff recognized the difficulty of estimating that number in the particular circumstances of a primarily "cash" business.

[65] It is unclear exactly how much money Front Row raised from investors during the Relevant Period. Hunt acknowledged that he did not know how much money came into Front Row; "it just started to snowball and got a little overwhelmed I suppose at the end". Hunt did state that Front Row raised "over [\$]10 million off the top of my head" in 2006, but later stated the amount raised for 2005, 2006 and 2007 together from Alberta investors "has to exceed \$10 million". For the same three years, Hunt estimated the amount raised from United States residents was \$3.1 million, presumably in American dollars.

[66] Although some of the other Respondents provided estimates of the amounts they raised, poor (or non-existent) record-keeping – coupled with the majority of the transactions apparently occurring in cash – make a precise calculation impossible. We do know that Hunt believed Front Row had received approximately C\$10 million and US\$3 million. This appears to be a conservative estimate. Tamura thought he had raised approximately \$1 million, Pilling thought he had raised C\$240 000 and approximately US\$7.464 million and McLeod thought he had raised approximately C\$3 million and approximately US\$350 000. Although neither Pittarelli nor Campanelli-Pittarelli provided any estimate of the money they had raised, based on the remuneration they said they received (which was derived, at least in part, from commissions), it appears that they could have raised as much as some \$6.4 million in Loan money for Front Row (using 10% as a commission rate). Jimmy Creason and Jamie Creason believed that they raised somewhere between \$500 000 and \$700 000.

[67] Considering this evidence, we conservatively estimate that at least \$15 million in investor Loan money was provided to Front Row. We so find.

6. Loan Documentation

[68] While some of the Loans were documented, many apparently were not. It appears that whether Loan Documentation was given to investors depended on who was doing the soliciting activity and whether the investor insisted on some paperwork.

[69] Hunt said that 95% of the Loans made by investors to Front Row were verbal contracts completed with no documentation – or 95% of the Front Row investors had no written contracts or documentation. He also said that some people asked for "a few actual two-paragraph contracts, more of a receipt-type of a contract". We infer that this 95% estimate refers to Loans or investors he was personally involved with or admitted detailed knowledge of (those through Pittarelli, Campanelli-Pittarelli and, possibly, Tamura). Hunt signed a few items of the Loan Documentation, at least some of which he apparently printed off his computer.

[70] Pittarelli said that he personally entered into over six written contracts for Front Row, but that he had never provided any contracts – the investors (such as investor witness SG) usually made up or provided the contracts. He did acknowledge that he may have issued receipts to investors. Pittarelli said that at some point he came to know that other people (for example, according to him, McLeod) "were using some form of contract with my name to solicit funds".

[71] When asked how he kept track of the investors who had made Loans, Pittarelli responded: "Well, we had receipts for what we purchased and what we sold. I mean, we knew who the people were, and they also picked it up at the brokers' offices. So they were either on camera, or the brokers have records of them, or they know who they are." Yet when asked to what level of detail he kept records, Pittarelli said that "at one point, there was no way I could keep track of any of that stuff". As noted, Campanelli-Pittarelli said that for investors she brought into Front Row she would write down an investor's name, the amount loaned and the promised interest rate on a piece of paper, but would discard it once the investor was paid. She acknowledged signing some Loan Documentation, apparently at the request of investors.

[72] Hunt claimed that he was able to keep track of the Loans by means of "a general ledger" maintained by Campanelli-Pittarelli that he had "full access to". Campanelli-Pittarelli denied keeping records as such, and no ledger was produced at the Hearing.

[73] The most extensive Loan Documentation in evidence relates to investors solicited by Pilling. Although Pilling did not document all the Loans he arranged, it appears he did create contracts for a good portion of them. Pilling stated that Tamura ("Front Row, but [Tamura]") instructed him to send the Loan Documentation to investors, who then filled out the forms. However, Pilling thought that the original contract had not come from Tamura: "The original one, you know, my understanding would have been [Pittarelli], but it could have been [Hunt]. . . . I do not know, but the original one, that did come over, just kind of a basic one from -- from what I understood Front Row and not [Tamura]." Several different types of Loan Documentation involving Pilling are in evidence (as noted below); he claimed that Pittarelli, Tamura or both "continually . . . made some changes" to those documents, such as decreasing the interest rate at one point.

[74] The Loan Documentation used by Pilling was titled "Loan Contract", with various additions (such as "B3", "B4" or "- Ticket Program"). The terms of Pilling's Loan Documentation varied. For example, one version provided for 8% interest, payable monthly for 12 months, with the principal due after 12 months ("[a]t 8% per month interest the Lender receives a return of 96% over the 12 month period"). Other purported rates of return included 48% and 120%. A common form of Pilling's Loan Documentation had three options, each for 12 months total, one of which the investor would choose: "5% per month, paid monthly"; "6% per month paid every 3 months"; or "7% per month paid every 6 months". There were default provisions in some of Pilling's Loan Documentation – typically 2% per month if the full amount was not paid when due and a reference to the investor taking "whatever means necessary" (including hiring an attorney) to recover the money.

[75] One version of Pilling's Loan Documentation included spaces for a "Guarantor" or two to sign, date and provide a name and address. Tamura's name and Hunt's name were printed on some of those, with some apparently signed (although Hunt elsewhere claimed that type of purported signature was not his). Front Row was identified as the "Borrower" or "borrower" in Pilling's Loan Documentation. Some of Pilling's Loan Documentation appeared to be signed for Front Row by Tamura and others purportedly by Hunt; some are not signed for Front Row at all. Pilling stated that he saw Tamura sign some of the documents, but never Hunt.

[76] Tamura stated that he signed Pilling's Loan Documentation for Front Row because Hunt was very hard to get hold of. However, Tamura said that he thought Front Row was aware of Pilling's Loan Documentation, and Tamura recalled discussing the earlier ones with Hunt and the later ones with Pittarelli.

[77] Tamura himself used contracts with three percentage options for three different periods. He said he had received blank contracts from Pilling. Tamura said that Hunt knew Tamura was bringing investors in and signing contracts. When asked if he got any contracts from Hunt, Tamura evasively replied: "I'd seen some contracts, but they were different rates and that. So I . . . got mine set up to fit the program that we were doing at that time." Tamura thought he had shown some of his Loan Documentation to Pittarelli, but was less certain he had shown it to Hunt. Tamura stated that he filled out Loan Documentation for about 14 or 15 people who invested in Front Row through him. Tamura also stated that he did not provide investors with any promotional material, prospectus or other offering document.

[78] McLeod used two types of Loan Documentation (although the copies in evidence contain slight variations). First, he gave investors a "Demand Note", which set out the amount of the Loan, the interest rate and the amount due from Front Row "[o]n demand" or at the end of the term. It concluded: "I hereby . . . guarantee payment of the within note." The signature line was "Dan McLeod OF: Front Row Tickets". Second, McLeod used a "Loan Agreement", which stated that the terms of the Loan to Front Row "shall be outlined by a demand note". The signature line was "Dan McLeod For: Front Row Tickets". According to McLeod, he would use the Loan Agreement in conjunction with the Demand Note for the first investment of an investor, then only the Demand Note thereafter. However, McLeod had no documentation for some investors, stating that they were friends who declined documenting their transactions because McLeod's "word is good".

[79] McLeod said that he initially used a different form of "Loan Agreement" which identified "Anthony Pittarelli Front Row Tickets" as the borrower and had a signature line for "Anthony Pittarelli (Borrower)". McLeod said that he had received this document from Hunt and had used it for awhile (signing "for" in front of Pittarelli's name), but was later told – seemingly by Pittarelli – not to use it. At that point, McLeod began using the Loan Documentation with his own name on it.

[80] McLeod described the inception and use of his Loan Documentation as follows:

- Q Where did you receive documents from?
A Those were actually designed by Bank of Montreal. It was something that we adopted in the -- and Front Row said, Well, fine. You go ahead and use it.
Q Who at Front Row said you could use these?
A I had approval from Jay.
Q Is that Jason Hunt and --
A Yes.
Q And he saw a copy of this demand note?
A I believe so.
Q When was that?
A Let me see. We started using those back in -- it would have been June, July.

Q Of what year?
A 2006.
Q Did you use any of these document[s] in 2005?
A 2005, no. No. It was another document which [Hunt] gave -- personally gave me, and we were using that. I believe it had [Pittarelli's] name on it, and then we told -- and then when [Pittarelli] found -- found out that we were using -- he said No. I -- because he said, The loans are not being given -- the money is not being given to me. It's being given to Front Row. I said, Well, that's what I was given, that's what we were utilizing.

[81] McLeod acknowledged providing a brochure to some investors, but stopped when asked to do so by Pittarelli. McLeod did not provide investors with any other promotional material, prospectus or other offering document.

[82] Hunt said that neither he nor Front Row ever gave Tamura, Pittarelli, Pilling or McLeod any form of Loan Documentation. Hunt stated that, when he received investor money (cash, cheques or money orders) from Tamura, Pittarelli, Pilling or McLeod, he did not ask if there was any Loan Documentation in relation to the Loans. Hunt said that he later discovered McLeod was using a form of documentation that resulted in Pittarelli or Front Row obtaining a cease and desist order. While none of the Respondents testified before us and thus we were unable to make any credibility assessments thereon, the totality of the evidence and circumstances is such that Hunt must have had some knowledge -- if not of the exact Loan Documentation -- that Loan Documentation was being provided to Front Row investors. As the guiding mind of Front Row and the individual accepting investor money, Hunt at the very least had a responsibility to make himself aware of and approve any documentation that was being used by all those raising money for Front Row.

[83] Windy Ridge apparently used no Loan Documentation, except for two "promissory notes" that one investor drew up himself.

[84] Some time after making their original Loans to Front Row, some investors were asked to complete "Acknowledgements" relating to loan amounts already paid or still outstanding. A lawyer apparently suggested that such Acknowledgements be obtained.

7. Rates of Return

[85] The evidence is that Front Row offered investors very lucrative rates of return ranging from 5% for 60 days to 152% per year. Rates of return were apparently determined based on the event involved and the length of time from the Loan made to the event date. Hunt explained that Front Row was able to offer investors the large returns because of the substantial profits that could be made when the tickets were resold. As an example, he said that he could purchase a ticket to a Bon Jovi concert for \$100 or \$125 and then resell that same ticket for \$2500. Hunt stated that "98[%] of the concerts that we do buy into do sell out, and there's only a small percentage of [them] that don't and that's the research that I do on-line to make sure that we're purchasing from a -- an artist that is reputable and is going to sell out". According to Pittarelli, Front Row was able to resell some event tickets at a profit approximating 80%.

[86] Consistent with this evidence that Front Row's ticket brokering could be a lucrative business, investor witness DL gave an example of his own ticket-buying experience (not related to Front Row) where he paid many times the face value for a ticket to a rock concert.

[87] Hunt apparently met with Pittarelli, Campanelli-Pittarelli and Tamura "on a regular basis" to discuss Front Row operations, including rates of return to offer investors. This is consistent with the evidence from Pittarelli and Campanelli-Pittarelli – although the latter two implied that Hunt was ultimately the sole decision-maker. Pittarelli denied making any recommendations to Front Row, Hunt or Tamura as to "how much interest would be paid to individual investors that were investing in Front Row". Pittarelli said that, at the start, Hunt told Pittarelli how much the Front Row investors were going to be paid; later, "it was standard policy from" Tamura. Pittarelli characterized Front Row as having a system in which "Hunt sometimes would offer ridiculous amounts of interest, . . . that was [Hunt's] policy". However, this criticism did not stop Pittarelli from offering lucrative rates of return to investors on behalf of Front Row and suggesting that others do the same. For example, Pilling said that he received terms and rates of return from both Pittarelli and Tamura (although Pilling could not say if Hunt was involved).

[88] Hunt had less direct involvement with the other individual Respondents who were also selling investments in Front Row – Pilling, McLeod, Jamie Creason and Jimmy Creason. Hunt denied authorizing Tamura, Pilling or McLeod to offer returns of up to 152% per year or 100% over three months – Hunt did acknowledge authorizing returns of 100% over one year. Hunt, noting that Tamura, Pilling and McLeod were all originally friends with Pittarelli, suggested that those three took advice from Pittarelli relating to raising money for Front Row and implied that the rates of return they were offering investors on behalf of Front Row would have come through Pittarelli. Jimmy Creason said that he would discuss with Hunt the rate of return to offer the investors who invested with Front Row, although there were times when he himself set the rate of return for an investor. Jamie Creason said that his father told him what rate of return to offer the Front Row investors he solicited and that Jimmy Creason took instructions from Hunt for the Front Row investments.

[89] Notwithstanding Hunt's attempt to distance himself, it does appear that McLeod, Jamie Creason and Jimmy Creason knew of Hunt's connection to Front Row – for which they were raising money – and had some reason to believe that Hunt was directing the rates of return that they were told to offer investors. As McLeod stated, "most everything that I got would have come from [Hunt]" because Pittarelli "always had to go to somebody to -- to give me a rate".

[90] While the evidence is not clear as to whether one person ultimately established the rates of return that were to be paid to Front Row investors, it does appear more likely than not that Hunt, Tamura, Pittarelli, Campanelli-Pittarelli and – to a lesser extent – Jimmy Creason were all involved in the discussions that led to the rates of return set for investors. We so find.

8. Payments to Investors

[91] Staff did not provide banking or other evidence to show to where the Front Row, S & I or Windy Ridge money was disbursed, including payments made to investors. The evidence indicates that most, if not all, investors received their interest payments, principal repayments or both until early 2007. Payments to investors were apparently often made later than promised; however, this tardiness seemed to be of no concern to the investor witnesses.

[92] Front Row payments to investors were made by cash, cheque or wire transfer. When it was time to pay the investors, Hunt would pay the person who brought in the investor and that person would pay the investors:

Typically if it -- I'm just using somebody's name as an example. I'm not pointing any finger at anybody. If it was Sam Tamura, and we basically use his account as kind of a line of credit as per se, and we would pay back Sam Tamura, and if he had borrowed any money from somebody, I was probably not aware of who he borrowed money from, so I -- I would pay Sam Tamura, and it was his responsibility to pay back the lenders.

...

Well, I could see the deposits that were made in and the agreements that [Tamura] told me that he had made. If it was at 10[%], then I would write [Tamura] a cheque for that amount so I don't have to write twenty cheques, and if he -- if he felt that he wanted to take a commission off of the back end of that, that was his prerogative. I had already made the agreement with [Tamura] as a -- say, a 10[%] rate, and if he wanted to pay his -- his lenders 8[%] and keep 2[%] for himself, that was -- that was his business.

[93] Tamura paid the investors he had brought into Front Row from the S & I bank accounts, after seeking and obtaining Front Row's authorization (which we conclude was ultimately Hunt's authorization).

[94] Tamura, who had received investor money for Front Row from Pilling, paid Pilling who in turn paid interest and principal to the investors he had solicited. Tamura said he made those payments to Pilling after receiving instructions to do so from either Pittarelli or Hunt. Pilling confirmed that all of the money he used to pay investors came from Tamura. Pilling gave an example of his payout communications with Tamura: "[F]or example, I'd give him an invoice for a -- a monthly payout, and then he would get it okayed and provide money in my bank account, so I could send that money out to the individuals".

[95] McLeod said that the cheques for any money he received back were always Front Row cheques signed by Hunt, except for a few occasions when Hunt was unavailable, in which case he received cheques written from S & I. The cheques from Front Row were sometimes made payable to McLeod; McLeod would then cash the cheques and distribute the appropriate amounts to the investors. If McLeod received cheques from Front Row or S & I payable to a particular investor, he would deliver the cheque to the investor directly. Tamura confirmed that he wrote cheques payable to McLeod, on instructions from Front Row, Hunt and Pittarelli, that Tamura believed were "[t]o pay out clients".

[96] According to Jimmy Creason, investor money was deposited to the Windy Ridge bank accounts, as were profits from ticket sales received from Front Row. Jamie Creason or Jimmy Creason paid investors their principal and interest after receiving authorization from Front Row (we conclude that authorization was from Hunt).

9. Representations to Investors

[97] It appears for the most part that the information provided to investors was in oral discussions, was limited and varied with the seller. However, McLeod gave some potential

investors a brochure (as noted above), and Pilling gave some potential investors a letter outlining his own introduction to and understanding of the opportunity.

[98] The evidence is that Front Row, through Hunt or perhaps Pittarelli, had told certain select investors that their principal or interest was guaranteed – that is, apparently personally guaranteed by Hunt. There is one example, mentioned by both Hunt and Pittarelli, in which an investor was told that his Loan to Front Row – or the principal or interest – was guaranteed by Hunt and secured by a charge on Hunt's home. According to Hunt and Pittarelli, Front Row, through either of them, did not advise any other investors that their principal or interest was guaranteed. Pittarelli stated: "[A]ny other time, I guess, they know the risks. They were explained the risks involved with the business." The risks inherent in the ticket brokerage business were described by Pittarelli as follows:

Oh, you could never be [100%] sure [that tickets would sell for the expected high price]. I've taken beatings on shows, you know, but I've also quadrupled my moneys on certain shows, you know. So you can really -- just experience, history, and the person loaning the money or the promoter of these things explaining properly to the person what the ins and outs are, and what happens.

Like, anytime I've taken money for myself personally, not from Front Row, when I've solicited funds for myself, I've always explained the risks, and I've paid late 80 or 90[%] of the time I've ever taken money, which they were aware of.

[99] Hunt stated that he did not initially tell investors of potential risks, but did do that "[l]ater on": "When it got to that point where I was telling people about the risk, I basically told them that, like any risk -- like any investment or any loan, there is a risk. If something happened that you could lose your money and to not spend anything that you shouldn't afford to lose."

[100] Pilling denied advising investors that their investments were guaranteed. However, according to Pilling, in the beginning a small group of people were told, apparently by or as instructed by Tamura, that there would be no risk to their principal as Tamura "personally guaranteed the first million dollars or so". However, as Pilling said, "it was just for a -- a fairly short period of time before they realized, Hey, I can't -- can't guarantee everybody".

[101] Campanelli-Pittarelli did not tell investors about any risks involved in the Front Row investment but did tell investors that their principal and interest payments could be later than expected.

[102] Tamura acknowledged speaking, along with Pittarelli, to a couple in Lethbridge and describing the Front Row investment. Tamura thought they explained to the couple that there was a risk in the investment, but he was unsure. When asked if he told them their principal was guaranteed, Tamura stated that he "can't remember", but "[w]e could have. . . . It's been a long time." When questioned during the Tamura Interview about what was told to investors in general, Tamura engaged in the following exchange:

Q Anyone you spoke to. What did you tell them?

A I told them that they would lend Front Row the money, and they would get a return back, whether they wanted it on a monthly or six months or ten months or a year, whatever -- what they decided, how they wanted it.

Q And were the investors advised that their funds would be guaranteed, their initial investment, their principal?
A Probably, yes.
Q You probably said that?
A Yes, probably. Yeah.
Q And how about the interest? What did you said about the interest?
A It would be payable on -- on the dates that they chose.

[103] In the McLeod Interview, McLeod said he advised most of the investors he solicited that there was a risk in making the Loans to Front Row and a possibility that they could lose all their money, although he conceded he said that was a "very minimal" chance. However, McLeod later admitted in the McLeod Admissions that he "routinely" represented to potential investors that both the principal amount and the interest payable on their Loans "were guaranteed", with, we note, no indication by whom or how.

[104] Jamie Creason and Jimmy Creason stated they told investors that, if they loaned money to Front Row, there was a risk that payment on their investment could be delayed or they could lose their money. Both Jamie Creason and Jimmy Creason contended that they never told any prospective investor that either their principal or interest was guaranteed.

10. Reliance on Exemptions

[105] None of the Respondents acknowledged that they understood throughout the Relevant Period that Front Row was selling securities and subject to regulation under the Act.

[106] None of the Respondents apparently inquired as to whether any of the prospective investors they were soliciting would qualify under any of the available registration and prospectus exemptions. Some of the individual Respondents solicited their family, friends or business associates, encouraging them to make Loans to Front Row, but none of them apparently assessed at the time whether these family, friends or business associates were eligible to be sold Loans without a prospectus or the involvement of a registrant. At the Hearing, little evidence was adduced – apart from the testimony given by the investor witnesses, which we discuss next – to establish the nature or extent of the relationship of each Front Row investor with the Respondent who sold the investor the Loan.

III. INVESTOR TESTIMONY

[107] We found the investor witnesses credible and their testimony reliable overall, with one exception as noted below.

A. MH

[108] MH, an Alberta resident, learned of the opportunity to invest in Front Row from his son ("CH"). On 26 October 2006 MH and CH met with McLeod at CH's home. McLeod did not specify if he had any position with Front Row, but he told MH and CH that lending money to Front Row to buy and resell tickets was a good investment. Both invested that day – MH gave McLeod \$10 000; CH gave McLeod \$5000.

[109] In evidence is a "Demand Note" dated 26 October 2006 (the "MH Demand Note"), stating that MH and his wife were to be paid \$15 000 "[o]n demand". The term was noted as six months, and interest of 24% per year was payable on default of payment. MH witnessed

McLeod sign the MH Demand Note, above the words "Signature: Dan McLeod OF: Front Row Tickets". MH testified that the MH Demand Note was the "receipt" he received from McLeod for the \$10 000 Loan, with the \$15 000 representing the amount MH was owed at the end of the six-month term (despite the "demand" wording). Another document in evidence is a "Loan Agreement" of the same date between MH and his wife as lender and Front Row as borrower. MH testified that McLeod signed that document, over the words "Dan McLeod For: Front Row Tickets". Also in evidence is MH's cheque for \$10 000, dated 26 October 2006 and payable to "Front Row Tickets".

[110] MH testified that McLeod did not explain any risks of the investment and that "[w]e never discussed if it was safe or unsafe." According to MH, McLeod also "never said he guaranteed it, but he said it was a good investment". Neither did McLeod mention the concepts of prospectus, registration or exemptions. MH never received his principal back or any interest, the Freeze Orders having been made. This has led to difficult financial consequences. MH stated that he telephoned McLeod and left messages, but never received an answer.

B. BA

[111] BA, an Alberta resident, learned about the Front Row opportunity through a close friend – Tamura's son. BA then spoke to Tamura, who told BA how the business worked and that he could choose to receive a return after one month, six months or one year. BA initially decided to invest \$10 000 at 5% monthly for a year. He later invested another \$15 000. BA stated that his father invested \$45 000 and his mother invested \$160 000. BA testified that Tamura did not mention any risks, although he promised the particular rates of return.

[112] According to BA, Tamura described himself as "basically a business partner for Front Row, and he did a good part of that buying and selling of tickets". BA stated that Tamura never mentioned a prospectus or registration, although he did say something to the effect that BA "was counted as friends or family" for an exemption (which, we note, is at odds with the S & I and Tamura Admissions). BA noted that the close relationship he had was with Tamura's son, not Tamura.

[113] In evidence is a "Loan Contract" dated 15 September 2006 between BA as lender and Front Row as borrower for a principal value of \$160 000 with interest of 7% per month paid every six months. BA testified that this was the document for the Loan from his mother to Front Row, and that he signed for her after Tamura provided it. "Sam Tamura" is hand-printed next to "*Front Row Tickets*" (original emphasis). BA testified that he faxed this document to Tamura, who apparently then signed above that printed name. BA stated that he and his parents have not received any return back from their investments, the Freeze Orders having been made. BA stated that the loss of the money has been particularly difficult for his mother because it was such a large amount. We infer from BA's testimony that neither he nor his mother qualified as an accredited investor at the times they invested in Front Row. BA concluded that he probably would not make this type of investment again.

[114] BA thought that all the payments were made either to Tamura personally or to S & I, but that none were made directly to Front Row.

C. TM

[115] TM, an Alberta resident, learned of the Front Row opportunity through a friend who introduced TM to Pilling. TM met with Pilling in July 2006, and Pilling "basically kind of touched base on what the investment was with, and what they invested it in, and what the returns would be; and that was just -- kind of gave me a basic going over of how it worked". TM anticipated that Pilling and the others he worked with would take "a small cut" of the money invested, but TM never asked about that and was not told. TM testified that Pilling said the return would be 10% per month. There were different percentages for keeping all the money in or for withdrawing some of it.

[116] TM made two \$10 000 investments – one he left in "to compound" and the other he "drew a thousand a month off". TM took to his first meeting with Pilling a bank draft already made out to Front Row in the amount of \$20 000, but did not make any investment in Front Row at that meeting. TM testified that he later gave Pilling a \$20 000 cheque payable to Front Row – a copy of such a cheque, dated 25 July 2006, is in evidence. Although Pilling seemingly promised TM a receipt, he did not receive one. There is, however, a "Loan Contract" in evidence for \$20 000, bearing interest at 10% monthly or "a return of 120% over the 12 month period". This was signed by TM as lender on 1 August 2006 and had an unidentified signature for borrower dated 2 August 2006. The hand-printed borrower's name was Front Row.

[117] TM testified that Pilling did not mention a prospectus, registration or exemptions. TM stated Pilling said that "there was no risk" and that the returns were guaranteed. In cross-examination, TM was adamant that Pilling used the word "guaranteed". TM believed that meant guaranteed by Front Row, and TM agreed he would not have entered the contract if he had known the Loan was not guaranteed. TM also acknowledged that he overcame any hesitation he had about the investment because he had faith in his friend who introduced TM to Pilling.

[118] TM testified that Pilling mentioned two other names in connection with Front Row – one was Sam with the last name "Tam something"; the other was "Anthony something". TM did not know their roles with Front Row, but stated: "[I]t sounded like they were overtop of [Pilling], because he was always answering and asking them for money or permissions. . . . [Pilling] always told me he'd have to go back and talk to Sam, you know, usually Sam. He always said he had to go speak to Sam". TM also stated that Pilling said he was going to give TM's cheque "to Sam".

[119] TM did receive six payments of \$1000 each, as expected. TM testified that Pilling "just gave me the run-around" instead of explaining why the payments stopped. However, TM also agreed that Pilling was "being pretty fair" in trying to address TM's concerns at that point. TM received no other interest payments, nor has he received his principal back.

[120] TM stated that the investment in Front Row "definitely affected my life", and that he would "definitely not" make this type of investment again.

D. SG

[121] SG, an Alberta resident, learned of Front Row in June 2005 from a business associate, TL, who apparently stated that an investment with Front Row would lead to "a good return". SG gave cash to TL on two occasions – \$10 000, then \$10 000 or \$20 000 – before meeting with "Giovanna and Anthony and Jason Hunt". SG identified the first two as having the surname Pittarelli. SG testified that "a combination of all three" described Front Row's business to him as buying and selling tickets. SG invested another \$100 000 at that time. He stated that his total investment in Front Row was \$477 000, of which he recovered \$360 000. The additional amounts were invested as a result of many meetings with Campanelli-Pittarelli, some of which SG described in his testimony, as well as a meeting with Pittarelli. SG testified that he did receive "a lot" of the promised payments, although some were late. He received his last payment in, he believed, December 2006, then went out of the country for a time, learning on his return that Front Row's "money had been seized" (frozen).

[122] SG stated that Hunt, Pittarelli and Campanelli-Pittarelli never used the term "accredited investor", "prospectus" or "exempt market".

[123] In evidence is a "Loan Contract" dated 26 August 2005 between SG as lender and Pittarelli as borrower, providing that the borrower was to pay \$100 000 principal and \$10 000 per month interest within 12 months. SG stated that he thought Hunt drafted the document; SG signed it and saw Pittarelli sign it.

[124] Another document in evidence was also titled "Loan Contract" and was dated 30 November 2005. It was for the same principal and interest amounts, all to be paid by 30 April 2006. SG was again listed as the lender; this time both Pittarelli and Campanelli-Pittarelli were identified as the borrowers under the name of Front Row. SG stated that he drafted this document, based on the 26 August 2005 document. He also testified that Campanelli-Pittarelli, Pittarelli and Hunt were all present, and that he saw all three of them sign the document (Hunt as a witness).

[125] A third document in evidence was for a further \$150 000 loan, dated 4 August 2006. SG testified that Campanelli-Pittarelli "phoned me and wanted [\$]150,000, so I typed up this agreement, and I met her, and she signed it, and I signed it". This "Loan Contract" specified that cheques were payable to "S & I HOLDINGS"; SG said that is what Campanelli-Pittarelli told him should be done.

[126] SG also testified to a handwritten document (by him) stating that Campanelli-Pittarelli received \$30 000 from him on 19 September 2006, then a similar typed document for \$10 000 and dated 3 April 2006. Both were signed by Campanelli-Pittarelli.

[127] There are several cheques in evidence, some from SG and some paid to him. SG stated that he gave at least two of the former category to Campanelli-Pittarelli. He further testified that those in the latter category were for interest on money he loaned to S & I, and that at least two of those he had received from Campanelli-Pittarelli. SG also stated that most of the cheques payable to him but not in evidence were from Front Row.

[128] SG testified that he had not received any explanation of the relationship between Front Row and S & I, other than Campanelli-Pittarelli telling him "they were part of the company, and they were involved in it, S&I". He did say, during cross-examination, that he was told S & I was "part of Front Row Tickets", but that he did not understand the extent of S & I's involvement until after the Freeze Orders were made. At another time SG referred to S & I as a "holding company" for Front Row. He ultimately agreed with a statement by counsel for S & I and Tamura that SG had the impression from Campanelli-Pittarelli "that S&I was connected in some fashion with Front Row".

[129] Counsel for Front Row, Hunt, Pittarelli and Campanelli-Pittarelli brought out some inconsistencies in SG's testimony. Staff had provided to the Respondents a "will say" statement outlining SG's anticipated evidence based on a discussion between SG and a Staff investigator. Also in evidence is a 30 April 2007 letter from SG to the Staff investigator. There are some differences between the information in those two documents and the testimony SG gave at the Hearing. For example, the "will say" apparently said SG was expected to testify that there was no guarantee on the principal he invested. SG disagreed with that during cross-examination, stating that he did not recall telling the Staff investigator that and "why would anyone write up a contract agreement assuming he didn't care if he got the principal back". SG agreed that the first contract he signed had a default clause, which allowed for the possibility of non-payment. Counsel for Front Row, Hunt, Pittarelli and Campanelli-Pittarelli also noted that SG's 30 April 2007 letter to the Staff investigator stated that SG invested \$250 000 in Front Row, while his testimony at the Hearing stated the amount was \$477 000. SG explained the \$227 000 difference by stating that the amount in the letter was "a rough estimate", which he revised after going through his records again.

[130] In cross-examination by counsel for Front Row, Hunt, Pittarelli and Campanelli-Pittarelli, SG acknowledged that investments have risks, but stated: "At the time I didn't know there was a risk, I didn't -- because I talked to several people, and they acted like it was a sure thing, so I didn't think there was a risk at the time." Those he relied on were Hunt, Pittarelli, Campanelli-Pittarelli and TL.

[131] In cross-examination by Jamie Creason, SG acknowledged sharing in some money paid out of court. SG admitted that he claimed \$477 000 in that proceeding – not \$477 000 less any principal or interest payments received – and thus apparently received more money than he was entitled to under his Loans.

[132] SG stated that he now trusts only himself to invest his money – "I don't invest with anyone anymore."

[133] Despite some inconsistencies in SG's evidence, we, having considered their nature, found SG credible and his testimony reliable in all but one respect: we do not accept his evidence at the Hearing that he was essentially guaranteed a return of his principal. He clearly wanted his principal returned – as all investors presumably do – but that hope does not equate to a guarantee by Front Row, S & I or any of the individuals with whom SG was dealing.

E. DL

[134] DL, an Alberta resident, testified that all the investments he made were in Windy Ridge, although he later realized the money was for Front Row investments. DL also acknowledged that \$500 000 of his money invested in Front Row went to a different entity, not Windy Ridge, at Jimmy Creason's direction.

[135] DL learned of the Front Row opportunity through Jamie Creason, a relative, in October 2006. DL's description of the Loan program was consistent with the other evidence before us.

[136] DL gave Jamie Creason a cheque for \$300 000 payable to Windy Ridge and dated 31 October 2006. DL testified that Jamie Creason told him what name to put on the cheque. This Loan was to pay interest at a rate of 10% per month over six months, but DL ended up leaving the money in longer. He received interest payments totalling \$120 000 on this investment until the Freeze Orders were made. DL was clear that, although he knew Jamie Creason and Jimmy Creason "were both doing great by way of their investments", DL also knew he "never had a guarantee. . . . [I]t was a business investment basically, so there was no guarantee that the funds would be there". DL stated that Jamie Creason never discussed if DL qualified as an accredited investor, nor did they have discussions about DL's net worth. However, it appears that DL would have been an accredited investor at the time and that Jamie Creason may have known of DL's financial circumstances because of their family connection, although no attempt was made to ascertain DL's eligibility as an accredited investor at the time Jamie Creason first solicited DL to invest in Front Row.

[137] Later on DL dealt with Jimmy Creason, likely within about three or four months of making the initial investment. All or most of DL's latter investments were, apparently, typically made through Jimmy Creason. DL stated that, at first, he received regular interest returns by cheque, which he believed were all from Windy Ridge. DL never thought that Jamie Creason was buying and selling the actual tickets; "it was always a person named Anthony". DL stated that he never met or spoke with Tamura.

[138] DL also made a \$50 000 investment, apparently for only about three months, at 50% or 60% interest. However, he received no principal back or interest. After that, DL and another person invested \$500 000 as a short-term investment in the Super Bowl in late November 2006 and received \$650 000 back. DL then made another \$500 000 investment at 8% per month, through another entity, not Windy Ridge. DL himself, before making these investments, had bought tickets at a premium – apparently as much as \$500 for a ticket with a face value of slightly less than \$100.

[139] DL testified that he lost \$630 000 of principal. DL agreed that his investments in Front Row were performing as he expected until about April 2007. He learned then of possible problems; he learned in May 2007 about the Freeze Orders.

IV. ANALYSIS

A. Trading in Breach of Registration and Distribution Requirements

1. Registration

[140] Section 75(1)(a) of the Act (as it read during the Relevant Period) stated that no person or company shall "trade in a security" unless the person or company is registered under the Act. The requirement that a person or company must be registered with the Commission before trading in or selling securities is one of the fundamental protective elements of securities regulation. Registration of individuals and firms serves as a protective mechanism – only those properly qualified and suitable are allowed to trade securities with or on behalf of the investing public.

[141] The evidence is, and we find, that none of the Respondents were registered to trade in securities in Alberta during the Relevant Period. Accordingly, we must determine whether any of the Respondents were "trading" in "securities" within the meaning of the Act.

2. Securities Offered by Front Row

[142] Section 1(ggg) of the Act sets out a broad, non-exhaustive definition of "security", including:

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

. . .

(xiv) any investment contract;

[143] As discussed above, investors lent money to Front Row for the purchase and resale of tickets to various events, for various terms and at various rates of interest. If documented – apparently most Loans were not – the Loan often took the form of a "Loan Contract" or "Demand Note". In the Statements of Admissions, Tamura, S & I, Pittarelli, Campanelli-Pittarelli, Pilling and McLeod each admitted that the Loans to Front Row were "securities".

[144] We agree.

[145] We find that the Loans to Front Row were clearly "securities" as each document or oral agreement was a "note or other evidence of indebtedness" under section 1(ggg)(v) of the Act. Investors lent money to Front Row on the understanding that they would receive payment of the indebtedness – principal plus interest – owing under the Loans.

[146] We also find that the Loans to Front Row were "investment contracts" and thus "securities" under section 1(ggg)(xiv) of the Act. What constitutes an investment contract, which is not defined in the Act, has been the subject of jurisprudence in Canada and the United States. The seminal Canadian case is *Pacific Coast Coin Exchange of Canada Limited v. Ontario (Securities Commission)*, [1978] 2 S.C.R. 112, affirming (1975), 8 O.R. (2d) 257 (C.A.), affirming (1975), 7 O.R. (2d) 395 (Div. Ct.) (following tests adopted by United States courts in *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946) and *State of Hawaii v. Hawaii Market Center, Inc.*, 485 P.2d 105 (1971)). *Pacific Coast* requires that, for an investment contract to be found, there be an investment of money in a common enterprise with an expectation that profits would be earned

from the "undeniably significant" efforts made by parties other than the investors. The Commission has followed *Pacific Coast* in, for example, *Re Land Development Company Inc.*, 2002 LNABASC 208 and, more recently, *Kustom Design*.

[147] Participation in the Front Row venture required an investment of money. The commonality required existed between the Respondents as promoters and sellers of Front Row and the investors as the providers of capital to Front Row. The evidence clearly demonstrates that once investors lent their money to Front Row, they were not required to do anything further. Front Row took investor money and expended efforts to purchase blocks of event tickets and resell them (obviously intending to resell them at a profit). From profits realized – after payments to salespersons and to defray administrative expenses – Front Row was then to pay investors their agreed returns. There is no question that these efforts of Front Row were the "undeniably significant" ones from which investors hoped to receive profits from their investments. Thus, we find that the elements for an investment contract as set out in *Pacific Coast* are met, and the Loans were investment contracts.

[148] We therefore find, on both bases, that the Loans to Front Row were "securities" under the Act.

3. Trades in Front Row Securities

[149] Section 1(jjj) of the Act defines "trade" to include "any sale or disposition of a security for valuable consideration" and "any act, advertisement, solicitation, conduct or negotiation made directly or indirectly in furtherance of" a trade.

[150] The concept of "trade" within the meaning of Alberta securities laws is broad. However, the Commission has recognized that indirect acts of trading must have a "sufficiently proximate connection" to a trade in securities to constitute an act in furtherance of such a trade. Thus, the Commission examines the whole of the conduct and context in which a particular act occurred in determining whether it was an act in furtherance of a trade in a security (*Kustom Design* at paras. 159-60).

[151] The evidence is clear that Front Row sought to and did raise capital through marketing and selling its securities – the Loans – to investors resident in Alberta and elsewhere. Front Row accepted money loaned to it by investors. Front Row also entered into, approved or encouraged arrangements with others who promoted and sold the Loans to investors on Front Row's behalf. These sales of securities financed Front Row's ticket brokerage business activity. We conclude that Front Row sold its securities for valuable consideration, and thus we find that it clearly traded in its securities.

[152] The evidence is clear that Hunt, as the sole director, officer and shareholder of Front Row, played an active role in Front Row's daily operations and activities, including directing the sale of Front Row securities to the public. As we earlier found, Hunt was the guiding mind of Front Row. In the Hunt Interview, Hunt acknowledged that he, in conjunction with Pittarelli, was responsible for all major decisions concerning Front Row's operations. Hunt was involved in setting the rates of return payable on the Loans. Hunt admitted he was aware that Front Row was receiving money from investors. He was the sole signatory for the Front Row bank accounts and made most of the deposits to those accounts. Hunt told Staff investigators that Front Row

had raised approximately \$10 million from Canadian investors and some US\$3.1 million from investors in the United States. There is also evidence from investor witness SG that he met with Hunt to discuss the Front Row venture before SG made an investment of \$100 000. Tamura in the Tamura Interview said that he too dealt with Hunt when making Tamura's own \$40 000 investment in Front Row. There are at least two "Loan Contracts" in evidence that bear Hunt's signature. Hunt acknowledged he was also aware that Front Row used a network of sales agents, including Tamura, Campanelli-Pittarelli, Pilling and McLeod, to facilitate the sale of the Loans to investors, although these individuals or companies were apparently not employed by Front Row. These activities undertaken by Hunt were, we find, either acts in furtherance of trades in securities or actual trades (sales) of the Front Row securities to investors for valuable consideration.

[153] In the Statements of Admissions, Tamura, S & I, Pittarelli, Campanelli-Pittarelli, Pilling and McLeod each admitted that they "actively solicited funds from investors in Alberta and elsewhere" – the Loans made to Front Row – and that they traded in securities of Front Row. We conclude that those admissions are consistent with the other evidence before us, as we now discuss.

[154] The evidence is clear and consistent with the S & I and Tamura Admissions that Tamura directly solicited and sold the Front Row securities to individuals (who were apparently for the most part his friends and business associates). Investor witness BA testified that his and his parents' investments in Front Row had been made directly through Tamura. There is also no dispute that the S & I bank accounts were used to receive investor money. Tamura and S & I were described as providing a "line of credit" to Front Row. Tamura himself paid investor money into the S & I bank accounts, apparently as instructed by Hunt, Pittarelli and Campanelli-Pittarelli. Tamura was involved in setting the rates of return payable on the Loans. Tamura also discussed with prospective investors potential rates of return that could be earned from investing in Front Row. We further conclude from the evidence that Tamura managed or gave instructions to some of the sales agents, such as Pilling, who were active in soliciting investors to make Loans. These activities undertaken by Tamura and S & I were, we find, either acts in furtherance of trades in securities or actual trades (sales) of the Front Row securities to investors for valuable consideration.

[155] The evidence is clear and consistent with the Pittarelli Admissions that Pittarelli directly solicited and sold the Front Row securities to investors. Pittarelli was Hunt's associate in Front Row and played an active role in its day-to-day operations. Pittarelli also managed, on behalf of Front Row, at least some of the various sales agents, including Tamura and McLeod, who were directly involved in selling Front Row securities to investors. Pittarelli personally accepted money from investors. Pittarelli signed some of the Loan Documentation in evidence, for example, some of that relating to the investments of investor witness SG. Pittarelli was involved in setting the rates of return payable on the Loans. He also solicited investor interest in Front Row by explaining to some investors how their investments in Front Row would generate the profits they were to receive. For his involvement with Front Row, Pittarelli admitted earning approximately \$400 000. These activities undertaken by Pittarelli were, we find, either acts in furtherance of trades in securities or actual trades (sales) of the Front Row securities to investors for valuable consideration.

[156] The evidence is clear and consistent with the Campanelli-Pittarelli Admissions that Campanelli-Pittarelli played an active role in the sale of Front Row securities to investors. She personally sold Front Row securities to investors, including investor witness SG. Campanelli-Pittarelli personally accepted money from investors and from Front Row agents such as Jimmy Creason. Campanelli-Pittarelli signed some of the Loan Documentation in evidence, for example, some of that relating to the investments of SG. Campanelli-Pittarelli was involved in setting the rates of return payable on the Loans. She also discussed with prospective investors possible rates of return for the Loans. For her involvement with Front Row, Campanelli-Pittarelli admitted earning approximately \$240 000. These activities undertaken by Campanelli-Pittarelli were, we find, either acts in furtherance of trades in securities or actual trades (sales) of the Front Row securities to investors for valuable consideration.

[157] The evidence is clear and consistent with the Pilling Admissions that Pilling played an active role in the sale of Front Row securities to investors. He actively solicited investors and sold Front Row securities to investors, such as his sister, niece, friends and others located in Canada and the United States. One such investor was investor witness TM. Pilling acknowledged that he sold Front Row securities to six Canadian investors who invested some \$240 000 in Front Row and to 87 United States investors who invested almost US\$7.5 million in Front Row. Pilling also discussed with prospective investors possible rates of return for the Loans and other aspects of the Front Row venture. Pilling prepared some of the Loan Documentation in evidence. Pilling received commissions from Front Row for his selling of the Front Row securities. These activities undertaken by Pilling were, we find, either acts in furtherance of trades in securities or actual trades (sales) of the Front Row securities to investors for valuable consideration.

[158] The evidence is clear and consistent with the McLeod Admissions that McLeod played an active role in the sale of Front Row securities to investors. He actively solicited investors and sold Front Row securities to at least 118 investors in Alberta and elsewhere. Investor witness MH purchased his Front Row securities from McLeod. McLeod took investor money and forwarded the money to Front Row. McLeod in the McLeod Interview said that he prepared some of the Loan Documentation in evidence. McLeod also discussed with prospective investors possible rates of return for the Loans and other aspects of the Front Row venture. McLeod received commissions from Front Row for his selling of the Front Row securities. These activities undertaken by McLeod were, we find, either acts in furtherance of trades in securities or actual trades (sales) of the Front Row securities to investors for valuable consideration.

[159] The evidence is clear that Jamie Creason and Jimmy Creason accepted money from investors solicited by them and deposited it into the Windy Ridge bank accounts, all for the purpose of facilitating investor participation in the Front Row venture. Investor money was paid into the Windy Ridge bank accounts on the instructions of either Jamie Creason or Jimmy Creason, the signing authorities for those accounts. Jimmy Creason in his submissions characterized Windy Ridge's operations as a "revolving line of credit" for Front Row, with money coming in under the direction of Front Row.

[160] Jamie Creason neither testified during the Hearing nor made any admissions. However, in the Jamie Creason Interview, Jamie Creason stated that he solicited and sold securities of Front Row to investors – apparently fewer than 10 invested through him. Jamie Creason also discussed with prospective investors possible rates of return for the Loans and other aspects of the Front Row venture. As discussed above, Jamie Creason took money from investors and deposited it into the Windy Ridge bank accounts. These activities undertaken by Jamie Creason were, we find, either acts in furtherance of trades in securities or actual trades (sales) of the Front Row securities to investors for valuable consideration.

[161] Jimmy Creason neither testified during the Hearing nor made any admissions. Jimmy Creason stated in the Jimmy Creason Interview that he explained the Front Row venture to approximately 20 people (apparently most, if not all, were family, friends or business associates), and those who decided to invest in Front Row did so through him. Jimmy Creason also discussed with prospective investors possible rates of return for the Loans and other aspects of the Front Row venture. As discussed above, Jimmy Creason took money from investors and deposited it into the Windy Ridge bank accounts. These activities undertaken by Jimmy Creason were, we find, either acts in furtherance of trades in securities or actual trades (sales) of the Front Row securities to investors for valuable consideration.

[162] Based on the foregoing, we find that all of the Respondents "traded" in securities of Front Row.

4. Distribution of Front Row Securities

[163] A "distribution" is defined in section 1(p) of the Act as including "a trade in securities of an issuer that have not been previously issued". Section 110(1) states that no person or company shall trade in a security "if the trade would be a distribution of the security" unless a prospectus has been received by the Executive Director. This requirement is one of the fundamental protective elements of securities regulation. Compliance with section 110(1) protects investors who are considering the purchase of a security by providing the investor with a prospectus that contains full, true and plain disclosure of information necessary to enable the investor to assess the risks of the investment and make an informed investment decision.

[164] The evidence is, and we find, that Front Row had not filed a prospectus in Alberta to distribute its securities here. Accordingly, we must determine whether the trades of Front Row securities by the Respondents were "distributions" within the meaning of the Act.

[165] The securities of Front Row sold to investors were not previously issued. Therefore, the trades of Front Row securities by the Respondents were also "distributions" of Front Row securities.

5. Registration and Prospectus Required

[166] We found that the investments in Front Row – the Loans – involved the issuance of securities and that all of the Respondents traded and distributed those Front Row securities. We further found that none of the Respondents were registered to trade in securities in Alberta. We also found that Front Row had not filed a prospectus in Alberta to distribute its securities here. Therefore, in the absence of an available or applicable exemption or exemptions, each of the

Respondents contravened sections 75(1)(a) and 110(1) of the Act when they traded in and distributed the Front Row securities.

6. Unavailable and Inapplicable Exemptions

[167] Any person or company that trades in and distributes securities must ensure that each and every one of the trades and distributions complies with Alberta securities laws. This is the case whether the person or company decides to use a registrant and a prospectus or, alternatively, obviates the need for those by relying on an available and applicable exemption. A person or company making a trade or distribution in reliance on an exemption has the onus of proving: first, that an exemption was available and applicable in the circumstances to complete the trade or distribution; and, second, that there was strict compliance with the exemption being relied on (*Re Bartel*, 2008 ABASC 141 at para. 109; and *Re Euston Capital Corp.*, 2007 ABASC 75 at para. 98). Such a person or company unable to prove reliance on available and applicable exemptions will be found to have contravened sections 75(1)(a) and 110(1) of the Act.

[168] In that none of the Respondents were registered to trade in securities and that Front Row had not filed a prospectus to distribute its securities, the onus was on the Respondents to prove that one or more of the exemptions from the registration and prospectus requirements under NI 45-106 (before 14 September 2005, Multilateral Instrument 45-103 *Capital Raising Exemptions* ("MI 45-103")) was or were available and applicable for all trades and distributions made by them, respectively, without registration and a prospectus.

[169] None of the Respondents demonstrated that there was an exemption available or applicable for all of their respective trading in or distributing of the Front Row securities.

[170] In the Statements of Admissions, Tamura, S & I, Pittarelli, Campanelli-Pittarelli, Pilling and McLeod each admitted making no attempts to determine whether any of the investors they solicited qualified under any of the available exemptions. Jamie Creason in his written submissions candidly acknowledged that until April 2007 he was not aware of the requirements of Alberta securities laws – did not know of the registration and prospectus requirements, nor that there were exemptions available for qualifying prospective investors. From this, we conclude that Jamie Creason also made no attempts to determine whether he was selling Front Row securities to persons or companies that qualified under any of the available exemptions. Front Row, Hunt, Windy Ridge and Jimmy Creason neither presented evidence nor made any submissions that they had relied on any exemptions to trade and distribute the Front Row securities. Thus, we find, none of the Respondents established reliance on available and applicable exemptions under Alberta securities laws for all trading in or distributing of the Front Row securities done by the respective Respondents.

[171] In their written argument, Tamura and S & I suggested that some of the investors who were sold Front Row securities were accredited investors and pointed to some of the investor witnesses as examples. Tamura and S & I also suggested that they perhaps could have relied on the exemption found in section 2.5 of NI 45-106, which exempts family, close personal friends and close business associates of a "director, executive officer or control person of the issuer" or "of an affiliate of the issuer". They acknowledged that Tamura was not a director, executive officer or control person of Front Row (the issuer) and that S & I was not an affiliate of Front

Row "in the ordinary sense as envisioned by NI 45-106". However, they suggested that because Front Row, through Hunt or Pittarelli, had directed S & I as to the use of money in the S & I bank accounts, Front Row had "thereby exerted de facto 'control'" over S & I and thus S & I could be characterized as an "affiliate" as defined in NI 45-106. We did not receive sufficient evidence to determine the nature or extent of control, if any, exercised by Front Row (through either Hunt or Pittarelli) over S & I. In the result, we are not satisfied that S & I was an "affiliate" within the meaning of NI 45-106.

[172] In the event we had accepted the "affiliate" proposition, Tamura and S & I contended that the investors they dealt with were their friends or business associates and thus were properly exempt. Having regard to the Investigative Interviews, we note that other of the Respondents similarly indicated that they sold Front Row securities to family, friends or business associates. However, we did not receive sufficient evidence to allow us to determine whether those investors had sufficient bonds of interest or association to qualify within the requirements of section 2.5 of NI 45-106 (or section 3.1 of MI 45-103).

[173] Some of the investors who purchased the Front Row securities may well have qualified under the parameters of the accredited investor or the family, friends and business associates exemption. We did hear evidence of investors who did not so qualify. For example, investor witness BA and his mother who made their investments in Front Row through Tamura did not, from the evidence we heard, qualify as accredited investors under section 2.3 of NI 45-106 (or section 5.1 of MI 45-103). As noted, we did not receive sufficient evidence to allow us to determine whether all individuals who were characterized as family, friends or business associates had sufficient bonds of interest or association to qualify within the requirements of section 2.5 of NI 45-106 (or section 3.1 of MI 45-103). For example, Tamura, in the Tamura Interview, said that he sold Front Row securities to LS (a person he had met) and DH (his insurance agent), but nothing more was tendered to establish the nature and extent of these relationships. It was also unclear how close a friendship existed between BA or his parents and Tamura (BA's connection being to Tamura's son).

[174] We conclude that none of the Respondents have discharged the onus on them to prove that the accredited investor or the family, friends and business associates exemption (or any other registration and prospectus exemption) was available and applicable for all of their respective trading in and distributing of the Front Row securities.

[175] Accordingly, we find that the Respondents each breached sections 75(1)(a) and 110(1) of the Act by trading and distributing Front Row securities without registration, a prospectus or an available and applicable exemption from those requirements.

B. Misrepresentations

1. Allegations and Law

[176] In the Notice of Hearing, Staff alleged that certain of the Respondents – Hunt, Pittarelli, Tamura, Pilling, McLeod, Jamie Creason and Jimmy Creason – contravened section 92(4.1) of the Act by making statements to investors that they knew or reasonably ought to have known were misleading or untrue and would reasonably be expected to have a significant effect on the

market price or value of the Front Row securities. The Notice of Hearing provided the following non-exhaustive particulars:

- Pittarelli, Tamura, Pilling, McLeod, Jamie Creason and Jimmy Creason made such misleading or untrue statements concerning expected rates of return – ranging from 5% for 60 days to 152% per year; and
- Hunt, Tamura and McLeod made such misleading or untrue statements concerning the safety of the Front Row investments – the guaranteeing of principal or interest or both.

[177] Section 92(4.1) of the Act provides:

(4.1) No person or company shall make a statement that the person or company knows or reasonably ought to know

- (a) in any material respect and at the time and in the light of the circumstances in which it is made,
 - (i) is misleading or untrue, or
 - (ii) 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 or an exchange contract.

[178] Therefore, to find a contravention of section 92(4.1) of the Act, we must conclude from the evidence that:

- a person or company made a statement; and
- the person or company knew or reasonably ought to have known that the statement:
 - in a material respect and in light of the circumstances in which it was made was misleading or untrue or omitted a fact required to be stated or necessary to make the statement not misleading; and
 - would reasonably be expected to have a significant effect on the market price or value of a security.

[179] Before we consider whether the allegations concerning misrepresentations are proved, we note that a misrepresentation is indeed a type of prohibited representation. A prohibited representation is a statement proscribed by any of the various subsections or clauses comprising section 92 of the Act, including section 92(4.1). To find a contravention – a prohibited representation – under any of these subsections or clauses, each of the requisite elements set out in the applicable subsection or clause must be proved. The requisite elements differ among the subsections and clauses. Here, the elements that Staff must prove are those set out in section 92(4.1).

2. Alleged Misrepresentations Relating to Expected Rates of Return

(a) Positions of Parties

(i) Staff

[180] According to Staff, the evidence established that Hunt, Pittarelli, Tamura, Pilling, McLeod, Jamie Creason and Jimmy Creason told investors they could expect to receive what Staff characterized as "exceedingly high rates of return" – ranging from 5% for 60 days to 152% per year – on their Front Row investments. Staff submitted that these statements concerning expected rates of return were misleading "by omission" – that is, "misleading in the sense that none of the attendant risks of the investment were described to investors at the time they were made". Staff further submitted that Hunt, Pittarelli, Tamura, Pilling, McLeod, Jamie Creason and Jimmy Creason made these statements when they knew or ought to have known that "the investors' evaluation of the securities being offered would have been influenced by" such statements. Therefore, Staff claimed that these statements concerning expected rates of return were misrepresentations contrary to section 92(4.1) of the Act.

(ii) Hunt and Pittarelli

[181] Hunt and Pittarelli submitted that the evidence – the uncontradicted testimony of investor witness DL – amply and credibly supports the proposition that the ticket brokerage business is "extremely lucrative" and capable of generating "enough profit to sustain rates of investment of between [50%] and [100%] in a relatively short period of time" and further that "[i]t is notorious that the demand for tickets to popular events far outstrips the supply of those tickets." They also submitted that, in order for the misrepresentations alleged against them to be found, Staff needed to prove – but had not – that Front Row "was not viable in the sense of being clearly unable to pay out the promised rates of return". There is, Hunt and Pittarelli contended, nothing wrong with citing high rates of return to investors so long as those rates are accurate. Hunt and Pittarelli submitted that, in the circumstances, they did not make any statements to investors concerning expected rates of return that they knew, or ought to have known, were misleading or untrue when they made them. In sum, Hunt and Pittarelli took the position it would be improper to sustain on the evidence tendered the misrepresentations alleged against them.

(iii) Tamura

[182] Tamura emphasized two aspects of section 92(4.1) of the Act. First, he characterized as a key – or the *mens rea* – element the requirement that the person "knows or reasonably ought to know" that the statement is misleading or untrue. Second, he described as significant that the person so know "in light of the circumstances in which [the statement] is made". Tamura submitted that, while he may have been mistaken or wrong in what he said to investors about expected rates of return, he did not know, nor should he reasonably have known, that was the case. Rather, Tamura claimed that he "genuinely believed that Front Row would pay significant returns via the business of buying and reselling tickets" and that "there is simply insufficient evidence to conclude" he knew or ought to have known what he told investors about expected rates of return was misleading or untrue. In conclusion, Tamura submitted that his "comments about high returns are not misrepresentations in the circumstances under which they were made": "[h]e had seen them happen and he had reason to believe [the investors he told about them] would see such returns."

(iv) Pilling

[183] Pilling submitted that the law relating to misrepresentations in contract is relevant to this issue and that, using that framework as a guide, it has not been demonstrated he made misleading statements to investors. Pilling contended that, consistent with Staff's written argument, statements made to prospective investors were not routinely made by him, but by others. He also contended that his admitted statements concerning expected rates of return were descriptions of the contractual terms eventually set out in the promissory notes delivered to investors and no evidence was adduced that these statements were inaccurate. Indeed, Pilling noted that investor witness TM – the only investor witness called by Staff concerning the allegations against Pilling – confirmed that for approximately six months TM received exactly what had been described to him. Pilling submitted that any statements made by him concerning expected rates of return were either expressions of opinion (thus not representations) or "perfectly accurate" descriptions of contractual terms. He also submitted that the evidence of TM did not advance Staff's case against Pilling because TM's evidence made clear he was not induced to make his investment in Front Row by anything Pilling said.

(v) McLeod, Jamie Creason and Jimmy Creason

[184] We received no submissions from McLeod. Neither Jamie Creason nor Jimmy Creason addressed this issue in their submissions.

(b) Application of Law to Facts Found

[185] Hunt acknowledged, in the Hunt Interview, that Front Row investors could be offered a rate of return of 8% per month over typically three to six months or 10% per month over three months and had been offered 100% over one year. On the basis of this and other evidence before us, we are satisfied that Hunt offered rates of return within that range to the investors he solicited. In the Pittarelli Admissions, Pittarelli admitted he represented to potential investors that they should expect a rate of return of 8% per month or a rate of return from 8% to 50%. In the Tamura Interview, Tamura said that he offered investors rates of return on their investments between 5% and 10% per month, depending on the duration of their investments. Pilling admitted, in the Pilling Admissions, that he "routinely" represented to potential investors that they could expect a rate of return of 5% monthly if they invested for 60 days, a rate of return of 8% monthly if they invested for 12 months or a rate of return of 152% per year if they reinvested their interest payments and allowed their securities to renew automatically. Also, according to investor witness TM, Pilling told TM that the return would be 10% per month. In the McLeod Admissions, McLeod admitted that he "routinely" represented to potential investors that they should expect a rate of return of 15% every 45 days, 24% over a 90-day period, 50% for a six-month investment or 10% per month. In the Jamie Creason Interview, Jamie Creason said that investors who provided their money to him were told they would receive a return on investment of a certain percentage, based on instructions provided by Jimmy Creason. Jimmy Creason said, in the Jimmy Creason Interview, that investors who provided their money to him were told they would receive a return on investment of a certain percentage. Investor witness DL, whose investments in Front Row were made through Jamie Creason and Jimmy Creason, testified that he made an investment with a return of 10% per month over six months, a second investment for only about three months with at least a 50% return and a third short-term investment of \$500 000 for which he received \$650 000 back – rates of return which, we are satisfied, were conveyed to DL by Jamie Creason or Jimmy Creason or both.

[186] Thus, the evidence is, and we find, that Hunt, Pittarelli, Tamura, Pilling, McLeod, Jamie Creason and Jimmy Creason made statements to investors concerning expected rates of return ranging variously from 5% for 60 days to 152% per year.

[187] We turn, next, to a consideration of whether, when making these statements to investors, Hunt, Pittarelli, Tamura, Pilling, McLeod, Jamie Creason and Jimmy Creason knew or reasonably ought to have known that they were misleading or untrue.

[188] Staff did not allege nor did they prove that the ticket brokerage business of Front Row was a sham or non-viable. Further, according to the uncontradicted evidence of investor witness DL, called by Staff, the ticket brokerage business can be a lucrative one. Moreover, it appears from the evidence before us that investor money was being used by the Respondents as the investors understood it would be. It also appears from the evidence before us that the very rates of return being promised to Front Row investors were being paid – often later than promised, but nevertheless paid. That said, we do have grave concerns about the sustainability of Front Row's business over an extended period and thus its ability to continue paying the promised rates of return in the long term, particularly given the attendant risks, limited use of documentation and woefully inadequate record-keeping. However, nothing in the evidence before us demonstrates that the rates of return promised by Hunt, Pittarelli, Tamura, Pilling, McLeod, Jamie Creason and Jimmy Creason during the Relevant Period were, in context, unrealistic, improbable, misleading or untrue in a material respect or reasonably ought to have been considered by them to be such.

[189] Any failure to disclose attendant risks and the eventual cessation of payments of returns to Front Row investors are, in our view, more appropriately considered in relation to the allegations of misrepresentations concerning guaranteed principal, interest or both.

(c) Conclusion

[190] For the foregoing reasons, Staff have not proved the allegations of misrepresentations concerning expected rates of return against Hunt, Pittarelli, Tamura, Pilling, McLeod, Jamie Creason and Jimmy Creason. Accordingly, these allegations fail.

3. Alleged Misrepresentations Relating to Guaranteed Principal or Interest

(a) Positions of Parties

(i) Staff

[191] According to Staff, the evidence demonstrated that Tamura and McLeod told investors their principal invested in Front Row was "guaranteed". Staff submitted that these statements of Tamura and McLeod were "simply false" and "groundless at the times that they were made". Staff further submitted that Tamura and McLeod made these statements when they knew or ought to have known that "the investors' evaluation of the securities being offered would have been influenced by" such statements. Therefore, Staff claimed that these statements concerning guaranteed principal were misrepresentations contrary to section 92(4.1) of the Act.

[192] Staff made no submissions concerning any such allegations against Hunt, Pittarelli and Pilling.

(ii) Hunt and Pittarelli

[193] Hunt and Pittarelli submitted that it would be improper to sustain any allegations against them on the evidence tendered. They also submitted that, to the extent that any assertions of guaranteed investments were made by Tamura or McLeod, there is no reliable evidence to suggest that such assertions were made with Hunt's or Pittarelli's knowledge and consent.

(iii) Tamura

[194] Tamura acknowledged his admission in the Tamura Interview that he "probably" told some people that their principal was "guaranteed". However, he submitted that, even had he on occasion used the word "guaranteed", that was not a misrepresentation because, "[b]ased on his experience at the time, it would indeed seem that a full return of one's money was the least one could expect." He also submitted that, given the context of the transactions, no investor would seriously rely on – be misled by – such a word or expect they somehow had a guaranteed investment in the usual sense. Instead, given the context, the investors had to know that the investments in Front Row were not guaranteed or risk-free. Tamura further submitted that, since Staff led no evidence from any investor witness who heard him use the word "guaranteed", it is impossible to understand the context in which the word was used, if at all, and thus the evidence is insufficient to find a misrepresentation.

(iv) Pilling

[195] Pilling submitted that investor witness TM – the only investor witness called by Staff concerning the allegations against Pilling – clarified he understood any discussion about the investment being "guaranteed" meant only that he had the promise of Front Row. This, according to Pilling, was "perfectly true" – "what [TM] had bargained for". Pilling also submitted that the word "misleading" in section 92(4.1) of the Act suggests there must be an element of investor reliance on a statement made.

(v) McLeod

[196] As noted, we received no submissions from McLeod.

(b) Application of Law to Facts Found

[197] The evidence is that Front Row, through Hunt or perhaps Pittarelli, had told certain select investors that their principal or interest was guaranteed – that is, apparently personally guaranteed by Hunt. There is one example, mentioned by both Hunt and Pittarelli, in which an investor was told that his Loan to Front Row – or the principal or interest – was guaranteed by Hunt and secured by a charge on Hunt's home. According to Hunt and Pittarelli, Front Row, through either of them, did not advise any other investors that their principal or interest was guaranteed. While we do not consider this to be sufficiently clear, convincing and cogent evidence that Pittarelli made statements to investors that their invested principal or interest was guaranteed, we do consider this to be sufficiently clear, convincing and cogent evidence that Hunt made such statements to investors.

[198] In the Tamura Interview, Tamura said he "probably" advised investors that their principal invested with Front Row was guaranteed. Also, according to Pilling, in the beginning a small

group of people were told, apparently by or as instructed by Tamura, that there would be no risk to their principal as Tamura "personally guaranteed the first million dollars or so". However, as Pilling said, "it was just for a -- a fairly short period of time before they realized, Hey, I can't -- can't guarantee everybody". This, we find, to be sufficiently clear, convincing and cogent evidence that Tamura made statements to investors that their invested principal was guaranteed.

[199] Investor witness TM testified Pilling said that "there was no risk" and that the returns were guaranteed. In cross-examination, TM was adamant that Pilling used the word "guaranteed". In the Pilling Interview, however, Pilling denied advising investors that their investments were guaranteed. We note that TM's testimony was given at the Hearing and tested through cross-examination; the Pilling Interview statements were not. Accordingly, we give TM's testimony at the Hearing greater weight. Moreover, Pilling's denial was inconsistent with references to a "Guarantor" in a small percentage of the Loan Documentation used by Pilling for investors other than TM. Therefore, we find that Pilling did, in fact, tell TM that "there was no risk" and that the returns were guaranteed. We note that there is no other evidence before us of any other such statements being made by Pilling to investors.

[200] McLeod admitted in the McLeod Admissions, and we find, that he "routinely" made statements to potential investors that their invested principal and interest payments were "guaranteed". It appears, however, that McLeod did not make such statements to all potential investors: investor witness MH – the only investor witness called by Staff concerning the allegations against McLeod – testified that McLeod "never said he guaranteed" the investment.

[201] We next consider whether, when making these statements to investors, Hunt, Tamura, Pilling and McLeod knew or reasonably ought to have known that they were misleading or untrue.

[202] There is insufficient evidence before us to find that any statements made to investors by Hunt concerning guaranteed principal or interest were misleading or untrue. It appears from the evidence that a small number of Front Row investors had their principal or interest personally guaranteed by Hunt (secured, in one example, by a charge on his home), and there is nothing in the evidence to the contrary or impugning the validity of any such personal guarantee. Similarly, there is insufficient evidence before us to find that any statements made to investors by Tamura concerning guaranteed principal were misleading or untrue. It appears from the evidence that a small number of Front Row investors had their principal personally guaranteed by Tamura, and there is nothing in the evidence to the contrary or impugning the validity of any such personal guarantee.

[203] On the other hand, the statements made to TM by Pilling and the statements made to investors by McLeod concerning guaranteed principal, interest or both were, we find, patently inaccurate – that is, patently misleading and untrue. The evidence is that, but for a small number of Front Row investors who apparently had their principal or interest personally guaranteed by Hunt or Tamura, the investments in Front Row were not risk-free – in other words, were not guaranteed in any way. Nor, in the circumstances, should they have been understood to be risk-free by Pilling or McLeod. Indeed, it is clear from the Pilling and McLeod Interviews that each

was well aware of the risks associated with investing in Front Row. Thus, we find that, when making these statements to investors, Pilling and McLeod knew or reasonably ought to have known that they were misleading or untrue, and materially so.

[204] We then consider whether, when making these statements to investors, Pilling and McLeod knew or reasonably ought to have known that such statements would reasonably be expected to have a significant effect on the value of the Front Row securities.

[205] Investor witness TM agreed he would not have entered the contract if he had known the Loan was not guaranteed. We are in no doubt that this risk-free promise was a – if not the – material factor in leading at least some investors, including TM, to ascribe considerable value to the Front Row securities and ultimately to invest therein. Thus, we find that the statements made to investors by Pilling and McLeod concerning guaranteed principal, interest or both would reasonably be expected to have a significant effect on the value of the Front Row securities. We further find that, if Pilling and McLeod did not know this, they reasonably ought to have known this.

(c) Conclusion

[206] For the foregoing reasons, Staff have not proved the allegations of misrepresentations concerning guaranteed principal, interest or both against Hunt, Pittarelli and Tamura. Accordingly, these allegations fail.

[207] For the foregoing reasons, Staff have proved the allegations of misrepresentations concerning guaranteed principal, interest or both against Pilling and McLeod. Accordingly, these allegations are sustained and we find that Pilling and McLeod each breached section 92(4.1) of the Act.

C. Conduct Contrary to the Public Interest

[208] We found that all the Respondents engaged in illegal trades and distributions of Front Row securities. We also found that Pilling and McLeod made misrepresentations concerning guaranteed principal, interest or both.

[209] It is clear that Front Row, through the various other Respondents, raised a significant sum of money from investors, including Alberta investors.

[210] Although it appears on the evidence that investor money was being used by the Respondents as the investors understood it would be and that the rates of return being promised to Front Row investors were being paid to them, the continued viability of Front Row's business was, in our view, questionable. There was a lack of disclosure and transparency surrounding the cost of tickets, the events invested in, the potential resale amounts for tickets to the events, the attendant risks and the commissions or fees taken by the Respondents. Any documenting or recording of the transactions and of Front Row's current and future obligations – by Front Row itself or other of the Respondents (with the possible exception of Pilling and McLeod) – was woefully inadequate.

[211] Investors would have been aware of this and other pertinent information had they been afforded a prospectus and the advice of a registrant attentive to their financial circumstances, risk tolerances and investment objectives. Investors thus would have known the potential risks and been able to reach an informed opinion on Front Row's ability to continue to operate and compensate investors as agreed. In the absence of registrant involvement and a prospectus, the investing public was put at risk of making ill-advised, uninformed investment decisions, which in turn put in jeopardy the integrity of the Alberta capital market.

[212] Misrepresentations induce investors to invest based on inaccurate and misleading information about the securities being offered. This puts individual investors at risk and undermines confidence in the Alberta capital market.

[213] Accordingly, we conclude that the contraventions of the Act found – particularly the Respondents' actions in contravention of the registration and prospectus requirements of the Act – exposed the investing public to considerable harm and put in jeopardy the efficiency of and confidence in the Alberta capital market. These actions were clearly contrary to the public interest.

V. CONCLUSIONS

[214] We found that:

- contrary to sections 75(1)(a) and 110(1) of the Act, the Respondents illegally traded in and distributed securities of Front Row;
- contrary to section 92(4.1), Pilling and McLeod made misrepresentations concerning guaranteed principal, interest or both; and
- in so doing, the Respondents engaged in conduct contrary to the public interest.

[215] This decision concludes the first phase of this proceeding. It remains to be decided what, if any, orders for sanction or costs we should make against the Respondents. Staff are directed to provide their written submissions on the issues of sanction and costs to the panel (through the Registrar of the Commission) and to the Respondents **by the close of business on 14 June 2010**. If, in turn, any Respondent wishes to respond to Staff's submissions, those written submissions must be sent to the panel (through the Registrar), to Staff and to all other Respondents **by the close of business on 5 July 2010**. Staff may then reply in writing to any such written submissions, that reply to be provided to the panel (through the Registrar) and to the Respondents **by the close of business on 12 July 2010**.

[216] If any party wishes to make oral submissions concerning the issues of sanction and costs, that party must so advise the Registrar **by the close of business on 15 July 2010**, with an indication of whether that party proposes to call witnesses and the amount of hearing time expected to be required. If such a request is made, the panel will set a date for oral submissions

and advise the parties accordingly. The panel of its own accord may also set a date for oral submissions, if it considers that this would be of assistance to it.

20 May 2010

For the Commission:

"original signed by"
Glenda A. Campbell, QC

"original signed by"
Allan L. Edgeworth, P. Eng.

"original signed by"
Glen D. Roane