ALBERTA SECURITIES COMMISSION

DECISION

Citation: Re Bluforest Inc., 2020 ABASC 138 **Date: 20200824**

Bluforest Inc., Cem (Jim) Can and Charles Michael Miller

Panel:	Tom Cotter Steven Cohen Kari Horn
Representation:	Don Young Carson Pillar for Commission Staff Hardeep Sangha for Cem (Jim) Can and Charles Michael Miller
Submissions Completed:	July 11, 2019
Decision:	August 24, 2020

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I. INTRODUCTION

[1] Staff (**Staff**) of the Alberta Securities Commission (the **ASC** or the **Commission**) alleged that Bluforest Inc. (**Bluforest**), Cem (Jim) Can (**Can**) and Charles Michael Miller (**Miller**, together with Bluforest and Can, the **Respondents**) contravened Alberta securities laws and acted contrary to the public interest.

[2] Allegations against two other individuals – Farhang (Fred) Dagostar Nikoo (**Nikoo**) and Norman David Anderson (**Anderson**) – were resolved by settlement. Nikoo's settlement (the **Nikoo Settlement**, cited as *Re Nikoo*, 2019 ABASC 36) occurred prior to the hearing, whereas Anderson's settlement (the **Anderson Settlement**, cited as *Re Anderson*, 2019 ABASC 51) occurred shortly after the hearing began.

[3] Staff's February 5, 2018 Notice of Hearing (the **NOH**) alleged that Can and Miller breached the *Securities Act* (Alberta) (the **Act**) by illegally distributing Bluforest securities, making prohibited representations and engaging in fraud. Staff also alleged that each of the Respondents made misrepresentations, participated in a market manipulation scheme and engaged in conduct contrary to the public interest. As discussed in further detail below, some of these allegations were withdrawn by Staff in written submissions.

[4] The hearing began on March 6, 2019 and continued over 14 hearing dates. Having reviewed the evidence and the law, we have determined that Can illegally distributed securities contrary to s. 110 of the Act; Bluforest made misrepresentations contrary to s. 92(4.1); Can engaged in a course of conduct that resulted in or contributed to an artificial price for Bluforest shares contrary to s. 93(a)(ii); and both Can and Miller engaged in a course of conduct that perpetrated a fraud contrary to s. 93(b). Reasons for our findings are set out below.

A. Procedural History

[5] We heard testimony from 13 witnesses, and received documentary evidence from Staff and from Can and Miller. Both Can and Miller were self-represented throughout the evidentiary part of the hearing but were subsequently represented by counsel, who, along with Staff, provided written and oral submissions. Bluforest was served with the NOH but it was not represented and we did not receive any submissions on its behalf.

[6] When we convened to receive oral submissions, counsel for Can and Miller asked that the hearing be reopened to admit evidence consisting of transcripts from two investigative interviews conducted by ASC investigative staff of Anderson (the **Anderson Transcripts**) and certain emails (including attachments to the emails) exchanged between Anderson and Can after the evidentiary part of the hearing (the **Can Emails**). We were not given any advance notice of the request to reopen the hearing, nor any evidence in support of that request. We established a process in which the parties could provide written submissions and provide any evidence considered necessary in support of the request. We then heard oral submissions addressing the merits of Staff's allegations. We later gave our ruling on whether to admit the Anderson Transcripts and the Can Emails, directing that the Anderson Transcripts would be entered into evidence, but the Can Emails would not because they were irrelevant.

II. BACKGROUND

A. General

[7] Staff's allegations related to events that occurred between December 2010 and November 2013, in relation to the securities of Bluforest and its predecessor, Greenwood Gold Resources Inc. (**Greenwood**). In that time, Greenwood evolved from a gold mining exploration company that acquired a few mining claim options (which subsequently terminated or lapsed) to a renamed company – Bluforest – that claimed to have acquired hundreds of millions of dollars in Ecuadorian property rights for use in the evolving carbon credits market.

[8] Staff alleged that Can was the mastermind behind an elaborate "pump and dump" scheme, which he perpetrated through Bluforest after acquiring a controlling interest in the company in December 2010. According to Staff, Can surreptitiously controlled most of the free-trading shares of Bluforest, primarily through share consolidations in conjunction with the issuance of shares to related offshore companies to settle fictitious corporate debt. He then orchestrated a deceptive marketing campaign to create an appearance of broad market interest in Bluforest shares. Miller's alleged role in the scheme was to acquire assets for Bluforest in non-arm's length transactions from entities he controlled (for which he would also receive Bluforest shares), and then misrepresent the nature of the transactions and assets in public disclosures. Through an intricate web of offshore brokerages and companies in which their interests were concealed, Can and Miller controlled Bluforest shares that could be sold into the artificially inflated market, following which the share price plummeted.

[9] Staff also alleged that Can effected a non-compliant control distribution by selling Greenwood/Bluforest shares to several Alberta residents.

[10] The allegations involved a wide assortment of characters, and the recitation of facts that follows sets forth specific findings about the individuals and entities identified as having a role in the events.

B. Respondents

1. Bluforest

[11] Greenwood was incorporated in the State of Nevada on March 26, 2008 by Gary Alexander (**Alexander**), and changed its name to Bluforest effective June 5, 2012 to reflect a change in the corporation's business from that of a mining company to a carbon-offsets marketing company. We refer to the corporate entity as either Bluforest or Greenwood, although we attempted to use Greenwood when referring to the entity as it existed prior to the corporate name change.

[12] Greenwood's/Bluforest's securities were quoted for trading on the US OTC Markets Group Inc. quotation board throughout the relevant time period, and Bluforest became a reporting issuer in Alberta on July 31, 2012, pursuant to Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-The-Counter Markets*.

2. Can

[13] Can is a former resident of Calgary, Alberta and was in Turkey at the time of the hearing. He controlled Mainland Investments Ltd. (**Mainland**), which became a consultant of Greenwood in March 2012.

[14] Can was also president and chief executive officer (**CEO**) of Unicorn International Securities LLC (**Unicorn**), a brokerage firm located in Belize. Can also controlled several other companies, particulars of which follow.

[15] During the relevant time period, Can was not registered with the ASC as either a dealer or adviser in securities.

3. Miller

[16] Miller is a former Alberta resident and was in Ecuador at the time of the hearing. Effective February 15, 2012, he became Greenwood's sole director, president and CEO, secretary, treasurer and chief financial officer. As of April 2, 2012, Miller was a Greenwood director and its CEO. He was appointed as acting chief financial officer and treasurer on May 25, 2012. He signed many corporate documents on behalf of Greenwood/Bluforest in the relevant time period.

[17] Miller was also a member of the Fundacion Nelson Velasco Aguirre (**NVA**) in Ecuador beginning in October 2011, and he signed a Memorandum of Understanding dated January 26, 2012 as president of Global Environmental Investments Ltd.

4. Other Respondents

[18] As mentioned, Nikoo and Anderson were both identified in the NOH as respondents but each subsequently entered into a settlement agreement to resolve the respective allegations against them.

[19] Nikoo, a Calgary, Alberta resident (formerly a resident of Cold Lake), was a financial planner and had been registered as a mutual fund salesman since 1995. He signed a document in which he was listed as a "Co-Founder" of Bluforest, although it was unclear from the evidence whether he formally held any position with Greenwood/Bluforest.

[20] Anderson, also a Calgary, Alberta resident, is a lawyer at a Calgary-based law firm. He, or his firm, acted on behalf of Can since approximately 2002.

C. Other Individuals and Entities

1. Bluforest Canada Ltd.

[21] Bluforest Canada Ltd. (**Bluforest Canada**) was incorporated on March 19, 2012 as a wholly-owned subsidiary of Bluforest.

Bluforest Employees

2. Branislav Jovanovic

[22] Branislav Jovanovic (**Jovanovic**), a Calgary, Alberta resident, is a business owner. He met Can in the late 1980's or early 1990's, and was Greenwood's president and director from approximately December 2010 until February 2012.

3. James Donihee

[23] James Donihee (**Donihee**), a former colonel in the Canadian armed forces and later the CEO of the National Energy Board, was a director and president of Greenwood/Bluforest from

April 2, 2012 until his resignation effective November 1, 2012. He was the sole officer (president) and director of Bluforest Canada during the same time period. Throughout his time with Greenwood/Bluforest, Donihee reported to Miller.

4. Amanda Miller

[24] Amanda Miller (**Amanda**) is the daughter of Miller, and a lawyer in Alberta. She was secretary of Bluforest and acted as in-house counsel from April 2012 until January 10, 2013.

Bluforest Service Providers

5. Caroline Winsor

[25] Caroline Winsor (**Winsor**), a Calgary resident, operated International Securities Group Inc., which assisted in preparing documents and making filings on behalf of Greenwood. Winsor's daughter, Jacqueline Danforth, controlled Filer Support Services Inc., a company that provided similar services for Greenwood.

6. Scott Lawler

[26] Scott Lawler (**Lawler**) was an attorney practicing in Chandler, Arizona.

7. Diane Dalmy

[27] Diane Dalmy (**Dalmy**) was an attorney practicing in Colorado.

8. Faiyaz Dean

[28] Faiyaz Dean (**Dean**) was a lawyer practicing in Vancouver, British Columbia and Seattle, Washington.

Can Associates

9. Talal Fouani

[29] Talal Fouani (**Fouani**), a Calgary resident, was involved in investor relations activities for both public and private companies. Fouani was, at times, a friend and an associate of Can, having met Can in 2010, and he accompanied Can to various Bluforest-related meetings in Belize and Panama. He also owned Vino Business LLC (**Vino**).

10. Jeffrey Cox

[30] Jeffrey Cox (**Cox**), formerly an Alberta resident, was an associate of Can. He was in the same general line of work as Fouani.

[31] Cox owned Ireland Offshore Securities S.A. (**Ireland Offshore**), an international business corporation (**IBC**) incorporated in Belize on June 25, 2013. Cox started Ireland Offshore solely for the purpose of opening a brokerage account with Unicorn.

11. Eric Cusimano and Jamie Boye

[32] Eric Cusimano (**Cusimano**) and Jamie Boye (**Boye**), both US residents, were connected to various stock promotion websites, including www.bestdamnpennystocks.com and www.trypennstocks.com, which published material promoting Bluforest shares.

Can Companies

12. Mainland

[33] Mainland was incorporated in Alberta by Anderson's law firm on September 1, 2010. As of October 2010, Mainland was wholly owned by North American Investments Inc. and Can was the sole officer (president and secretary) and director.

[34] Can was Mainland's guiding mind throughout the relevant time period.

13. North America(n) Investments Ltd. / Inc.

[35] The documentary evidence referred to several variations of a corporate name most commonly appearing as "North American Investments Ltd." (**NAIL**) – the variations found in the evidence sometimes substituted "America" for "American" and switched the legal element of the corporate name between "Ltd. " and "Inc.", or omitted it entirely. Whether the variations were intended to obfuscate and confuse the documentary record or simply resulted from carelessness, we were satisfied from all of the evidence that they referred to the same corporate entity. Even though there was one instance where two variations of the corporate name were purportedly counterparties to one agreement, the recital of the subject agreement referred to one of the parties as an Alberta corporation which other evidence confirmed did not exist.

[36] The different corporate names were often used interchangeably in connection with the same transactions, and the evidence was overwhelming that, regardless of the name used, Can controlled the company. It was most likely incorporated in Belize as an IBC. In this decision we generally use the acronym "NAIL" when describing transactions involving this company, despite other name variations in the documentary evidence.

14. Belizean IBCs

[37] The following Belize incorporated IBCs were controlled by Can: Starglow International Inc. (**Starglow**), Atlantis Properties Ltd. (**Atlantis**), Lightship Capital Management Ltd. (**Lightship**), and Lightblue Advisors Ltd. (**Lightblue**).

15. Global Resource Energy Inc.

[38] Global Resource Energy Inc., an OTC-quoted issuer using the trading symbol GBEN (**GBEN**), was controlled by Can.

16. APIC Holdings Ltd.

[39] APIC Holdings Ltd. (**APIC**), an Alberta corporation, was controlled by Can. Fouani testified that APIC was one of Can's companies, which evidence was corroborated by bank records. Jovanovic also testified that APIC belonged to either Can or Can's spouse.

Miller Companies

17. Global Environmental Investments Limited

[40] Global Environmental Investments Limited (**GEIL**) was incorporated in Belize. Another company with an identical name was incorporated in the British Virgin Islands. The parties disputed who controlled the Belizean company, but we are satisfied on the preponderance of the evidence that Miller controlled both, including evidence that Winsor incorporated GEIL for Miller to hold the control block of Bluforest shares.

18. Oceanview Real Estate Company Ltd.

[41] Oceanview Real Estate Company Ltd. (**ORE**), a company incorporated in Canada, was controlled by Miller. Another company with the same name but the legal element "Inc.", was also controlled by Miller.

Belize Incorporator and Brokerages

19. IPC Corp.

[42] We received evidence of the existence of numerous related IPC entities incorporated in Belize, which we will collectively refer to these as **IPC**. One of the services provided by IPC to its clients was the creation of IBCs, and the appointment of nominees to sign documents on behalf of IBCs. Robert Bandfield (**Bandfield**) and Andrew Godfrey (**Godfrey**) were representatives of IPC and signed numerous documents on behalf of several IBCs mentioned here.

20. Legacy Global Markets S.A.

[43] Legacy Global Markets S.A. (**Legacy**) was a brokerage located in Belize. Brian de Wit (**de Wit**) was an employee of Legacy. Certain trading activity in evidence occurred through Legacy's omnibus account held at another brokerage – Caledonian Global Financial Services (**Caledonian**).

21. Unicorn

[44] Unicorn was a brokerage located in Belize. There was no dispute that Can controlled Unicorn.

III. PRELIMINARY MATTERS

A. Allegations

[45] The Nikoo Settlement and the Anderson Settlement narrowed the scope of allegations set out in the NOH. In their written submissions, Staff also conceded that certain allegations against Can and Miller had not been established by the evidence. As a result, Staff abandoned the allegations of (i) illegal distribution against Miller, (ii) certain misrepresentations against Can and Miller, and (iii) prohibited representations against Can and Miller.

[46] Staff asserted that three allegations of misrepresentations made against Can, Miller and Bluforest remained, namely that they: misrepresented that Bluforest had a tangible asset worth almost US $700,000,000, omitted to state that Can had control and direction over and was the guiding mind of Bluforest, and omitted to state that Can controlled the majority of Bluforest's free-trading shares. However, we were uncertain whether the NOH adequately alleged that the individual Respondents might be liable for the representations said to have been made, or omitted, by Bluforest. In particular, the NOH did not explicitly allege that Can or Miller authorized, permitted or acquiesced in Bluforest's alleged misconduct, nor did it allege that they made the impugned representation or that they failed to disclose the requisite information.

[47] When asked to address this issue in oral submissions, Staff acknowledged that Bluforest made the filings and the NOH did not contain language that Can or Miller authorized, permitted or acquiesced in Bluforest's conduct. Staff contended that this pleading is a matter of convention and not critical under the Act and that the function of a notice of hearing is to provide notice to

respondents to make full answer or defence to the allegations. Staff pointed to the allegation that Can "owned, controlled, and/or was the directing mind" of Bluforest and submitted that if the panel found Can to be an owner, controller or directing mind of Bluforest, he would be responsible for misrepresentations of the company, because "what the company does, the individual is responsible for".

[48] The principles relating to director and officer liability in this context were summarized in *Alberta (Securities Commission) v. Workum*, 2010 ABCA 405 (O'Brien JA, dissenting in part, at paras. 206-08):

> A fundamental principle of corporate law is that a registered corporation is an entity separate and distinct from its officers and members. The concept is one of limited liability. A corporation acts through its officers and directors, but they are not personally liable. The corporate veil will only be pierced if a statute clearly imposes personal liability, or in certain other situations, such as a sham company – neither alleged nor applicable in this case. Here, the Act, through section 194(4) as well as other provisions, provides a means of imposing personal liability for corporate acts. The corporate veil otherwise remains in place.
>
> It is not sufficient, therefore, merely to allege that directors and officers are responsible for a corporation's financial statements to make them liable for the corporation's failure to file them in accordance with GAAP. Here, the Act set out specific circumstances for imposing personal liability for a corporation's defaults. Section 194(4) of the Act required the Commission to establish that the officer or director "authorized, permitted or acquiesced in the offence". Furthermore, as Workum submitted, the 2006 amendment to section 199 demonstrates clearly that the Legislature intended secondary liability for the corporation's breach to be applicable to directors and officers only when their involvement amounted to having authorized, permitted or acquiesced in a breach, not merely that they "bore responsibility". The mere allegation that the individuals acted contrary to the public interest is not a basis for imposing individual liability for a corporate act.
>
> In some respects, of course, these concepts may overlap; but in others, they are quite different. It cannot, however, be reasonably suggested that the terms are synonymous. Indeed, if the Commission reasons that liability arises with mere responsibility, it is difficult to understand the necessity either for section 194(4) or the 2006 amendment. These sections are superfluous if liability for corporate acts falls upon any person having responsibility for a corporate act.

[49] The ASC has consistently made findings against individual officers and directors for corporate misconduct in circumstances where the individual authorized, permitted or acquiesced in the misconduct. In *Re Aurora*, 2011 ABASC 501 (affirmed *sub nom*. *Alberta (Securities Commission) v De Palma*, 2012 ABCA 295) an ASC panel determined that (at para. 199): "[a]uthority over the acts of a corporation generally rests, ultimately, with its directors and officers – who in consequence will bear responsibility for having approved or condoned (authorized, permitted or acquiesced in) those acts." More recently, an ASC panel in *Re Aitkens*, 2018 ABASC 27 summarized the approach in the following terms (at para. 40):

> Corporate entities and trusts can act only through individuals – either directly or through other corporate entities (such as through a corporate trustee acting for a trust). Further, "[a]uthority over the acts of a corporation generally rests, ultimately, with its directors and officers" (*Re Aurora*, 2011 ABASC 501 at para. 199). Therefore, directors and officers of corporations may be held responsible for – or to have authorized, permitted and acquiesced in – the conduct of corporate respondents (see also *Re Maitland Capital Ltd.*, 2007 ABASC 357 at para. 138).

[50] In *Re Cerisse*, 2017 BCSECCOM 27, the British Columbia Securities Commission addressed a similar issue, in circumstances where allegations that the respondents had authorized, permitted or acquiesced in the company's issuance of false or misleading news releases had been withdrawn in the course of the hearing. The executive director later argued that an individual can be held liable for corporate misrepresentations absent an allegation that the individual authorized, permitted or acquiesced in the making of the statements. Without that allegation, and because the individual was found not to have made the impugned statements, the panel dismissed the allegation:

> In the case before us, the press releases that the executive director alleges contain misrepresentations were clearly Solanex press releases. There is no reference to Sadler in those press releases or any statements that could be said to be attributable to Sadler. These were clearly the statements of Solanex and not of Sadler. This is exactly the situation that section 168.2 of the Act was intended to address. A director or officer of Solanex, that authorized, permitted or acquiesced to the statements being made, could be held liable under section 168.2 of the Act for misrepresentations if a corporation's statements are found to be misrepresentations. In this case, Solanex, the maker of the statements is not even a respondent nor was Sadler a director or officer of Solanex at the relevant time. (para. 102)

[51] If Staff seek to have an individual respondent found responsible for corporate misconduct, it would be prudent to allege that the individual respondent "authorized, permitted or acquiesced" in the conduct. However, we accept that a notice of hearing might adequately allege as much without invoking this statutory phrase. For example, the notice of hearing in *Workum* did not include that language and instead alleged that the individual respondents were responsible for the company's acts because they carried out the impugned acts on behalf of the company. The majority determined that this allegation adequately notified the respondents of "the gravamen of the complaint being advanced against them by the Commission" (*Workum*, at para. 157).

[52] Here, the NOH did not plead that Can or Miller made Bluforest's filings or that either would otherwise be personally liable for Bluforest's alleged misconduct. Staff pointed to the pleading that Can was Bluforest's "directing mind" and argued that this adequately conveyed that he may be personally liable for the corporate misconduct – especially in relation to filings, as a person that controls and directs the company must be responsible for the filings. While acknowledging that the directing mind concept is meant to attribute liability to a corporate entity for the actions of an individual, Staff argued that it goes both ways and that it operates to attribute the company's conduct to a person who is controlling and directing the company.

[53] The heart of the issue is adequacy of notice. In the case of Can, we conclude that the NOH does not provide adequate notice that he may be held responsible for Bluforest's alleged misrepresentations. The NOH allegation that Can was a directing mind of Bluforest does not itself suffice, when the NOH is read as a whole. Similarly, insofar as Staff seek to make Miller responsible for misrepresentations pertaining to Can's role in Bluforest and control over its free-trading shares, we conclude that the NOH does not give Miller adequate notice of those allegations. The NOH does identify Miller as responsible for the alleged misrepresentation concerning Bluforest's tangible asset, and in our view that allegation is adequately pled.

[54] Therefore, Staff's extant allegations are the following:

- Can breached s. 110 of the Act by engaging in a distribution of Bluforest securities without filing a preliminary prospectus and prospectus with, and receiving a receipt from, the Commission;

- Miller and Bluforest breached s. 92(4.1) by making a statement (or statements) that each knew or reasonably ought to have known was misleading or untrue, or failing to state a fact necessary to make a statement not misleading, and that would reasonably be expected to have a significant effect on the market price or value of Bluforest's securities;

- the Respondents breached s. 93(a)(ii) by directly or indirectly engaging in an act, practice, or course of conduct relating to Bluforest's securities that each knew or reasonably ought to have known resulted in or contributed to an artificial price for those securities;

- Can and Miller breached s. 93(b) by directly or indirectly engaging in an act, practice, or course of conduct relating to Bluforest's securities that they knew or reasonably ought to have known perpetrated a fraud on a person or persons; and

- the Respondents' actions were contrary to the public interest.

[55] We will address these allegations in further detail below.

B. Standard of Proof

[56] The applicable standard of proof in ASC enforcement proceedings is a balance of probabilities, which requires a determination of whether "it is more likely than not that an alleged event occurred" (*F.H. v. McDougall*, 2008 SCC 53 at para. 49). Evidence must be "sufficiently clear, convincing and cogent" to satisfy this standard (*F.H.* at para. 46).

C. Inferences

[57] Staff acknowledged that they were asking that the panel draw inferences from circumstantial evidence. The Respondents submitted that Staff's case is largely dependent on unreasonable inferences, particularly in relation to Can's role with Greenwood/Bluforest. Among the facts asserted by Staff which the Respondents contend are speculative are that Jovanovic was Can's nominee, that Can was "Jonny Walker", that a US$60,000 invoice (the **NAIL Invoice**) dated January 15, 2011 from NAIL to Greenwood for consulting services was fictitious, and that the issuance of Greenwood/Bluforest shares for debt was not reflective of share value at the time the debt was incurred.

[58] The ability of an ASC panel to draw inferences from circumstantial evidence was thoroughly addressed in *Walton v Alberta (Securities Commission)*, 2014 ABCA 273 (at paras. 26-28):

> The Commission recognized that inferences could be drawn from circumstantial evidence, but correctly noted (reasons, paras. 461-3) that speculation and conjecture were not the equivalent of proper inferences. The fundamental difference is explained in *Alberta Union of Provincial Employees v Alberta*, 2010 ABCA 216 at paras. 37-8, 29 Alta LR (5th) 273, 482 AR 292:
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> > 37 There is a legal distinction between speculation and drawing inferences from the circumstantial and direct evidence on the record. The trier of fact is permitted to do the latter, but not the former. [. . .]
> >
> > 38 For these purposes, "speculation" can therefore be described as the drawing of an inference in the absence of any evidence to support that inference, or in situations where there is no "air of reality" to the inference: *R. v. Dubois*, [1980] 2 S.C.R. 21, adopting the dissenting reasons in (1979), 17 A.R. 541, 49 C.C.C. (2d) 501 at paras. 15-17 (C.A.); *R. v. Morrissey* (1995), 22 O.R. (3d) 514, 97 C.C.C. (3d) 193 (C.A.) at p. 530; *R. v. Martin*, 2010 NBCA 41 at paras. 34-6; *Caswell v. Powell Duffryn Associated Collieries Ltd.*, [1940] A.C. 152 at pp. 169-70; *Kerr v. Ayr Steam Shipping Co.*, [1915] A.C. 217 at pp. 233-4.
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> Drawing inferences when there is an evidentiary gap, based on an "educated guess", is speculation: [*U.S.A. v Huynh* (2005), 202 OAC 198 at para. 7, 200 CCC (3d) 305 (CA)]. These concepts were applied in a securities context in *Re Suman*, (2012) 35 OSCB 2809 at paras. 294-300.
>
> The Commission concluded:
>
> > [463] To summarize, when drawing an inference from circumstantial evidence, we must ensure that the inference is grounded on proved, not hypothetical or assumed, facts and is a reasonable one – one drawn using common sense, human experience and logic having considered the totality of the evidence and any competing inferences. . . .
>
> The process of drawing inferences from facts established by the evidence is not without limits. As was said in *R. v Cavanagh*, 2013 ONSC 5757 at para. 74: ". . . there comes a time when the underlying facts may be so remote that there are just too many steps or leaps in the chain of reasoning to say that a particular inference can be reasonably drawn". As is discussed *infra*, paras. 31-4, proof of opportunity or motive is of limited value in drawing inferences. Phraseology in the reasons such as "it would not have been unreasonable", "could be" or "might have" cause concern, as they are more indicative of speculation than inferences. The syllogism "it would not have been unreasonable", with its double negative, particularly invites speculation, or a reversal of the burden of proof, or both. It is one thing to reason: "Where there is smoke, there is likely fire", but quite another thing to reason: "There was no smoke, but it would not have been unreasonable for there to be smoke, therefore there might have been fire as well".

[59] Specific inferences are addressed in our analysis below. In each case, we ensured that inferences were logically and reasonably drawn from another fact or group of facts, and based on the totality of the direct and circumstantial evidence, while taking into account any contrary inferences that might have been made.

D. Credibility and Reliability of Witnesses

[60] Staff called 12 witnesses: two ASC investigators – Myles MacPherson (**MacPherson**) and Sean Bonazzo, six Greenwood/Bluforest investors, Bluforest's auditor – Charles Klein (**Klein**), Fouani, Jovanovic and Donihee. Miller called one witness – Diego Burneo (**Burneo**), an Ecuadorean resident – who testified remotely via Skype. At various times during the hearing, Can and Miller expressed an intention to testify remotely but both elected not to testify.

[61] Our credibility assessments of these witnesses were based on the following guidance from *R. v. Boyle*, 2001 ABPC 152 at para. 107, citing *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A.) at 357:

> The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

[62] We were also mindful of the comments of the British Columbia Court of Appeal in *R. v. Pressley* (1948), 94 CCC 29 at 34 (and referenced in *Springer v. Aird & Berlis LLP* (2009), 96 OR (3d) 325 (S.C.J.) at para. 14 and in *Shane Suman*, 2012 ONSEC 7 at para. 315):

> The Judge is not given a divine insight into the hearts and minds of the witnesses appearing before him. Justice does not descend automatically upon the best actor in the witness-box. The most satisfactory judicial test of truth lies in its harmony or lack of harmony with the preponderance of probabilities disclosed by the facts and circumstances in the conditions of the particular case.

1. Staff Investigators

[63] Both Staff investigators were credible witnesses and we generally accepted their evidence.

[64] MacPherson's testimony was sometimes conclusory in nature, testifying to certain conclusions based on "the totality of evidence" obtained in the investigation. It was not always clear to us what evidence was being relied on for some of those conclusions, although there were instances where he identified specific evidence as the basis, at least in part, for a particular conclusion. Where the evidentiary basis for the conclusions was not obvious, some of MacPherson's testimony was of limited assistance to establish a particular fact. That did not preclude us, however, from arriving at similar conclusions, based not on Staff's conclusions but from our own assessment of the evidence.

2. Greenwood/Bluforest Investors

[65] Each of the investor witnesses were also credible witnesses. There were some minor inconsistencies in their evidence, however this was to be expected from the passage of time since the events in question and did not undermine the credibility and reliability of their testimony.

3. Jovanovic

[66] We are satisfied that the evidence of Jovanovic, one of Staff's witnesses, was truthful and reliable, subject to the limits of his memory and understanding of events at the time.

[67] In cross-examination, Can attempted to undermine Jovanovic's credibility, in part by pointing to Jovanovic's willingness to sign documents that may have contained inaccurate statements. Jovanovic admitted that he did so, after he had obtained assurances from Can at the time. Although he was seemingly unsophisticated in relation to corporate transactions and the responsibilities of a public company senior officer, we did not view his inexperience as

undermining the credibility or reliability of his testimony. It is creditable that Jovanovic self-reported to the United States Securities and Exchange Commission (the **SEC**) that he had issued false press releases while president of Greenwood.

[68] Jovanovic testified that his relationship with Can deteriorated in the summer of 2011, and it was apparent from Can's cross-examination that there was some animus between the two. We also received evidence of litigation between Greenwood and Jovanovic that occurred in 2012. We did not consider these points of contention to have tainted Jovanovic's testimony.

4. Donihee

[69] Donihee, a Staff witness, testified over the course of two hearing days. We found Donihee to be a credible witness and generally accepted his evidence. On several occasions he gave extended answers to questions, apparently to provide context and to seemingly justify his conduct as reasonable. In our view his explanations did not undermine his credibility.

5. Klein

[70] Staff also called Klein, a certified public accountant licensed to practice in Florida. Klein performed the audit of Greenwood/Bluforest's comparative financial statements for the year ended December 31, 2012, and the reviews of the company's comparative financial statements for the quarters ended September 30, 2012, March 31, 2013, and June 30, 2013. He provided some insight into Greenwood's and Bluforest's operations as they related to public disclosure. However because his communications with the company's management were through periodic emails and telephone conversations, his direct knowledge was limited.

6. Fouani

[71] Fouani, one of Staff's witnesses, was an associate of Can throughout much of the relevant period and testified as to his understanding of Can's dealings with Greenwood/Bluforest from behind-the-scenes. His evidence implicated Can for creating companies for which Can appointed nominees (while maintaining an apparent ownership of less than 10% to avoid becoming an insider) and later selling his stock after promoting the companies.

[72] Fouani was not a credible witness. He sought to minimize his involvement in Bluforest, which he claimed was limited to introducing Can to certain individuals at a time when he and Can were "buddies". He testified that he did not know what the Respondents were up to and that he did not think anything illegal or improper was going on, despite also testifying that Can's plan was to operate Greenwood as a pump and dump on the OTC market. Fouani said that he "just wanted to get my money, so I was there to make sure I get paid" for having made "a lot of introductions to Mr. Can for Mr. Can".

[73] Fouani displayed overt hostility towards Can, apparently resulting from Can's promises to repay money owed to Fouani (which may have been paid, at least in part, by Can through the transfer of Bluforest shares into Fouani's account). Fouani was especially difficult and defensive when cross-examined by Can, who Fouani often said was a fugitive responsible for stealing money. Fouani was unresponsive to many questions, and often refused to answer questions by stating "what does this have to do with Bluforest?" or "that's none of your business." He was

admonished several times and asked to confine his responses to answering the questions asked of him. He often claimed that he could not remember certain facts or details.

[74] In light of his demeanor, evasive and non-responsive answers and poor memory, we accorded very little weight to his testimony, unless it was corroborated by reliable evidence.

E. Adverse Inference

[75] In written submissions, Staff argued that an ASC panel "is entitled to draw an adverse inference against a party when, absent an explanation, that party fails to call a witness who would have knowledge of the facts and presumably could be willing to assist" (*Re Arbour Energy Inc.*, 2012 ABASC 131 at para. 73). In oral submissions, Staff argued that we should draw an adverse inference in relation to Michael McCarthy (**McCarthy**), who ostensibly held a significant interest in GEIL. He did not testify and Staff contended that McCarthy was not within their control as they did not know where he was. Staff indicated MacPherson testified about his unavailability, although we were not referred to that evidence, nor were we able to find that in his testimony.

[76] Principles pertaining to the drawing of an adverse inference in the civil context were recently summarized by Justice Slatter (dissenting) in *Stikeman Elliott LLP v 2083878 Alberta Ltd*, 2019 ABCA 274 at paras. 87-88:

> An adverse inference can be drawn against a party that fails to bring forward evidence on a key point. The principles were summarized in ***Howard v Sandau***, 2008 ABQB 34 at paras. 39, 44, 87 Alta LR (4th) 340, 439 AR 379:
>
> > 39 The failure of a party to call a witness in a civil case may result in an adverse inference being drawn against that party. This principle has been well documented in both case law and academic sources. A number of cases have adopted the following statement from Wigmore, *Evidence in Trials at Common Law*, 1979 as the "leading statement" on adverse inference:
> >
> > > The failure to bring before the tribunal some circumstances, documents or witness, when either the party himself or his opponent claims that the facts would thereby be elucidated, serves to indicate, as the most natural inference, that the party fears to do so; and this fear is some evidence that the circumstance or document or witness, if brought, would have exposed facts unfavourable to the party. These inferences, to be sure, cannot fairly be made except upon certain conditions; and they are also open always to explanation by circumstance which make some other hypothesis a more natural one than the party's fear of exposure. But the propriety of such an inference in general is not doubted. . . .
> >
> > 44 In their book *Witnesses*, Toronto: Thompson Carswell, 2007, Mewett and Sankoff identify at page 2-23 the following circumstances as particularly significant:
> >
> > - whether there is a legitimate explanation for the failure to call the witness
> > - whether the witness has material evidence to provide
> > - whether the witness is the only person or the best person who can provide the evidence.

> - whether the witness is within the "exclusive control" of the party, and is not "equally available to both parties" . . .
>
> Whether to draw an adverse inference is up to the trier of fact.
>
> An adverse inference is not mandatory, but the refusal to draw one must be reasonable.

[77] In *Re Hutchinson*, 2019 ONSEC 36 (at para. 76) the Ontario Securities Commission determined that it would be appropriate to draw an adverse inference against a respondent in circumstances where the evidence established a "*prima facie* case regarding a particular factual conclusion", stating that "Staff must first adduce evidence that appears to be credible and reliable and that is sufficiently strong for the respondent to be called on to answer it; . . .".

[78] We accept that McCarthy's testimony would be relevant to Staff's allegations, but we were not given a cogent explanation of why he could not be called as a witness. There was no evidence of Staff's efforts to locate the witness, nor whether any of the Respondents exercised exclusive control over him. Accordingly, we do not consider it reasonable to draw an adverse inference for the failure of the Respondents to call McCarthy.

[79] We also note that in argument Staff made reference to the fact that neither Can nor Miller testified. We did not consider that as a suggestion that an adverse inference should be drawn from their election not to give evidence. Rather, we accepted Staff's submission that many of Can's and Miller's assertions of fact made in argument, but which were not in evidence, ought to be disregarded.

F. Documentary Evidence

[80] The documentary evidence admitted included settlement agreements, investigative interview transcripts and notes from an interview of Winsor conducted by SEC attorneys on July 29, 2015 (the **Winsor Proffer**). We admitted that evidence, having regard to ss. 29(e) and (f) of the Act, which provide that an ASC enforcement panel shall receive evidence that is relevant to the matter being heard and that the laws of evidence applicable to judicial proceedings do not apply to ASC hearings. Accordingly, relevant evidence, including hearsay evidence, is admissible in an ASC hearing, subject to principles of natural justice and fairness and our assessment of the weight to be given that evidence (*Re Fletcher*, 2012 ABASC 222 at para. 12, *Re Fauth*, 2018 ABASC 175 at para. 8-9).

1. Settlements

[81] Both the Nikoo Settlement and the Anderson Settlement were admitted. Staff sought to rely on the "factual and breach admissions" in these settlement agreements to support their allegations against Can and Miller. Neither Nikoo nor Anderson testified in the hearing, however as mentioned we admitted the Anderson Transcripts.

[82] ASC panels have previously admitted settlement agreements, subject to the weight to be given to the admissions of fact therein. When those facts provide background information or context to the proceedings, or are consistent with other evidence, they have generally been accepted as reliable, but contentious and uncorroborated facts in settlement agreements have not

usually been given any weight. Reasons for this were described in *Re Stewart*, 2005 ABASC 91 at paras. 20-25:

> Before setting out some of those facts, we think it important to comment on the role of the Settlement Agreements in these proceedings.
>
> We found the Settlement Agreements to be of some assistance, as a source of additional background information or context for these proceedings. In some instances, statements of fact in one or other of the Settlement Agreements corroborated or contradicted other evidence, and we took those instances into account in assessing the credibility of the oral testimony.
>
> Beyond that, we attached little weight to the Settlement Agreements. There are a number of reasons for this.
>
> . . .
>
> Caution is called for in part because of the fact that parties to any legal proceeding, if they are endeavouring to arrive at a negotiated settlement, may conduct themselves very differently than if they are pursuing contentious litigation through to a hearing and decision. To achieve a broadly acceptable negotiated conclusion, a party might make admissions or concessions, and advance or abandon particular legal positions, that would be handled very differently in the course of a contested hearing.

[83] Staff argued that considerable weight should be given to the Nikoo Settlement and the Anderson Settlement since both Nikoo and Anderson publicly admitted to serious capital market misconduct that was contrary to their interests, and resulted in significant monetary penalties and lengthy market-access bans that "will or could affect [their] careers and livelihood". Nikoo, a mutual fund salesperson and financial planner, agreed to pay $70,000 and be subject to a 10-year ban on advising in securities and acting as a registrant. Anderson, a Calgary lawyer, agreed to pay $90,000 and to 8-year market bans (with some carve-outs). The Respondents argued that Anderson's admissions were "calculated" to shift responsibility away from him to the other Respondents.

[84] Neither Nikoo nor Anderson admitted to all of the allegations made against them in the NOH. In the Nikoo Settlement, Nikoo admitted to illegal dealing and to making misrepresentations and prohibited representations, but not to illegally distributing securities as had been alleged in the NOH. Anderson admitted to engaging or participating in an act, practice or course of conduct that he ought to have known would result in or contribute to an artificial price for Bluforest securities contrary to s. 93(a)(ii) of the Act, whereas the NOH alleged that he perpetrated a fraud contrary to s.93(b) of the Act. The Respondents contended that Anderson's admission was materially different than what had been alleged by Staff and had less of an effect on Anderson's future career as a lawyer. No evidence was adduced concerning the effect this has had on Anderson's professional career, and we cannot speculate on the consequences that he may face in the future.

[85] The allegations against Nikoo differed from those remaining against Can, with the exception of illegal distributions. Nikoo did not admit to engaging in the illegal distribution of Greenwood/Bluforest securities, but implicated Can in the distribution of those securities. There was no dispute among the parties that Can sold the subject securities – the issue in contention was whether he did so as a "control person". The Nikoo Settlement is silent on that issue, and therefore

has no probative value in determining the allegations against Can. Similarly, there was nothing in the Nikoo Settlement that touched on the remaining allegations against Miller. We therefore disregarded the Nikoo Settlement in its entirety.

[86] The Anderson Settlement directly implicated Can in the alleged market manipulation scheme, and to some degree both Can and Miller in the alleged fraud. Anderson's admissions were highly qualified by a statement that he was "not directly aware of the Promotional Campaign at the time, but acknowledges that he failed to take proper or sufficient steps to identify if Can, through his control of Bluforest and use of Lightship and other IBCs, was engaging or participating in an act, practice or course of conduct relating to Bluforest securities that resulted in or contributed to an artificial price for those securities". This qualification is critical, as it suggests that Anderson is only admitting that he ought to have known what Can was doing, but that he had no actual knowledge of Can's misconduct.

[87] Several of Anderson's specific fact admissions are contradicted by his sworn statements in the Anderson Transcripts. For example, in the Anderson Transcripts he explicitly disavowed any knowledge of various IBCs and who was behind them, yet the Anderson Settlement identifies those same IBCs as being owned or controlled by Can. Throughout the Anderson Transcripts, he denied knowing anything about many of the predicate transactions which formed part of the alleged market manipulation scheme and fraud, but in the Anderson Settlement certain of those transactions are recited as facts. No explanation was given for these glaring contradictions.

[88] Accordingly, we regarded the Anderson Settlement with considerable scepticism. Aside from uncontroversial statements that provided background facts or procedural context, we did not rely on the Anderson Settlement for assessing Staff's allegations, unless his admissions were corroborated by other reliable evidence.

2. Interview Transcripts

[89] We admitted into evidence transcripts of an investigative interview of Cox (including exhibits marked during the interview) and the Anderson Transcripts, because they were clearly relevant.

[90] The weight given to such evidence was discussed in *Arbour* (at para. 54):

> In assessing the weight to attach to statements made in any of the transcribed investigative interviews, we have considered: whether the interviewee was examined under oath, indicating sufficient appreciation of the solemnity of the process; whether the interviewee was represented by counsel during the interview; whether the interviewee testified, or could have been summoned to testify, at the Merits Hearing, thereby allowing testing or clarification by way of cross-examination or panel questioning; and whether there was other evidence of the interviewee's trustworthiness. That said, mindful that the Respondents are entitled to natural justice and procedural fairness, we generally have given statements made in the investigative interviews less weight than direct evidence and we generally have not relied exclusively on any particular interview content in making any of our findings, with this caveat: because Morice and Brost chose not to testify at the Merits Hearing and were not summoned to testify by any other Respondent, we generally have treated statements made by Morice in the Morice Interview and statements made by Brost in the Brost Interview and the Brost US Interview as we would direct evidence and have sometimes relied on them exclusively in making findings, even though such statements were untested during the Merits Hearing.

[91] Cox and Anderson were both interviewed under oath, although neither was represented by counsel (other than Anderson in his second, relatively brief, interview). Neither Cox nor Anderson testified at the hearing, which limited our ability assess their credibility, and precluded the testing of their statements.

[92] Can argued that Cox was a particularly unreliable witness, based on the admission in his interview that "he does not remember things that he said or that he has done over the course of the last four or five years". Cox acknowledged in his interview that he had been impaired by alcohol and narcotics for most of the prior ten years and had difficulty recalling names and dates. Can and Miller also submitted that his statements were biased and difficult to rely on based on his connection to aspects of the promotional campaign, that he was party to numerous transactions of questionable intent, and that his character is flawed.

[93] We agree that Cox's evidence should be treated with caution, and accordingly, we gave no weight to Cox's interview transcripts, unless corroborated by reliable evidence.

[94] We have already commented on the reliability of the Anderson Settlement, and for the same reasons we accorded no weight to the Anderson Transcripts, unless corroborated by other reliable evidence.

3. Winsor Proffer

[95] Staff also relied on the Winsor Proffer. MacPherson was one of two ASC Staff who attended and participated in the Winsor interview. Although the Winsor Proffer notes were not made by MacPherson, he testified that they were consistent with his recollection of the interview.

[96] Staff submitted that the statements in the Winsor Proffer were contrary to her interest, relevant to the matter being heard, and corroborated by other independent evidence.

[97] We assessed the reliability of the Winsor Proffer similar to how we would an interview transcript. Winsor was represented by counsel, but there was no indication that her statements were made under oath. Evidently the interview took place at a U.S. Federal Bureau of Investigations (**FBI**) office in Philadelphia, Pennsylvania by two attorneys from the SEC and, as mentioned, two ASC Staff, together with her counsel. In those circumstances, we can fairly infer that Winsor appreciated the seriousness of the occasion, and we were given no indications that she had any motive to give misleading answers to the questions asked of her. However, as pointed out by Can and Miller's counsel, the Winsor Proffer "does not specifically admit any act which would have resulted in a severe consequence to herself".

[98] We treated the Winsor Proffer with some caution, but in general terms we found her statements to be reliable insofar as they were consistent with other evidence which she would likely not have seen or heard.

4. Other Criminal Proceedings

[99] Staff tendered several documents relating to various US and Canadian criminal proceedings against several of the individuals mentioned earlier, including Can. The criminal

proceedings all related to other market manipulation schemes, some of which involved many of the same individuals and entities involved or implicated in the circumstances surrounding this case. Staff submitted that the documents were tendered only for the purpose of understanding who the individuals are, and not to suggest guilt by association. We allowed the documents into evidence – there was no objection, provided they were not tendered as similar fact evidence or evidence of bad character – however we have accorded them no weight in assessing the allegations against the Respondents.

5. Bank Records

[100] In this decision, amounts not specified to be in a particular currency will, unless specified otherwise, refer to Canadian dollars, either because the evidence clearly indicated Canadian dollars as the relevant currency or because that was assumed when no currency was specified.

[101] We received into evidence bank records for a Greenwood account with ATB Financial, including account opening documents dated February 2011 that referenced Jovanovic as Greenwood's president. Jovanovic testified that he opened the ATB account on Can's instructions, even though Jovanovic alone had signing authority.

[102] Jovanovic identified three drafts totalling US$67,100 payable to Mainland from the Greenwood ATB account, issued on Can's instructions.

[103] We also received evidence of five other bank accounts at the Toronto-Dominion Bank. Two were in the name of Bluforest Canada, one in Canadian currency and the other in US currency. Two were in the name of Mainland, one in Canadian currency and the other in US currency; Can had signing authority for both Mainland accounts. The fifth account was in the name of Can and his spouse.

[104] Mainland's bank records were admitted into evidence, including a document which indicated that Can was associated with other Toronto-Dominion Bank customers, including APIC.

G. Solicitor-Client Privilege

[105] As will be discussed later in this decision, a significant issue in the hearing concerned the identity behind the pseudonym "Jonny Walker" who wrote several incriminating emails from the address jonnywalker256@gmail.com (both the pseudonym and email address will be referred to as **Jonny Walker**). According to the Anderson Transcripts, Anderson thought that Jonny Walker was Can, but Can sought to have that evidence ruled inadmissible on the ground that Anderson's statement violated solicitor-client privilege.

[106] In his written submissions, Can did not clearly articulate the basis for asserting solicitor-client privilege, other than to broadly state that ". . . any admissions and any evidence put forth by the Staff having emerged from Anderson, in relation to Can, Mainland, or any entity in these proceedings is a breach of the solicitor-client privilege and inadmissible . . . ".

[107] Staff argued that Anderson's knowledge concerning the identity of Jonny Walker is not protected by solicitor-client privilege, because Can had not established that such knowledge arose in the context of a communication between lawyer and client involving the seeking or giving of

legal advice that was intended to be confidential; *Re Kilimanjaro Capital Ltd.*, 2018 ABASC 106 at para. 18 (see also *R v McClure*, 2001 SCC 14 at para 36). Staff referred to Anderson's statements to the effect that Can was both a client and a friend, so that it was plausible that Anderson's knowledge came about from his personal relationship with Can. Staff also pointed to email communications from the subject address to others as evidence that Can's alias was not intended to be confidential as just between client and lawyer.

[108] The parties also disagreed on the scope of the "unlawful conduct" exception to solicitor-client privilege. Can maintained that this exception applies only to criminal proceedings or to provide a defence when the innocence of the accused is at stake. He correctly noted that this is not a criminal proceeding, and asserted that the exception does not apply. Staff relied on the statement from the Supreme Court of Canada in *Solosky v. The Queen*, [1980] 1 SCR 821 at 835: " . . . if a client seeks guidance from a lawyer in order to facilitate the commission of a crime or a fraud, the communication will not be privileged and it is immaterial whether the lawyer is an unwitting dupe or knowing participant" (emphasis added).

[109] Principally, though, Staff relied on their argument that there was simply no evidence concerning the manner in which Anderson learned that Can was Jonny Walker. We agree. It was evident that Anderson was careful throughout the Anderson Transcripts to assert solicitor-client privilege when he thought Staff's questions were straying into areas involving the seeking or giving of professional advice. In the absence of contrary evidence, we have to assume that Anderson was mindful of his professional obligations. The context of his statement to the effect that Can was the same person as Jonny Walker did not suggest that his knowledge arose from a communication made in the course of seeking legal advice with the intention that it be confidential. Accordingly, Can's assertion of solicitor-client privilege fails for want of evidence. In any event, as will be discussed later, the preponderance of the evidence, even without Anderson's statement, persuaded us that Can wrote and sent the Jonny Walker emails.

H. Can's Role

[110] Can's role with Greenwood/Bluforest and other related companies was crucial to many of Staff's allegations. We therefore address Can's role with pertinent companies as a preliminary issue.

1. Can's Role With Greenwood/Bluforest

[111] The NOH alleged that Can owned, controlled, and/or was the directing mind of Bluforest at all material times. Staff's position was that Can acquired control over Greenwood's shares in December 2010, despite his name not appearing in filings for Greenwood on EDGAR – the US filing system for the SEC. Can appointed Jovanovic as his nominee, who followed Can's directions and did not independently exercise his decision-making authority over Greenwood's operations. Staff further contended that Can negotiated a new structure with Miller as Greenwood became Bluforest, such that Can would retain 25% control of the voting shares and receive a three-year consulting contract but would not sit on the board of directors. Staff submitted that Can exercised control over all of Bluforest's operations, and surrounded Bluforest with individuals known to him (including Anderson, Winsor, Jacqueline Danforth, deWit, Dalmy, Lawler, Dean, Cusimano, Bandfield and Godfrey).

[112] Can submitted that he was merely providing services to Greenwood as a contractor, which involved handling the administrative affairs of the company and providing advisory services to the board of directors. He denied using nominees or retaining control over any voting rights for Greenwood shares, and contended that he organized the transaction in which Jovanovic conveyed his controlling interest to Miller to move Greenwood forward with an alternative business plan. Can asserted that he provided advice to Bluforest's board of directors and administered Bluforest's affairs as a consultant, which enabled him to participate in the decision-making process but that his involvement never reached a level of control or ownership.

(a) Mainland

[113] It was common ground that Mainland was Can's company. Corporate records show Can was appointed president and secretary of 1556639 Alberta Ltd. when incorporated in 2010, and became its sole director shortly after incorporation. 1556639 Alberta Ltd. changed its name to Mainland on February 17, 2011.

[114] Greenwood paid Mainland US$67,100 in May and June 2011 – US$10,000 on May 4, US$7,100 on May 5 and US$50,000 on June 1. Jovanovic made each of these payments on Can's instructions.

[115] On or about March 15, 2012, Greenwood and Mainland entered into a three-year consulting agreement which, according to Greenwood's disclosure, provided Mainland annual compensation of $1 million, and one million stock options exercisable at $1.00 per share, in exchange for Mainland providing financial, advisory, marketing and investor relation services to Greenwood (the **Mainland Consulting Agreement**). An unsigned version of that agreement in evidence included a signature line for Can, as Mainland's director, and Miller, as CEO of Greenwood.

(b) Jovanovic

[116] Jovanovic – a friend of Can for many years – agreed to help Can with a company he controlled because Can needed somebody that he could trust. When that company ceased operating in 2010, Jovanovic understood that Can was struggling financially and looking to "go back into stocks". Near the end of 2010, Can identified Greenwood as a target company and asked Jovanovic to act as the company's president because it "wouldn't look good on paper if [Can] was the president of a new company" after his previous company went bankrupt. Can told Jovanovic that he "needed to be president for the interim, and then later on, it would develop as it develops". While not initially meant to be paid, Jovanovic was later promised compensation of $10,000 per month.

[117] Jovanovic said that Can "set up everything in motion, . . . and I signed the document . . . to serve as president". Jovanovic did not pay for the control block of Greenwood shares in December 2010, although he attended Can's house to sign an agreement that indicated otherwise after being told that Alexander approved. Jovanovic also acknowledged signing inaccurate disclosure documents in relation to this transaction, but that he did so only after Can persuaded him not to worry about it because it was "just documentation, and nobody checks up on it". Jovanovic later self-reported this conduct to the SEC. Jovanovic acknowledged that Can did not force him to sign these documents and that he did so of his own volition.

[118] Jovanovic testified that he followed Can's instructions and that his responsibilities were limited to signing documents and holding Greenwood shares. Can conducted Greenwood's business from his home and Jovanovic testified that Can made all of the decisions – Can "took care of calling investors, promoters . . ." and ". . . did everything that was supposed to be done regarding paperwork and things like that". Jovanovic also testified that Can made the decisions affecting Greenwood's share capital, including the 20-for-1 forward split of Greenwood shares in January 2011 and the decrease in Greenwood's authorized shares in June 2011. Can retained Dalmy as legal counsel and Winsor as the accountant for Greenwood.

[119] Can instructed Jovanovic to open a bank account and Can directed the movement of Greenwood's funds. Jovanovic recalled that Greenwood received a payment of approximately $150,000 in April or May of 2011 from "a couple of people in California". Can had alerted Jovanovic a few days in advance that funds would be wired into Greenwood's account. Jovanovic said that he contacted Can when the funds were deposited and that Can showed up at Jovanovic's house shortly after to provide instructions for the disbursement of these funds. Those disbursements were made on June 1, 2011 to Mainland (US$50,000), to an individual unknown to Jovanovic (US$5,000), to Anderson's law firm (US$59,000) and to APIC (US$22,000) – a company Jovanovic thought belonged either to Can or to Can's spouse. Jovanovic did not understand why the money was paid to these parties rather than to develop Greenwood's property in British Columbia, and it became clear to him that Greenwood's business plan "wasn't real".

[120] Jovanovic said that his relationship with Can became more tense at this point and reached a "boiling point" in July or August of 2011 when Can told him that "you're holding the bag and you're it. So you deal with it. I'm done. I'm out." At that point, Jovanovic was receiving telephone calls from investors and bankers, and rather than abandon the company, he attempted to keep it afloat.

[121] Can attempted to repair his relationship with Jovanovic later that fall, as he wanted the Greenwood shares that Jovanovic obtained from Alexander. Can told Jovanovic that Can could "take it off my hands" and Jovanovic might even get his salary of $150,000. Ultimately, Jovanovic said that he and Can exchanged several threats and that Can sued him and placed a lien on his house. Jovanovic was not paid for his services at Greenwood, and mediation aimed at recovering his compensation was unproductive, although he received payment for the sale of the Greenwood control block to Can.

[122] Jovanovic testified that he stopped contact with Can after February 2012. According to Greenwood's public disclosure, Jovanovic resigned effective February 15, 2012.

(c) Donihee

[123] Although he was recruited by Miller and Nikoo to join Greenwood, Donihee described his meeting with Can as being akin to a job interview, stating that his impression was that Can "was a principal in the company, that he was very material in making decisions" and "he was going to make the call on whether or not I would be afforded this opportunity to join the company".

[124] Donihee was privy to the decision-making dynamics within Bluforest over several months, and testified that "the distinction between management and [Can] is extremely thin", and that there

was never any doubt that Can was "calling the shots and having a very direct impact on the business as it unfolded". While he considered both Can and Miller to be "the absolute driving forces . . . in terms of the business decisions and acquisitions and possible mergers and ventures . . .", Donihee considered Can to be "at least as instrumental, often more so, than Mr. Miller was in terms of making decisions that were going to unfold as far as the business was concerned".

[125] In cross-examination by Can, Donihee acknowledged that Can lacked the formal authority to make certain decisions, but maintained that Can was, in effect, one of the primary decision-makers within Bluforest. Donihee recalled:

> . . . when things were ugly to the point that I had become affirmed in my decision to leave, there were conversations that transpired between you and I where you would have made statements to the effect that, you know, whether I resigned or whether I didn't, you could simply arrange to have a board resolution, remove me as a director, and see me out of there in a heart beat anyways.

[126] Donihee testified that Can seemed to revel in the fact that he was not part of management but "had a very, very strong impact on any decisions that were being taken and where everything was headed". He recalled a specific telephone conversation in the summer of 2012 involving FINRA and the SEC, in which Can was in the room but avoided speaking, instead providing notes to Donihee and another Bluforest employee on the call. In retrospect, Donihee said that Can was very reticent to let them know he was present. According to Donihee:

> . . . there was no doubt in my mind that [Can] was making the calls and he was driving Mr. Miller on many occasions. It was not uncommon at the end for him to on occasions gleefully state that he had purposely ensured that his name would not go on these things and that despite the fact that he could make lots of these calls that, you know, he was not management. He had put up, if you will, a force field around himself such that he could make the calls and yet not have his name on paper.

[127] Donihee's evidence was that the Mainland Consulting Agreement played a significant role in a power struggle between Can and Miller, as Can "had virtually a death grip on any decision that Mr. Miller could take". He testified that the terms of the Mainland Consulting Agreement allowed for a significant number of stock options for Can, and that it contained onerous termination provisions in Can's favour. According to Donihee, Miller was "trying to figure out how to shed himself" of Can. Donihee conceded that the Mainland Consulting Agreement did not otherwise prevent Bluforest management from making decisions and operating on a day-to-day basis.

(d) Fouani

[128] Fouani testified that Can met with Suzanne Wood (**Wood**) (and perhaps another individual) in 2010 to acquire Greenwood. Fouani thought that Can paid about $20,000 or $30,000 at the time and that he promised to pay more after promoting the company. Fouani recalled that Can's plan was to put an asset into the company and then promote it on the OTC market and sell shares illegitimately through a pump and dump.

[129] Fouani's evidence was generally consistent with evidence from an investigative interview of Wood by staff of the British Columbia Securities Commission. From MacPherson's recollection, Wood said that she had been introduced to Can because he wanted to acquire control of a publicly traded company, and this led to the transfer of restricted Greenwood shares from Wood to

Jovanovic. Wood was evidently Alexander's neighbour – he owned Greenwood when it was incorporated in 2008.

[130] Fouani also testified that Can was controlling Bluforest by April 2013, and that had not changed since he started at Greenwood. He said that Can "operated as a one-man show, and he created all the paperwork in his office, but he would have nominees for each different business".

(e) Cox

[131] Cox told Staff during his investigative interview that Can spoke often about Bluforest and that he controlled the company's shares, although he would have structured it so that he owned most of it, but did not have it in his name.

(f) Winsor

[132] According to the Winsor Proffer, Can said that he owned Greenwood and controlled its float. Winsor also recognized the name Wood, and understood that Jovanovic took direction from Can.

(g) Klein

[133] Klein, Bluforest's auditor, did not think Can was part of Bluforest management or a control person, based on information he had seen. He testified that Can seemed to be an advisor and recalled that he was "pretty sure [Can] wasn't making decisions" but "was advising on them". Klein testified that he never got a final decision from Can – those were made by either Miller or Donihee. Can's involvement in certain communications regarding the characterization of Bluforest's assets did not change Klein's perspective, as he felt that Can "was always on the sidelines" and he "didn't think [Can] was ever an officer, never saw him listed as an officer, but he had influence". Can did not send Klein any supporting documents in relation to reviews or audits – they always came from management.

(h) Investor Witnesses

[134] JD, an investor witness who purchased Greenwood shares in 2012, thought that Can was "above [Miller] starting up the whole process" and described Can as the "top guy" and the "man behind the whole situation". (She also said that Nikoo was the salesperson and Miller "was doing the negotiations".)

[135] Another investor witness, CB, understood that Can was one of the principal players in Bluforest (along with Miller). In September 2012, CB emailed Nikoo asking when Bluforest shares would trade on the NASDAQ; Nikoo responded that he had forwarded the email to Can who "will know much better".

(i) Other Documents

[136] Other documents – independent of the foregoing witness testimony – provided further evidence that Can guided Greenwood/Bluforest. Can sent an email to Dalmy on November 20, 2010 attaching a draft share purchase agreement for approximately 3.3 million restricted common shares of Greenwood, stating that "I did the purchase for 1K for the control block", which corresponded to the US$1,000 purchase price in the draft agreement. Approximately a month later Greenwood filed a Form 8-K disclosing that Jovanovic had acquired 3 million shares

of restricted common stock from Alexander for aggregate consideration of $30,000 and was issued an additional 500,000 shares of restricted common stock upon becoming the company's sole director and officer.

[137] In a February 10, 2012 email string (the **February 2012 Emails**) among Can, Miller, Nikoo and Doug Andrews (**Andrews**), Miller sought clarification on certain aspects of an arrangement involving Greenwood, Can and Miller. In broad terms, Can made it clear that the percentage ownership of the company would be divided 75/25 in Miller's favour – Can said " . . . I cant [sic] give up a shell on term for less then [sic] that", even though other documentary evidence showed that Can's ownership position would consist of free-trading shares, whereas Miller's position would be restricted shares. Can also stipulated that he not be on the board of directors, but would act as a consultant.

[138] The Anderson Settlement stated that Can acquired control of Bluforest in December 2010, and that Can exercised direction and control over Bluforest and its activities at all material times thereafter.

(j) Conclusion

[139] We are satisfied from the evidence that Can was Greenwood/Bluforest's guiding mind at all relevant times.

[140] Can acquired Greenwood in December 2010. Although the evidence was unclear as to the individual who sold the company to Can, the transaction was structured so that Jovanovic – acting as Can's nominee – appeared as Greenwood's president and majority shareholder.

[141] Despite Can's submissions, there was no evidence that he acted as a consultant through Mainland, at least not before March 2012 when the Mainland Consulting Agreement was signed. His roles were inconsistent with that of a consultant – he formulated Greenwood's business plans, was involved with investors and promoters, made decisions concerning the share capital, instructed professionals, and directed the transfer of funds through Greenwood's bank account (including payments totalling US$67,100 to Mainland in May and June 2011). Jovanovic only exercised authority on Can's instructions before their estrangement.

[142] Can's efforts to reclaim his Greenwood shares in late 2011 reinforced the fact that Jovanovic was Can's nominee and that Can was not merely a consultant. The Winsor Proffer corroborated the nature of Jovanovic's role.

[143] Once Miller became CEO of Greenwood, Can continued to exert significant influence over the company as a guiding mind. That was evident from the onset of the contemplated change, particularly the February 2012 Emails, which made it clear that Can was dictating key terms of the company's future plans. Donihee testified that Can's influence was beyond that of a consultant and that he and Miller were the decision-makers. Donihee also testified (consistent with evidence from Jovanovic, Cox and Fouani) that Can shielded himself from having any apparent authority over Bluforest but exercised actual authority in shaping and directing the major decisions for the company. The instrumentality of Can's operational control was the Mainland Consulting Agreement, which constrained Miller's influence and became a source of friction between the two.

[144] The power struggle between Can and Miller, as described by Donihee, reinforced our view that Can was not merely a consultant who provided certain services and advice but exerted considerable influence over Bluforest's major business decisions. As noted in Staff's submissions, a "CEO and board member does not struggle for corporate control with a mere advisor".

[145] We preferred Donihee's evidence on this issue compared to that of Klein, whose perceptions were based on his relatively limited role as auditor to Bluforest, involving periodic email communications and telephone conversations. Donihee, on the other hand, had extensive direct contact with Can and Miller, and thus had a much better opportunity to understand the real decision-making process within Bluforest over a longer period of time. Donihee's evidence was also consistent with that of Cox and Fouani.

2. Jonny Walker

[146] As mentioned, Staff maintained that Can was Jonny Walker. Staff's investigator testified that, based on information obtained during the investigation (including from Anderson) and from the emails themselves, Can had access to the email account, and Staff did not see any indication that anyone else used that email account. Staff thus concluded that the Jonny Walker email belonged to, and was used by, Can.

[147] The evidence before us included numerous emails sent from and to this address. An example was an email sent in December 2013 from an IPC representative, which read:

> Jim:
>
> Will you be responsible for the 2014 Annual payment for the following companies or should the client be billed?
>
> Cavern Capital LLC – Ben Schaffer
> Classic Distribution Ltd. – C Miller
> Lightship Capital Management Ltd. – Norm Anderson
> Reef Capital LLC – Norm Anderson
> Starglow International Inc. – Ben Schaffer

[148] The reply email indicated "yes" for "shafer" but that Anderson would take care of certain items and simply "NO" for "Classic". The same IPC representative had previously emailed Can in July 2011 about invoicing Starglow and other companies.

[149] We also had in evidence dozens of emails from Jonny Walker to de Wit at Legacy, giving instructions to wire substantial amounts of money to various recipient accounts. The Legacy account holders sending the funds were mostly Can-controlled IBCs, and recipients generally fell into one of four categories:

- Mainland through a bank account in Okotoks, Alberta;
- other Can-controlled companies;
- professional advisors and service providers used by Can, including Filer Support Services, Lawler, Dalmy, Anderson's law firm and Dean; and
- stock promoters or other entities linked to promotional touts in evidence.

[150] The emails were sent and received between October 2011 and June 2014, with the highest frequency, involving the most substantial amounts, occurring in the period leading up to the dissemination of promotional touts about Bluforest in 2013.

[151] As noted, one email to Jonny Walker from IPC was addressed to "Jim", and in another instance an email from Jonny Walker was signed "JC".

[152] When we considered the emails collectively, taking into account the identities of the subject companies and individuals – essentially all of whom were known to be controlled by or associated with Can – together with the bank records in evidence (discussed later in this decision) showing Can as the principal net beneficiary of the amounts transferred, we were left with little doubt that Can and Jonny Walker were the same person.

[153] On this issue, given the considerable documentary evidence, we also gave some weight to the corroborating testimony of Fouani and Anderson.

[154] Fouani testified that the Jonny Walker email was one of the emails that Can used when he wanted to deliver documents. Fouani forwarded some emails from that address to Staff investigators, and indicated in one that "Jim is Jonny Walker". The Anderson Transcripts contained evidence to the same effect.

[155] Accordingly, we find that Can controlled and used the Jonny Walker email account.

3. Control of Belize IBCs

(a) Starglow, Atlantis, Lightblue and Lightship

[156] Staff asserted that Can owned or controlled certain IBCs, namely Starglow, Atlantis, Lightblue and Lightship, the latter being "in Anderson's name, but controlled by Can". Counsel for the Respondents submitted that Staff's assertion was "almost wholly dependent on the testimony of admitted wrongdoers who, in an attempt to cloak their own involvement, endorsed the narrative put forth" by Staff.

[157] As discussed in further detail below, Greenwood shares were issued to each of Starglow (3,333,333 shares), Atlantis (2,916,667 shares), Lightblue (2,083,333 shares) and Lightship (4,166,667 shares) in April 2012 as part of a debt settlement of the NAIL Invoice.

[158] In effecting these transactions, Can signed documents on behalf of Lightblue. According to bank records, Lightblue made three deposits totalling US$199,892.32 into Mainland's bank account from December 2012 to May 2013. Can's receipt (through Mainland) of substantial funds from Lightblue belies any suggestion that Can was a mere nominee signatory of the company. We find that Can was the beneficial owner of, and he exercised control over, Lightblue in the relevant time period.

[159] After being issued Greenwood shares in April 2012, Starglow, Atlantis and Lightship received an additional 4.5 million Bluforest shares each as part of another debt settlement

arrangement in January 2013. IPC representatives signed documents on behalf of Starglow, Atlantis and Lightship.

[160] As mentioned, IPC created IBCs, such as Starglow, Atlantis and Lightship, and appointed nominees to sign documents on behalf of the IBCs as part of its services. The use of IPC employees to sign documents on behalf of IBCs concealed the identity of the beneficial owners who controlled the IBCs; in the words of Staff's investigator, "the whole point with opening up accounts at IPC is to camouflage the ultimate beneficial owner . . .".

[161] That conclusion is also consistent with Anderson's statements in the Anderson Transcripts, and Fouani's evidence, that Can used IPC to create several IBCs for the purpose of maintaining anonymity while conducting offshore securities trading activity.

[162] We also had in evidence an email from Can (via Jonny Walker) to Fouani dated April 23, 2013 with "IBC names" as the subject, with an attached list of companies, that included Starglow, Atlantis and Lightship (and NAIL), each with the same Belize address. That email was proximate in time to another email from Can to Fouani asking the latter's opinion on a draft promotional document for Bluforest.

[163] Email evidence also showed IPC representatives communicating with Can regarding Starglow, Atlantis and Lightship in relation to amounts owed to IPC for corporate services. One email indicated that Lightship belonged to Anderson, and another stated that Anderson was the "TA on the account" for Starglow and requested that Can provide IPC with "the full name, address, etc. on this person". Can replied that Anderson "was suppose[d] to have only one not 2". Anderson stated in his investigative interview with Staff that he had no interest in Starglow and that he did not know the company. The communications between IPC and Can concerning payment for IPC's services in relation to Starglow, Atlantis and Lightship, and requesting information from Can about Anderson, persuaded us that IPC was taking instructions from Can in relation to these IBCs.

[164] Each of Starglow, Atlantis and Lightship had a trading account at Legacy. De Wit at Legacy received dozens of email directions from Can (using the Jonny Walker alias) to wire funds from each of those companies' Legacy accounts. As mentioned, Can directed funds to promoters, professional and service providers, and other associates, including:

- companies involved in Bluforest's promotional campaign; Starglow to a promoter Research Driven Investor (**RDI**) ($75,000 and $75,000), Atlantis to Murphy Analytics LLC (**Murphy Analytics**) ($2,500), RDI ($25,000 and $20,000) and "Immaculate-SEO LLC" (**Immaculate**) ($5,000), and Lightship to RDI ($100,000);
- lawyers' firms retained by Can; Starglow and Atlantis to Dean ($16,000) and Anderson's firm (US$30,000, US$37,000 and US$17,000), and Lightship (US$30,000) to Anderson's firm;
- individuals or companies associated with Can (including Mainland); Starglow to Unicorn ($47,000), Atlantis to APIC ($68,000), Mainland ($45,000, $100,000, $150,000 and $7,400), Can's brother ($5,000), and Unicorn ($30,000, $40,000 and $40,000); and

- a company that provided corporate services to Greenwood; Lightship and Atlantis to Filer Support Services (US$10,000, $3,500 and $3,600).

[165] Bank records for Mainland's accounts showed transactions that were consistent with the instructions provided in the corresponding Jonny Walker emails.

[166] Evidence also established that Bluforest shares held by Starglow, Atlantis and Lightship with Legacy were traded through Legacy's omnibus account at Caledonian. We inferred from Can's directions of funds from those companies' brokerage accounts and his connections to these IBCs, that he also provided trading instructions to Legacy for Bluforest shares.

[167] We find that Can exercised control over Starglow, Atlantis, and Lightship throughout the relevant time.

(b) NAIL

[168] We earlier touched on the variations of the NAIL corporate name which appeared in the evidence, and our conclusion that these all referred to the same company, controlled by Can. Here we cite some of the evidence that led us to that conclusion.

[169] An organizing director's resolution showed that NAIL was the sole shareholder of Mainland. As mentioned, there was no dispute among the parties that Can controlled Mainland. Anderson clearly understood that Can was the person behind NAIL.

[170] While Godfrey executed certain documents on behalf of NAIL, we saw sufficient documentary evidence of Can providing instructions on behalf of the company to persuade us that Godfrey's role was only that of a nominee, consistent with IPC's services and with other documents bearing Godfrey's signature on behalf of other IBCs. Examples of Can's direction included emails to de Wit at Legacy with instructions to wire funds from "North America" and "North American" to other Can companies, as well as an email to another offshore brokerage requesting that shares be deposited in NAIL's account.

[171] The evidence was also clear that the name variations of NAIL referred to only one company, and were muddled either deliberately or through carelessness. As an example, the debt settlement transactions in January 2013 included documentation for the issuance of the same 2.5 million Bluforest shares variously to "North America Investments Ltd.", "North America Investments Inc.", "North America Investments" and "North American Investments Ltd." (emphasis added). In other documents, we noted that North American Investments Ltd. and North American Investments Inc. had the same post office box address in Belize, which was also shared by the other Can-controlled IBCs. Other documents indicated that NAIL was an Alberta company (one using Anderson's home address), whereas corporate registry searches indicated no such company existed.

[172] Accordingly, we find that NAIL and its variants were one company controlled by Can.

IV. SUMMARY OF EVENTS

A. Change of Control In Greenwood

[173] As mentioned, Jovanovic acquired 3 million restricted Greenwood shares effective December 15, 2010 for a total purchase price of $30,000, plus an additional 500,000 restricted shares for his appointment as the sole officer and director of Greenwood. According to Greenwood's public disclosure, this transaction resulted in a change in control of Greenwood, with Jovanovic acquiring 51.3% of Greenwood's 6,827,750 issued and outstanding shares.

[174] We found earlier in our reasons that Can acquired control over Greenwood in December 2010, using Jovanovic as his nominee.

B. NAIL Invoice

[175] NAIL issued an invoice to Greenwood dated January 15, 2011, using Anderson's home address. The amount of the invoice was US$60,000 ostensibly for consulting services. There was no evidence adduced on who prepared the NAIL Invoice.

[176] To Jovanovic's knowledge, Greenwood did not receive US$60,000 of consulting services on or before January 15, 2011, although he acknowledged that it was possible. He also said that Greenwood had no employees in January 2011 and he did not speak with anyone claiming to be from NAIL. Jovanovic did not know whether the NAIL Invoice was recorded in Greenwood's books, stating that Greenwood operated out of Can's house and that Can worked with Winsor in relation to the books.

[177] Klein did not recall seeing the NAIL Invoice and did not know if it appeared in Greenwood's financial records or statements. He speculated that it might have been included in a payables number, but stated that it was "never specifically separated out", and he did not see all the invoices that were posted as payable. In cross-examination, Klein was referred to Greenwood's Form 10-K for the 2012 year end, specifically a reference to the NAIL Invoice being settled in exchange for Greenwood shares. Klein testified that he did not obtain documentation underlying that transaction but that it was "all approved by the transfer agent and the corporate lawyer when they wrote those up". After his testimony, he provided a document to Staff purporting to represent Greenwood's accounts payable as of December 31, 2011, which was entered into evidence. According to this document, Greenwood owed US$60,000 to NAIL, with the debt more than 90 days in arrears. We note that Greenwood's audited balance sheet showed total accounts payable of US$8,957 as at December 31, 2011.

C. Forward-Split of Greenwood Shares

[178] On January 26, 2011, Greenwood approved a 20:1 forward-split of its shares which increased its issued and outstanding shares to 136,555,000. Dalmy sent the board resolution to Can so that it could be signed by Jovanovic, who testified that Can made this decision.

D. Miller Appointed Director and Officer of Greenwood

[179] In the February 2012 Emails, Can, Andrews, Miller and Nikoo discussed terms of a proposed arrangement. Miller sought clarification on his understanding of the negotiations before signing an agreement. Pertinent aspects included the following:

- Miller asked why Can wanted Miller to send $50,000 to Can's lawyers (Miller apparently complied, as he paid approximately $50,000 to Mainland a few days later, through his company ORE);
- Miller wrote that "[w]e are putting in a asset [sic] for over 450 million dollars", which Can "feels he can leverage . . . for close to or better than 50% of the asset";
- Miller wrote that he had "the opportunity to add the Sucumbus project of close to 1.5 million hectares" along with the "Juval project which will be valued at around 125 million";
- Miller understood that Can would be "putting in the Pub-co in which he valued it at $500,000 . . .", but that he had "yet to know what he is asking for exactly for this participation"; and
- Miller agreed that Can "will sit on the board along with [Andrews]" and "will promote the company".

[180] Can replied with comments indicating that "[t]he deal was 75-25% that means you [were] suppose[d] to have 75% control and we would have 25% of the total issued and outstanding of 100 MM after rollback". Can also wrote "I will not be sitting on the board. I will be a consultant to the firm for IR, PR finance and market Making".

[181] Can recommended that Dalmy be used by Miller "for all the legal and US corp work", advised that the reverse-split would happen in a few days, and that the "[i]ssuance of stock after closing it will take about 2-3 days the moment we have the new board and president in place". Dalmy had emailed Miller the previous day indicating that she had spoken to Can about the structure of the transaction and "[i]t was agreed that I would represent you in the transaction and if you so desire continue on as corporate counsel". In another email, Dalmy told Miller that she had sent a revised draft of the agreement to Can and would speak with him about it before sending it to Miller. In reply, Miller asked:

> Ok tell me as i am new to this
> am i giving up to much of the farm at 25%? Plus what they are asking of me for salaries and time frames?

[182] Dalmy seemingly ignored Miller's question in her reply email, but sent him the draft of the agreement, and drew Miller's attention to new provisions regarding: "(i) resignation of current director and your appointment together with Doug Andrews; (ii) debt settlement and issuance of 25,000,000 shares; (iii) consultant agreement for three year term at $1,000,000 annually and grant of 1,0000,000 [sic] stock options; and (iv) anti-dilution clause for 6 months after Closing".

[183] According to Greenwood's public disclosure, Jovanovic resigned his positions as director and officer of Greenwood effective February 15, 2012 and Miller was appointed the sole director of Greenwood and its President and CEO, Secretary, Treasurer and Chief Financial Officer.

E. Reverse-Split of Greenwood Shares

[184] On March 26, 2012 Miller signed a Form 8-K for Greenwood, filed with the SEC, disclosing that the board of directors and the company's controlling shareholder had approved a 1:500 reverse-split of its shares on February 6, 2012 (the **2012 Reverse-Split**), which reduced the

company's total issued and outstanding shares from 211,699,975 to 424,500. The 2012 Reverse-Split was effective March 23, 2012.

F. Settlement of NAIL Invoice Debt

[185] In a series of transactions beginning in March 2012, immediately following the 2012 Reverse-Split, the NAIL Invoice was settled by the issuance of 25 million Greenwood shares. According to an unsigned letter dated March 24, 2012 (with an address for NAIL that may not have existed), NAIL notified Greenwood that the US$60,000 debt had been assigned to various creditors (the **Assignees**).

[186] With one exception (as discussed below), Greenwood then entered into debt settlement agreements (all signed by Miller) with each of the Assignees pursuant to which they would receive Greenwood shares at $0.0024 per share to satisfy the assigned debt. A director's resolution dated March 26, 2012, signed by Miller, approved these agreements, and contained the following recital:

> WHEREAS prior management of the Corporation has confirmed to the Board of Directors the verbal agreement with North American Investments Ltd. that such debt would be settled at $0.001 or such other price as could be negotiated but in any event that no less than 25,000,000 shares would be issued subsequent to the reverse split of the Corporation's shares in settlement of [US]$60,000 of the North American Debt;

[187] Jovanovic testified that he did not discuss the NAIL Invoice debt with Miller and he did not come to a verbal agreement with NAIL to settle the debt.

[188] On April 9, 2012, Miller signed corporate resolutions authorizing Greenwood's transfer agent to issue Greenwood shares to the following Assignees:

- 3,333,333 shares to Starglow;
- 4,166,667 shares to Lightship;
- 2,083,333 shares to Lightblue;
- 2,916,667 shares to Atlantis;
- 2,083,333 shares to NAIL;
- 4,166,667 shares to Derry Partners Ltd. (**Derry**);
- 3,125,000 shares to Ular Invest & Finance Inc. (**Ular**); and
- 3,125,000 shares to Vlad Advisors Corp. (**Vlad**).

[189] We earlier found that Can owned or controlled Starglow, Lightship, Lightblue, Atlantis and NAIL. Staff did not adduce any evidence concerning the beneficial ownership or control of Derry, Ular and Vlad, which collectively held more than 10 million Greenwood shares following the aforementioned transactions. Other evidence showed that Derry was associated with some of the promotional touts (as further discussed below), and that Vlad paid Mainland US$11,300 in December 2012 – the bank records indicated the payment related to a "Reinvestment in CDID". According to Fouani, CDID was a company associated with Can and was connected to a pump and dump scheme. In our view there was insufficient evidence to prove that Can was the beneficial owner of, or exercised control over, Derry, Ular or Vlad.

[190] Lawler wrote an opinion letter (the **Lawler Opinion**) dated April 16, 2012 for the purpose of removing US resale restrictions from the Greenwood shares issued to the Assignees. The Lawler Opinion, addressed to Greenwood's transfer agent, described the transactions in the following terms:

> The Investors acquired the Stock directly from [Greenwood] in connection with the conversion of an interest in a Convertible Promissory Note, dated as of January 15, 2011, in favor of NORTH AMERICAN INVESTMENTS LTD., a corporation incorporated pursuant to the laws of the Province of Alberta ("North American"), under which GREENWOOD borrowed the principal amount of $60,000 from North American (the "Note"); the Note was convertible into shares of the Common Stock of [Greenwood]. North American assigned its right, title and interest with respect to $55,000 of the principal balance of the Note to the other Investors listed on Schedule A and retained the balance of $5,000 of the Note. The interest was converted into the Shares pursuant to agreements entered into between Greenwood and each of the Investors dated March 26, 2012, whereby it was agreed that the Note be converted at the price of $0.0024 per share.

[191] The Lawler Opinion also stated that none of the Assignees was an affiliate of Greenwood and that Greenwood "is not and has never been a shell company" within the meaning of applicable SEC rules. The only evidence of indebtedness before us was the NAIL Invoice, which did not provide for any right of conversion.

[192] Although the Lawler Opinion indicated that North American Investments Ltd. retained $5,000 of the NAIL Invoice and acquired 2,083,333 Greenwood shares as settlement of this amount, we do not have evidence of any signed settlement agreement between Greenwood and North American Investments Ltd. Instead, we received evidence of an assignment agreement in which North American Investments Ltd. (an Alberta company, even though other evidence showed no such company existed) assigned Greenwood's outstanding debt (of US$5,000) to North America Investments Ltd. (a Belize company).

[193] Greenwood publicly disclosed the transactions in April 2012, stating that Greenwood "shall . . . cause the settlement of debt in the approximate amount of $60,000 due and owing to that certain creditor . . ., as reflected on the financial statements of the Company as of September 30, 2011 . . . to be settled by issuance to the Creditor and/or his designee an aggregate of 25,000,000 shares of common stock . . .". The settlement was also disclosed in Bluforest's consolidated financial statements for the year ended December 31, 2012 (the **Form 10-K**) (following a 1:30 reverse-split of Bluforest shares in January 2013, the **2013 Reverse-Split**), as follows:

> On March 26, 2012, the Company agreed to settle debt in the amount of [US]$60,000 due and owing as at September 30, 2011 by issuance to the certain Creditor and his assignees an aggregate of 833,333 post reverse split shares of common stock. 833,333 post reverses split shares were reserved for issuance and were valued at fair market value of $240.00 per share on the agreement date, and accordingly we recorded $199,940,000 as loss on the debt settlement. The shares were issued in full satisfaction of the debt in April 2012.

[194] We understood from this disclosure that the settlement of the US$60,000 debt was valued at approximately $200 million of Greenwood shares. In response to a question as to the appropriateness of settling US$60,000 of debt for $200 million worth of shares, Klein responded:

> . . . I believe that the 60,000 related to the prior owner. It was part of his settlement, and I thought he was trying to keep a certain percentage of stock. But, you know, as we looked earlier, somebody was trying to waive their rights for non-dilution, but I thought this was an attempt to get a certain number of shares and have a certain percentage of the company.

[195] Equally confusing was the explanation offered by the Respondents' counsel during oral submissions, who stated initially that the debt was valued at $0.001 per share, and that "it's reasonable to assert the value of the conversion would be considerably lower than what it would be at the time – well, five years or six years from now when transactions were taking place." His reference to $0.001 per share corresponded to the recital in the director's resolution signed by Miller. When the panel suggested that a debt settlement premised on the $0.001 share price referenced in the resolution would result in the issuance of 60 million shares before the 2012 Reverse-Split, and 120,000 shares after it occurred, counsel was unable to provide an explanation for the conspicuous anomaly.

[196] The 2012 Reverse-Split, followed by the issuance of 25 million shares for the NAIL Invoice settlement, diluted prior Greenwood shareholders to less than 2% of the outstanding shares, and gave Can beneficial control of more than 57% of the outstanding shares.

[197] As discussed in further detail below, most of the shares controlled by Can were ultimately transferred into electronic-trading format.

G. Juval Property Acquisition

[198] While Greenwood was issuing its shares to settle the NAIL Invoice debt, the company was in the process of acquiring rights to a property in Ecuador known as the Hacienda Juval (the **Juval Property**). Greenwood initially entered into an agreement dated February 14, 2012 with ORE (a Miller-controlled company), in which Greenwood would acquire ORE's rights to the Juval Property (said to consist of approximately 80,197 hectares of land). According to Greenwood's disclosure, that agreement was rescinded because ORE could not deliver title to the Juval Property.

[199] GEIL (another Miller-controlled company) subsequently acquired rights to control the Juval Property pursuant to an agreement (the **Acquisition Agreement**) with NVA (an entity in which Miller was a member since October 2011) dated March 16, 2012. According to the recitals in the Acquisition Agreement, NVA was to retain ownership of the Juval Property (now represented as approximately 112,500 hectares) but would permit control over the land to pass to a voting trustee (the **Voting Trustee**) appointed pursuant to a voting trust agreement (the **Voting Trust Agreement**). The Acquisition Agreement required GEIL to pay US$4 million to NVA "founder members", US$1 million on March 30, 2012 and the remaining US$3 million on or before October 31, 2012.

[200] The Voting Trust Agreement, also dated March 16, 2012, appointed Nikoo as the Voting Trustee. According to Bluforest's public disclosure, Amanda replaced Nikoo as the Voting Trustee in June 2012.

[201] GEIL and Greenwood entered into an agreement (the **Purchase Agreement**) dated March 30, 2012, pursuant to which Greenwood received GEIL's interest in and to the Voting Trust

Agreement and the Acquisition Agreement. In return, GEIL received 75 million restricted shares out of 100,424,500 shares issued, representing approximately 75% control to GEIL.

[202] Although the Voting Trust Agreement identified Nikoo as the Voting Trustee, the Purchase Agreement referred to Amanda as the Voting Trustee and her name appeared in some of the draft agreements.

[203] Terms of the Purchase Agreement included:

- settlement of the US$60,000 debt owed to the "Creditor" by the issuance of 25 million shares of Greenwood shares;
- a one-year anti-dilution clause requiring consent of the Creditor to increase the number of Greenwood's issued and outstanding shares; and
- Greenwood entering into the Mainland Consulting Agreement.

[204] The Acquisition Agreement, the Voting Trust Agreement and the Purchase Agreement were signed by McCarthy on behalf of GEIL. Various "Founders Members" of NVA (albeit not Miller) signed the Acquisition Agreement and the Voting Trust Agreement on behalf of the NVA. We are satisfied on the preponderance of the documentary evidence that McCarthy was Miller's nominee in relation to GEIL.

[205] Greenwood disclosed the foregoing Juval Property agreements (including the Mainland Consulting Agreement and the settlement of the NAIL Invoice) in a Form 8-K signed by Donihee on April 9, 2012. Amanda was identified as the Voting Trustee. Greenwood's disclosure also indicated that the issuance of the 75 million shares to GEIL represented a change in control of Greenwood.

[206] Greenwood issued the 75 million shares to GEIL in April 2012.

[207] The evidence was clear that Can and Anderson were involved in drafting the documents in support of the Voting Trust Agreement and the Acquisition Agreement. At one point, Anderson asked Can to sign certain documents on behalf of GEIL.

[208] It is noteworthy that fundamental points discussed in the February 2012 Emails largely materialized once the Juval Property and NAIL Invoice settlement transactions were completed. This included the 2012 Reverse-Split, followed by the issuance of Greenwood share capital at an approximate 75/25 apportionment (at least for Miller's share through his control of GEIL, and substantially for Can's share through his control of several of the IBCs). Two other points also deserve mention here. First, the shares controlled by Miller were restricted, whereas those controlled by Can were free-trading (in the US). Second, about eight months later, this series of transactions would be substantially repeated – the 2013 Reverse-Split followed by a debt settlement by issuing shares, resulting in significant dilution to existing shareholders, again largely consistent with the approximate 75/25 apportionment to Miller and to Can.

H. Name Change to Bluforest

[209] Greenwood changed its name to Bluforest effective June 5, 2012. The news release disclosing this change stated that the company had "revised its business plan . . . to focus on the area of carbon offsets marketing" and the revised corporate name was to "better reflect the new business operations . . .". The name change was approved at a directors' meeting in Calgary on May 8, 2012, at which Miller, Donihee (appointed to the board on April 2, 2012), Can (though not a board member) and Amanda (as secretary) were present. The directors also approved a $1 million annual salary for Miller as Bluforest's CEO.

I. San Agustin Acquisition

[210] On June 27, 2012 Bluforest entered into an agreement with Ecuador Farms S.A., Develfarms (**Ecuador Farms**) to purchase approximately 30,000 hectares of land in Ecuador, referred to as the Hacienda Forestal San Agustin (the **San Agustin Property**) in exchange for 26,750,000 restricted Bluforest shares valued at US$180 million. The shares were issued on June 29, 2012.

[211] According to Donihee, Can had traveled to Ecuador and was present for the conversations and meetings leading up to the deal, and his June 22, 2012 email to Donihee (and others) explaining the fundamental terms of the transaction came as a surprise to Donihee (as Bluforest's president).

[212] Although the share consideration was delivered to Dean in escrow, subsequent Bluforest disclosure was inconsistent on whether the purchase was consummated. In its amended Form 10-K (dated April 17, 2013), Bluforest claimed: "[a]fter the second purchase, BluForest owns or controls 135,000 hectares of Ecuadorian forest lands." This land area included the San Agustin Property, yet the notes to the financial statements indicated that the purchase agreement was still executory, as the share consideration remained in escrow. That was unchanged in BluForest's Form 10-Q for the quarter ended June 30, 2013, dated August 14, 2013 – more than a year after the agreement was signed.

[213] Donihee testified that he did not know whether those shares were delivered to Ecuador Farms. He said that they had been delivered to Dean to be held in escrow until the property deed was provided, but he did not see the property deed in Bluforest's possession.

[214] According to the "SUPERCIAS" (an Ecuadorian regulator and member of the International Organization of Securities Commissions), Ecuador Farms dissolved because it never filed any financial reports.

J. Bluforest Becomes an Alberta Reporting Issuer

[215] Bluforest became a reporting issuer in Alberta on July 31, 2012, pursuant to Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-The-Counter Markets*.

K. Cancellation of 23 Million Bluforest Shares Held by GEIL

[216] As of September 30, 2012, Bluforest consented to GEIL's request that 23 million of its 65 million Bluforest shares be surrendered to Bluforest for no consideration, leaving GEIL with 42 million Bluforest shares. Donihee, who signed Bluforest's consent, did not recall details of this transaction but thought the surrender of shares for no consideration was "like burning cash".

Bluforest's 2012 financial statements and related note disclosure recorded a $75 million impairment for the Juval Property, reducing the book value from $600 million to $525 million, however there was no express connection between that impairment and GEIL's surrender of shares.

L. CERSPA Agreements

[217] Bluforest disclosed in its Form 10-K that it had entered into two certified emission reductions pre-sale and purchase agreements (**CERSPA**). Under the first CERSPA, dated November 12, 2012, GBEN pre-purchased 66,000 certified emission reduction credits for US$660,000, paid for by the issuance of 3 million restricted GBEN shares (which Bluforest wrote down to US$66,000 as at December 31, 2012). Under the second CERSPA, dated December 24, 2012, Mainland pre-purchased 8,300 certified emission reduction credits for US$83,000, paid for by setting off that amount owed by Bluforest to Mainland. These pre-sales were recorded as deferred revenue in Bluforest's financial statements.

[218] Staff contended, and we find, that Can controlled both CERSPA counterparties.

M. Share Sales to Alberta Investors

[219] Between approximately February and July 2012 Nikoo made arrangements for at least six of his clients, or referrals from clients, to purchase Greenwood/Bluforest shares beneficially owned by Can and Miller. These investors, all Alberta residents, collectively paid more than $1.1 million at prices between $3.00 and $4.91 per share. We also received evidence of two investors (one an Alberta resident) who purchased Greenwood/Bluforest shares in this timeframe for aggregate consideration of $325,000, though the identity of the beneficial selling shareholders was unclear. It appeared that most, and probably all, of these sales occurred after the 2012 Reverse-Split.

N. Resignations and Reverse-Split of Bluforest Shares

[220] After Donihee's resignation on November 1, 2012, Miller signed a director's resolution dated December 5, 2012 authorizing the 2013 Reverse-Split (a 1:30 consolidation), which reduced the company's issued and outstanding shares from 104,193,166 to 3,474,000. One of the stated reasons for this was to allow the company to negotiate debt settlements with existing creditors. According to Bluforest's disclosure, the company's "one shareholder holding approximately 65.98% of our voting power . . . [gave] written consent" to the transaction. This consolidation took effect on January 23, 2013.

[221] Effective January 10, 2013, Amanda resigned as Bluforest's secretary.

O. 2013 Debt Settlement Agreements

[222] On January 30, 2013, Bluforest issued 100 million of its shares to satisfy claimed debt of $900,000. Bluforest's issued and outstanding shares thereby increased to 103,474,000, again diluting pre-existing shareholders to a small fraction of their former position (approximately 3%). No explanation was given as to how a company with purported net assets of approximately $695 million could transfer 97% of that value in exchange for settling $900,000 of debt.

[223] There was no documentary evidence tendered as to the underlying Bluforest debts or settlement agreements between Bluforest and its creditors or their assignees. Bluforest's records indicated that the newly-issued shares related to the following:

- $150,000 owed to NAIL that "would be settled at $0.006 or such other price as could be negotiated but in any event that no less than 25,000,000 shares would be issued", pursuant to a "verbal agreement"; and
- $750,000 owed to Miller, who agreed to settle the debt "at $0.001 or such other price as could be negotiated but in any event that no less than 75,000,000 shares would be issued".

[224] Greenwood/Bluforest's disclosure of the NAIL debt was confusing. According to Bluforest's 2012 Form 10-K (and consistent with Jovanovic's evidence) Greenwood received payment of US$150,000 on May 31, 2011, which was apparently made pursuant to "verbal private placement agreements". Although the corresponding shares were supposedly issued in June 2011, they were later cancelled because no subscription agreements were received. The subscription amounts remained on Greenwood's books as investor deposits until November 22, 2011, when "the investor" (now singular) opted to transfer the amount to a short-term loan.

[225] Greenwood recorded a short-term loan balance of US$159,938 as at December 31, 2011, which was reduced to US$109,002 as at December 31, 2012, mostly from the payment of US$60,000 in March 2012 (in relation to settlement of the NAIL Invoice debt). We were unable to reconcile this balance with the settlement of the short-term loan of US$150,000 in January 2013, since no other transactions were disclosed that could account for the discrepancy.

[226] Bluforest filed a report of exempt distribution, signed by Miller, (the **Exempt Report**) with the ASC on February 27, 2013, reporting that Bluforest had distributed 25 million shares at $0.006 per share and 75 million shares at $0.001 per share. The Exempt Report did not identify the recipients of the shares, other than to list their country of residence as being Ecuador, Belize or the British Virgin Islands.

[227] The tranche of 25 million Bluforest shares were free-trading in the US. An opinion letter dated January 30, 2013 from Dean to Bluforest's transfer agent (the **Dean Opinion**) provided that the shares may be reissued without a restrictive legend based in part on representations from the "Sellers" that they were issued for debt that accrued on the books of Bluforest as of November 22, 2011 and that the share recipients "are not now, and during the three month period preceding the date of this letter, have not been an 'affiliate' of [Bluforest]". According to the Dean Opinion, the 25 million shares were issued as follows:

- Starglow – 4.5 million shares;
- Atlantis – 4.5 million shares;
- NAIL – 2.5 million shares;
- Lightship – 4.5 million shares;
- Classic Distribution Ltd. (**Classic**) – 3 million shares;
- Legend Wealth Ventures Inc. (**Legend**) – 1 million shares;
- Highbridge Overseas Ltd. (**High Bridge**) – 1 million shares;
- Lightblue – 2 million shares;
- Derry – 1 million shares; and
- Ulnar Invest & Finance Inc. – 1 million shares.

[228] Based on documentary evidence, including email communications between Miller and IPC, we find that each of Classic, Legend and High Bridge were IBCs controlled by Miller through IPC nominees during the relevant time period.

[229] The certificates for the 25 million shares were delivered to Dean. Soon after, the Bluforest shares issued to Starglow, Atlantis, NAIL, and Lightship, comprising 16 million of the 25 million, were cancelled and reissued into Caledonian accounts (on behalf of Legacy) in electronic form.

[230] Staff's investigator testified that the transfer of free-trading Bluforest shares in amounts less than 5% of the total issued and outstanding shares may have been significant, as the "5 percent threshold triggers a reporting requirement with the SEC, and by keeping the individual shareholders under 5 percent, . . . it negates the need to make a filing with the SEC . . .".

[231] The 75 million Bluforest restricted shares were issued as follows:

- Miller – 39 million shares;
- McCarthy – 17.25 million shares;
- Patricio Izurieta – 6.75 million shares;
- The Kimberley Group Inc. – 4.5 million shares;
- Allied Technology Ltd. (**Allied**) (a company controlled by Nikoo) – 4.5 million shares; and
- Aladdin Assets Management Ltd. – 3 million shares.

[232] Miller took delivery of the certificates for the 75 million restricted shares.

[233] On March 28, 2013, some of Allied's restricted Bluforest shares were reissued to Alberta investors who had bought Greenwood/Bluforest shares before the 2013 Reverse-Split. Either nominal consideration ($0.01 per share) or no consideration was paid to Allied for these shares. We heard varying explanations for these transactions, including that they were meant to compensate investors for the 2013 Reverse-Split.

P. Carbon Credit Agreement

[234] In notes to Bluforest's financial statements in its Form 10-Q (for the quarter ended March 31, 2013), Bluforest disclosed an agreement to develop carbon offsets in Ecuador, as follows:

> On February 28, 2013, [Bluforest] and the Commonwealth of Northern Ecuador ("MNE") executed an agreement that develops a program to reduce emissions from deforestation and forest degradation (REDD +) covering the whole territory of the Commonwealth (the "Program"). Pursuant to the contract [Bluforest] was to make an advance payment of $600,000, which would be recovered through the sale of carbon credit certificates in the future. This advance would be provided no later than 30 working days after signing the contract if the MNE was able to provide verification which allows the Manicommunidad the right to sell the Carbon Credits.

[235] We received into evidence a "Carbon Credit Advance Purchase Contract Regarding REDD + MNE Program" between "Bluforest International" and "REDD + MNE" dated February 28, 2013

(the **Carbon Credit Agreement**). According to its terms, the Carbon Credit Agreement formalized a transaction involving Bluforest to further the objective of developing a program to reduce emissions from deforestation and forest degradation in the Commonwealth of Northern Ecuador. Burneo testified that he was present when this document was signed by Mr. Guillermo Herrera, who (according to Burneo) was a prefect of the province of Carchi and president of the Commonwealth of Northern Ecuador, which Burneo said meant that he was also president of the government-owned company "created for these negotiations" and the appropriate person to sign the document. Mr. Burneo also testified that the Minister of Environment of Ecuador supported Bluforest's contracts, and that the document was formally entered into the government's document system.

[236] Staff referred to an email from a representative of the SUPERCIAS (which in turn was based on a review of documents obtained by the regulator from the Commonwealth of Northern Ecuador), stating that Ecuador's state-run enterprise had "never entered into any agreement to develop a program regarding carbon emissions reduction or reforestation", including the Carbon Credit Agreement. Burneo could not explain why the regulator was unable to locate the Carbon Credit Agreement, and Staff were unable to reconcile the Carbon Credit Agreement with the position taken by the SUPERCIAS. We note that certain important terms of the Carbon Credit Agreement – including the advance payment of $600,000 – were not performed nor capable of being performed by Bluforest, which might explain the position taken by the SUPERCIAS.

Q. Tangible Asset Public Disclosure

[237] As mentioned, Bluforest's Form 10-K, dated March 18, 2013 was signed by Miller as CEO, President, Principal Financial Officer, Principal Accounting Officer and Director of Bluforest. The Form 10-K contained two references to tangible assets. The Consolidated Statements of Cash Flows included a line item, "Stock issued for acquisition of tangible assets", with a stated value of US$773,875,000. It is apparent from the financial statements that this value included both the Juval Property ($600,000,000, to which an impairment of expense of $75,000,000 was applied) and the San Agustin Property ($173,875,000). The second reference was in one of the notes to the consolidated financial statements relating to the "Impairment of Property for Developing Carbon Credit", which read:

> Assets acquired for developing carbon assets are assessed annually for impairment of value, or upon a change in circumstances which in management's estimation, may result in a change to the carrying value of the recorded assets, and a loss is recognized at the time of the impairment by providing an impairment allowance. An asset would be impaired if the undiscounted cash flows were less than its carrying value. Impairments are measured by the amount by which the carrying value exceeds its fair value. Impairment of these tangible assets is based on the facts and circumstances surrounding each identified asset based on management's evaluation. . . .

[238] Klein testified that Bluforest personnel, at his recommendation, corrected most of the references to tangible assets but that these two instances "slipped through".

[239] The Form 10-K disclosed that the right to control the Juval Property passed to GEIL through the Voting Trust Agreement, but that NVA held title and maintained legal ownership over the Juval Property and that NVA is the legal and beneficial owner.

[240] The day after the Form 10-K was filed, 100 Bluforest shares traded, with a closing price of $5.10. Through the end of the month, less than 10,000 Bluforest shares were traded, with no trading activity in Bluforest shares in seven of the nine trading days at month end.

R. The Asset Email

[241] Staff received an email from a Bluforest investor, which had been sent by Miller on March 18, 2013 (the **Asset Email**). The subject line of the email read "Fwd: For all the non believers and the ones that stood behind me. hehhehe!!!!" The body of the email stated:

> Hello All.
>
> If you check the SEC filings at www.sec.com you will find great news for BLUFOREST. The property has been booked as a tangible asset valued at $698,962,128 "Million" and the share price today is at $5.00 the book value is $6.72 No one can disagree now !!!!!!! Blue Forest now has the potential to leap in front of all the competition.
>
> Charlie Miller
> CEO
> BluForest Inc

[242] Another Bluforest investor, JD, learned from SEC filings and the Asset Email about the tangible asset on Bluforest's balance sheet. On April 2, 2013, JD forwarded the Asset Email to her friend, CB, who had previously invested in Bluforest and testified that the Asset Email influenced him to consider buying more Bluforest shares from Nikoo.

S. Revision to Form 10-K

[243] On April 17, 2013, Klein sent Miller a revised draft of the Form 10-K that removed the two tangible asset references in the document (along with another change). In an email response to Miller's inquiry as to the reason for amending the tangible asset references, Klein stated: "you do not hold tangible assets in the NVA. You hold the rights to manage the assets." Klein testified that he was sure that he had previously conveyed this to Miller in their discussions.

[244] Bluforest filed an amended Form 10-K dated April 17, 2013, in which the two references to tangible assets were replaced with the term "properties". With these changes, the amended document read: (1) "Stock issued for acquisition of properties", and (2) "Impairment of these properties is based on the facts and circumstances surrounding each identified asset based on management's evaluation".

[245] We do not have all of the trading data for Bluforest shares for the month of April 2013. From the information available, it appears that approximately 10,000 Bluforest shares traded over three of the trading days in the final week of April 2013, with the highest closing price of $2.20.

T. Bluforest Cease Trade Order

[246] On June 28, 2013, the Commission issued a cease trade order (**CTO**) for Bluforest securities. According to the CTO, certain of Bluforest's financial statements (for the periods ending June 30, September 30, and December 31, 2012 and March 31, 2013) were not completed in accordance with Alberta securities laws.

U. Promotional Campaign

[247] Staff adduced evidence of various "touts" – an informal term meant to describe a promotional newsletter or promotional information extolling the merits of a public company – in relation to Bluforest that were disseminated from November 2012 to November 2013.

[248] The Bluforest touts were located through a website, www.stockpromoters.com (the **Stock Promoters' Website**), which aggregated in one place promotional and marketing material for publicly-traded companies. According to screenshots from the Stock Promoters' Website, a search of a company's stock symbol revealed whether the company was the subject of a current promotion. A printout of the search results from the Stock Promoters' Website using Bluforest's stock symbol identified 205 touts from November 30, 2012 to November 18, 2013. The search results also provided a summary for each tout, including the date of the tout, select Bluforest share trading information relative to that date, the identity of the promoter, and a statement (apparently reproduced from the fine print in the tout) about the compensation (if any) that had been paid, or was expected to be paid, to the promoter. Each summary included a link to an electronic version of the tout.

[249] In evidence were printed copies of each Bluforest tout sent during the timeframe. Of the 205 touts captured by the Stock Promoters' Website, 163 were published from July 16 to August 19, 2013, of which 104 were published August 5-9, 2013. These touts were disseminated by approximately 36 different promoters during the promotional campaign. Most promoters created between four and ten touts, although some sent only a single tout.

[250] Many of the touts were rife with hyperbole concerning Bluforest's prospects and conveyed a sense of urgency for buying the company's shares. In some instances, touts warned (in small print) that "[a]ny claims or Statements should be deemed apocryphal". Most of the touts contained fine print disclosing the compensation being paid to the promoters.

[251] We are persuaded by the evidence that an orchestrated promotional campaign in relation to Bluforest shares occurred, with deliberate intensity during the period July 16 to August 19, 2013 (the **Promotional Campaign**). The following summarizes some of the evidence relating to the Promotional Campaign.

1. RDI

[252] One promoter, RDI, sent 16 Bluforest touts during the Promotional Campaign. Most of these touts indicated that RDI had received US$75,000 from Ireland Offshore (described as a "non affiliated third party") to profile Bluforest for a three-day investor-relations campaign and that RDI expected to receive a further US$75,000 for a total of US$150,000 paid by Ireland Offshore.

[253] Three other promoters, evidently controlled by RDI, sent 27 additional Bluforest touts during the Promotional Campaign. One, identified as "Stock Digest Report", issued eight touts, each stating that the promoter was owned and operated by Solomon Small Cap Group LLC, which in turn was controlled by RDI. These touts also indicated that RDI paid Solomon Small Cap Group LLC US$10,000 to profile Bluforest for a three-day investor-relations campaign, and that RDI received US$75,000 from Ireland Offshore to profile Bluforest for a one-day investor-relations

campaign. The touts also stated that RDI expected to receive another US$75,000 for a total of US$150,000 paid by Ireland Offshore.

[254] Another promoter controlled by RDI, "PickPennyStocks.net", sent eight touts during the Promotional Campaign. These touts stated that the website was owned and operated by Pick Penny Stocks LLC, which in turn was controlled by RDI. They also stated that RDI had paid Pick Penny Stocks LLC US$10,000 to profile Bluforest for a three-day investor-relations campaign, that RDI received US$75,000 from Ireland Offshore to profile Bluforest for a one-day investor-relations campaign, and that RDI expected to receive another US$75,000 for a total of US$150,000 paid by Ireland Offshore to profile Bluforest.

[255] "Growing Stocks Reports", the third promoter controlled by RDI, sent 11 touts during the Promotional Campaign. These touts stated that RDI owned and operated the "www.growingstocksreport.com" website, that RDI had received $75,000 from Ireland Offshore to profile Bluforest for a three-day investor-relations campaign and that RDI expected to receive another $75,000 for a total of $150,000 paid by Ireland Offshore.

[256] As mentioned, Ireland Offshore was owned or controlled by Cox, an associate of Can (and Fouani). In his investigative interview, Cox denied knowing about the touts that mentioned Ireland Offshore's participation in Bluforest's investor-relations campaign. He also denied that Ireland Offshore had any involvement with Bluforest, stating that he "did not, in any way, authorize or have the money to do this", and had no knowledge of money paid from Ireland Offshore.

[257] From December 2012 to July 2013, Can (using the Jonny Walker email) instructed de Wit at Legacy to transfer $298,200 to RDI from Legacy accounts belonging to Can-controlled IBCs. Other evidence established that Can was doing business with RDI, notably bank records showing that RDI twice wired US$50,000 to Mainland, Can's company, in May 2013.

[258] We are satisfied that Can directed the transfer of funds to RDI from companies he controlled. We further find that the purpose of those payments was for RDI's promotional touts of Bluforest, both directly and indirectly through other promoters controlled by RDI.

[259] We also infer that Can used the Ireland Offshore name in RDI-touts to create the appearance that the touts were paid for by a "non affiliated third party". This was consistent with other evidence that Can used companies controlled by others without their knowledge to conceal his involvement.

2. Vino

[260] Six promoters, identified on the Stock Promoters' Website as "Penny Stock Scholar", "MicroCap Profiler", "Equity Trading Alert", "OTC Tip Reporter", "Small Cap Investor Daily" and "PennyTrader.co", collectively sent 42 Bluforest touts during the Promotional Campaign (including the only touts sent in July 2013, all in the July 16-19 period). Each of these touts stated (in fine print) that Vino – a "non-affiliated third party" – had paid $10,000 to profile Bluforest for a three-day "investor awareness program" and indicated that they had been sent to the Stock Promoters' Website from the same Florida address. With the exception of the touts sent by Small

Cap Investor Daily and PennyTrader.co, the touts also stated that the promoter was owned and operated by LionsGate Ventures Inc.

[261] Much of the promotional content in these touts was virtually identical. With one exception, the July touts stressed that Bluforest "has 342% upside", that it was "trading below $2.00/with a $6.72 book value" and that it was "able to report the recognition of and subsequent move from Intangible Assets of $698 million to $695 million of Tangible Assets on the Balance Sheet", making Bluforest "the ONLY OTCBB Company to ever go public with over $695 million in net asset value". Later touts stated that Bluforest owned the Juval Property valued at $525 million and the Esmaraldas property valued at $172 million, and that Bluforest controlled the Sucumbios property, making Bluforest "one of the largest forestry companies in the world".

[262] Earlier touts sent from another promoter – identified on the Stock Promoters' Website as "InvestorTrendz" – stated that Vino was expected to pay the promoter US$30,000 to profile Bluforest. One Bluforest investor (JD) received an email promotion from "Investor TRENDZ" on July 16, 2013. She could not recall how she received this tout, but testified that she received "things from [Nikoo], and I believe [Miller] sent us some communications or publications that were pumping up Bluforest and pumping up the carbon trading market". JD forwarded the tout to other Bluforest investors.

[263] Fouani owned Vino. Similar to Cox's evidence concerning Ireland Offshore, Fouani denied that Vino paid for any promotion of Bluforest securities despite the statements in the touts, and said that he had no idea how Vino's name came to be mentioned in the touts' disclaimers. Fouani testified that Can "usually put just any company so . . . it's coming from a third party, not from" Bluforest.

[264] We infer that Can used Vino's identity in the above-referenced touts to create the appearance that the Bluforest Promotional Campaign was paid for by parties unaffiliated with Bluforest. Similar to the case with Ireland Offshore, this was corroborated by other evidence that Can used companies controlled by others without their knowledge.

3. Sirius Stocks/TryPennyStocks

[265] "Sirius Stocks" published eleven Bluforest touts during the Promotional Campaign, all stating that "Siri.biz expects to be compensated 100,000 euros from a non-controlling third party for [Bluforest] advertising service". These touts also stated that they had been sent to the Stock Promoters' Website by "BestDamnPennyStocks.com", a website registered to Cusimano in February 2008.

[266] A promoter identified on the Stock Promoters' Website as "Try Penny Stocks" sent seven touts during the Promotional Campaign, all stating "TryPennyStocks.com expects to be compensated fifteen thousand dollars cash from a non-controlling third party for [Bluforest] advertising services". These touts also stated that they had been sent to the Stock Promoters' Website by Immaculate. Boye registered Immaculate in January 2009 in the state of Nevada. He also registered the "TryPennyStocks.com" website in October 2008.

[267] Five other promoters – identified as "Equities On the Rise", "US Market Buzz", "Bling Bling Pennystocks", "The Penny Stock Profiler" and "Get Rich Penny Stocks" – also sent virtually identical touts on the same day as Try Penny Stocks and Sirius Stocks. Collectively, these five promoters sent 36 touts during the Promotional Campaign. The touts sent by Equities On the Rise, Bling Bling Pennystocks and Get Rich Penny Stocks also indicated that Immaculate had sent its touts to the Stock Promoters' Website.

[268] In his interview transcripts, Cox said that Can was often talking with Cusimano "when the [Bluforest] stock was kind of moving", that Cusimano "pushed a button, and a lot of volume came in" and that he was able to send an "e-mail blast" or some other promotion that provided a "great lift" to Bluforest that increased both price and volume. Cox also said that Cusimano had the "Best Damn Penny Stocks" website. Cox's evidence was consistent with that of Fouani, who said that he travelled with Can to Panama, where Can met with Cusimano to arrange a promotion.

[269] On June 26, 2013, Can instructed de Wit (using the Jonny Walker email) to wire $5,000 (from Atlantis' account) to Immaculate (the company registered by Boye and mentioned in the touts sent by Try Penny Stocks, Equities On the Rise, Bling Bling Pennystocks and Get Rich Penny Stocks). We infer that Can provided this payment to Boye in relation to the touts issued by these promoters, which accorded with the compelling evidence that Can paid other promoters that disseminated touts on Bluforest.

[270] We find that Cusimano and Boye, at Can's direction, coordinated the issuance of Bluforest touts at the height of the Promotional Campaign and that they, through websites controlled by them, sent as many as 54 Bluforest touts during the Promotional Campaign.

4. Dominica Promoters

[271] An additional 33 touts came from six promoters, identified as "Best Penny Newsletter", "Gain the Green", "OTC Market Alerts", "Penny Players Club", "Marketbulls" and "The Bull Exchange" (the **Dominica Promoters**). These touts contained virtually identical content, listed the same Dominica address, and were sent from August 5 to 12, 2013. Most indicated that the promoter expected payment (of either $50,000, $100,000 or $200,000), although the payor was not identified in any of the touts beyond a reference in some that payment would be made by "a third party non affiliate".

[272] The Dominica Promoters' touts referenced the following Bluforest news releases (which were not in evidence):

- March 19, 2013, disclosing the "recognition of and the subsequent move from Intangible Assets of $698,875,000 to $695,277,476 of Tangible Assets on the Balance sheet" which ". . . created a BOOK value of $6.72 per share", followed by a statement in the tout that: "[i]n a matter of weeks / months, your [Bluforest] shares could be worth more than 10 times what you pay for them today!"
- August 5, 2013, indicating that Bluforest "is anticipating new technology" that "will expand the carbon offsets trading market";
- August 5, 2013, announcing that Murphy Analytics had initiated coverage of Bluforest, followed by a statement in the tout that "[w]e are expecting monster

moves over the next few days / weeks and months to come!" Later touts from Dominica Promoters (consistent with touts from other promoters) pointed out that the Murphy Analytics report expected Bluforest to "justify a price of $6.75!";

- August 7, 2013, naming Bluforest as "an emerging leader in the field of Carbon Trading and Renewable Energy", followed by a statement in the tout that Bluforest "can attract a surge of market interest" and "[w]e expect nothing less than huge gains for [Bluforest], and . . . it could reach a triple digit percentage gain today";
- August 7, 2013, indicating that Goldman Small Cap Research (Goldman) – a stock market research firm – had initiated research coverage of Bluforest, followed by quotes from Goldman's report that "there is tremendous value in BluForest's shares, as evidenced by its $6.72 per share in book value" and "[i]n the near term, we expect these shares to at least reach the $7.00 level and could surpass $10.00 in 18 months, following more clarity on the size and profitability future deals;
- August 12, 2013, stating that Bluforest, as "an emerging leader in the field of Carbon Trading and Renewable Energy", was closely watching the California carbon market, followed by a statement in the tout that "huge gains" were expected for Bluforest, and that "it could reach a triple digit percentage gains today".

[273] These touts were part of a coordinated effort to build upon a series of news releases (apparently, with little, if any, substantive content) to stimulate interest in, and increase the price of, Bluforest shares. Numerous touts were sent daily from purportedly different sources, all urging immediate action in anticipation of significant imminent increases in Bluforest's share price. The tenor of the Dominica touts was consistent with that of the other promoters involved in the Promotional Campaign, even though they did not disclose the party responsible for compensating the promoters.

5. Stock Appeal LLC

[274] On August 5, 2013, five touts were sent by five different promoters, all with virtually identical content, including a statement that the touts were sent to the Stock Promoters' Website by Stock Appeal LLC.

6. Penny Stock Research

[275] The only communication found on the Stock Promoters' Website that had a negative tone in relation to Bluforest was dated August 9, 2013 from "Penny Stock Research". The communication described Bluforest as the subject of an "extensive penny stock pump and dump" campaign that was a "disaster waiting to happen". As part of its analysis, it stated:

> [Bluforest] is one of the most heavily hyped penny stocks of the past week. According to our sources, 28 promoters with 240 newsletters have been paid $395,000 to pump [Bluforest] so far this month.

[276] Following a chart showing Bluforest share price fluctuations over an approximate three month period, it continued:

> As you can see, [Bluforest] shot up from around $1.00 at the end of July to a high of $2.15 on August 6th. That move was good for a gain of 115% in short order. However, the stock failed to hold that level when sellers rushed in to dump their shares.

> [Bluforest] plunged all the way down to a low of $1.16 on August 7th before finishing the day at $1.33.
>
> That vicious slide provided those buying at the top a hefty two-day loss of 38%. And any top-tickers selling at the day's low lost nearly half their money before they knew what hit them.

[277] Penny Stock Research also stated that Bluforest "issued a couple of press releases this week extolling the company's bright future" and that "two small cap research firms have each issued positive research reports on the company" but warned that they were not necessarily providing an independent and unbiased opinion, based on disclaimers in the reports confirming payments made to the firms. Penny Stock Research concluded that "[t]he company press releases, the massive stock promotion campaign, and the paid-for research reports all point to a carefully constructed pump and dump scheme for [Bluforest]."

7. Murphy Analytics

[278] The peak of the Promotional Campaign began with a number of touts between July 16-19, 2013. According to the Stock Promoters' Website, no other touts were sent until August 5, when approximately two dozen touts cited a report by Murphy Analytics. Described as "an independent investment research firm providing coverage of microcap stocks", Murphy Analytics prepared a research report that, according to the touts, contained "a detailed discussion of [Bluforest]'s business operations, market dynamics, macroeconomic data and indicators, financial results and risks", and concluded that Bluforest justified "a price of $6.75 . . . over the coming quarters, if the Company begins generating revenue and shows progress towards delivering earnings".

[279] Can provided instructions to de Wit (using the Jonny Walker email) to wire funds – US$5,000 on May 12, 2012 and $2,500 (from Atlantis) on May 13, 2013 – to Murphy Analytics.

[280] We are satisfied that Can paid Murphy Analytics to prepare the report that was used during the Promotional Campaign, with a deliberately misleading appearance as coming from an independent investment research firm.

8. Conclusions from Promotional Campaign

[281] We are satisfied from the evidence that Can orchestrated the Promotional Campaign. Specifically we find that Can:

- paid about $300,000 from companies he controlled – Lightship, Starglow, Atlantis and NAIL – to RDI for disseminating at least 29 touts (directly and through companies or websites it controlled) during the Promotional Campaign;
- engaged Cusimano and Boye to promote Bluforest shares by having them send dozens of Bluforest touts during the Promotional Campaign from websites that they controlled, and that Can arranged for compensation to be paid for these touts;
- used Vino's and Ireland Offshore's identities to give a misleading appearance that they paid for an investor awareness campaign promoting Bluforest; and
- paid Murphy Analytics, whose report (referenced in dozens of touts during the Promotional Campaign) concluded that Bluforest shares were undervalued by the market.

[282] Touts sent by RDI (including promoters ostensibly controlled by RDI), by promoters linked to Vino and by promoters connected to Cusimano and Boye accounted for more than 75% of the touts sent during the most active phase of the Promotional Campaign.

V. Bluforest Trading

[283] On December 28, 2012, Bluforest share certificates (representing a total of 10,416,667 shares) issued to each of Starglow, Lightship and Atlantis from the NAIL Invoice settlement were cancelled and reissued to Caledonian for the benefit of Legacy. This occurred after de Wit (at Legacy) asked Bluforest's transfer agent to "re-register" the share certificates so that they could be deposited "on behalf of our client with our custodian bank". At this point, the shares were tradeable, but not in electronic form.

[284] On January 17, 2013, those share certificates issued to Caledonian for the benefit of Legacy were cancelled and reissued in electronic form to Cede & Co – the nominee of the Depository Trust Company in the US, similar to CDS and Co. in Canada. Staff did not provide evidence of ownership of those shares beyond that point.

[285] On December 18, 2012, the share certificate (representing 2,083,333 Bluforest shares) issued to Lightblue from the NAIL Invoice settlement was similarly cancelled and reissued to Cede & Co. Can signed the reverse side of the shareholder certificate on behalf of Lightblue.

[286] A similar process was followed for the Bluforest share certificates issued to Starglow, Atlantis, Lightship and NAIL in January 2013. de Wit sent those certificates to Bluforest's transfer agent on February 14, 2013 with the direction that they be re-registered to Caledonian for the benefit of Legacy. On March 11, 2013, the reissued share certificates were cancelled and reissued in electronic form to Cede & Co.

[287] Legacy later traded Bluforest shares for Can-controlled IBCs Starglow, Atlantis, Lightship and NAIL through its omnibus trading account with Caledonian. These trades included:

- on June 28, 2013, Legacy sold 106,584 Bluforest shares, which were attributed to NAIL, for US$116,045.57;
- on July 18, 2013, Legacy sold 19,100 Bluforest shares, which were attributed to Atlantis, for US$27,514.83;
- on July 19, 2013, Legacy sold 239,000 Bluforest shares, which were attributed to Lightship, for US$271,589.12;
- on July 26, 2013, Legacy sold 180,000 Bluforest shares, which were attributed to Starglow, for US$202,959.23; and
- on July 26, 2013, Legacy sold 75,000 Bluforest shares, which were attributed to Atlantis, for US$87,989.07.

[288] MacPherson testified that none of Legacy, IPC, Caledonian or Unicorn were operating when Staff sought trading information as part of their investigation. Accordingly, Staff could not determine if this evidence constituted all Bluforest trading by Starglow, Atlantis, Lightship and NAIL.

[289] MacPherson was uncertain why Caledonian acted as an intermediary between Legacy and the market, but testified that from his investigative experience the layering of trading accounts was typical of pump and dump schemes.

[290] In early September 2013, Bluforest shares were traded in a Unicorn account held by Swiss National Securities, a Fouani company. There were more than a dozen trades over five days. Fouani testified that he opened the Unicorn account, into which Can transferred Bluforest shares from one of his nominees as repayment of a debt that Can owed Fouani. According to Fouani, both he and Can traded securities in that account, including times when Fouani was not in Belize. Fouani identified one purchase of 70 Bluforest shares as a trade he had no reason to make, and testified that it was probably Can "up-ticking" Bluforest shares for a higher closing price.

W. Trading Data

[291] In evidence were Bloomberg stock charts and daily trading data for Bluforest shares in 2013. In summary, the trading over the first half of the year was characterized by very thin volumes and volatile (closing) price fluctuations, from a low of $0.25 to a high of $6.19 per share. Trading volumes increased appreciably at the end of June and through August, in a narrower closing price range of between $0.93 and $2.00 per share – unsurprisingly, the highest volumes corresponded with the Promotional Campaign. After the Promotional Campaign, the Bluforest share price plummeted, ending the year at $0.035.

[292] MacPherson testified that the goal of pump and dump activity focuses more on volume than on price because the individuals involved often control the public issuer and are able to obtain shares at reduced prices.

V. ANALYSIS – ILLEGAL DISTRIBUTIONS

[293] The NOH alleged that "[i]n approximately February 2012, Can . . . began selling shares of [Bluforest] to Albertans", that "[o]ver the next year, in excess of $1,000,000 was raised from the sale of [Bluforest] shares to at least seven Albertans", and that the sale of such shares "were either not previously issued, or were previously issued and sold from the holdings of a control person, Can". The NOH also alleged that no preliminary prospectus or prospectus had been filed with the ASC, nor were reports of exempt distribution filed for these trades.

A. Law

[294] Section 110(1) of the Act prohibits the distribution of securities in the absence of a receipted prospectus, unless an exemption is available. A "distribution" is defined to include "a trade in previously issued securities of an issuer from the holdings of a control person".

[295] Section 1(l) of the Act defines a "control person" to mean:

> (i) a person or company who holds a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer, and if a person or company holds more than 20% of the voting rights attached to all outstanding voting securities of an issuer, the person or company is deemed, in the absence of evidence to the contrary, to hold a sufficient number of the voting rights to affect materially the control of the issuer, or

> (ii) each person or company in a combination of persons or companies acting in concert by virtue of an agreement, arrangement, commitment or understanding, who holds in total a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer, and if a combination of persons or companies holds more than 20% of the voting rights attached to all outstanding voting securities of an issuer, the combination of persons or companies is deemed in the absence of evidence to the contrary, to hold a sufficient number of the voting rights to affect materially the control of the issuer;

[296] These provisions should be given a broad, purposive interpretation that takes into account any beneficial ownership of securities, otherwise the provisions may be frustrated by allowing a control person to avoid the restrictions by registering securities in the name of a nominee (*Re Capital Reserve Inc.*, 1988 LNBCSC 685).

[297] D. Johnston, K. Rockwell and C. Ford, in *Canadian Securities Regulation*, 5th ed. (Markham: LexisNexis Canada Inc., 2014 at 172), give four rationales for the requirement that a control person distribution be qualified by a prospectus:

> First, the control person may have access to information where other securityholders do not. Second, the control person has a vested interest to ensure that the market price is high when disposing of the securities. Third, the unregulated sale of a large block of shares could drive down the securities' market price. Fourth, if the control person is an important influence on management, other securityholders are entitled to know when this ends. [footnotes omitted]

[298] In *Re Hemostemix Inc.*, 2017 ABASC 14 at para. 70, an ASC panel commented on the "control person" definition:

> The resale of securities held by control persons – which the Act's definition addresses – engages certain market fairness considerations because of the informational advantage which may be held by a control person (for example a control person may have information about the issuer that other market participants do not, and thus the Act requires that such a control person file a prospectus providing full, true and plain disclosure about the issuer before the securities are sold, subject to limited exceptions).

B. Analysis of Illegal Distribution Allegations

[299] It was common ground that Greenwood/Bluforest shares were "securities" within the meaning of section 1(ggg) of the Act, and that the ASC had not receipted a prospectus for those shares.

[300] Also not in dispute was Can's indirect involvement in three transactions:

- On May 8, 2012, Mainland sold 120,000 Greenwood common shares to an Alberta investor for $590,000. The purchase price was deposited into Mainland's Canadian bank account on May 7, 2012, with a handwritten note on the cheque "120,000 shares of GGRI".

- On July 30, 2012, Mainland sold 11,111 Bluforest common shares to an Alberta couple for $50,000, which was paid into Anderson's law firm's trust account. Can's name was under the signature line for Mainland in an unsigned share purchase agreement for this sale.

- Near the end of July 2012, Mainland sold 13,500 Bluforest common shares to an Alberta investor, CB, for US$60,750, which was paid into a trust account held by Anderson's law firm. Can's name was under the signature line for Mainland in an unsigned share purchase agreement for this sale.

[301] For the latter transaction, Can emailed CB a draft of the share purchase agreement and provided directions for payment. Can also made corrections to the share purchase agreement at CB's request, and then emailed the updated document to CB. In a separate email, Can also asked CB for an address to send the share certificate.

[302] Mainland sold Bluforest shares to other investors, including 11,111 shares to CB's brother for US$50,000 near the end of July 2012.

[303] We are satisfied that these were sales of previously issued shares of Greenwood or Bluforest, and each constituted a "trade" within the meaning of s. 1(jjj) of the Act. We are also satisfied that Can effected these trades, albeit through his company Mainland. There was no dispute that Can controlled Mainland, and s. 5 of the Act provides that a person is deemed to beneficially own securities that are beneficially owned by an issuer controlled by that person. Can as the deemed beneficial owner was therefore responsible for the impugned trades.

1. "Control Person"

[304] The issue in contention was whether Can was a "control person" at the time of the trades to Alberta investors. One preliminary issue that was not addressed by the parties was whether the definition of control person should be construed in the context of beneficial ownership rather than legal ownership of the subject shares. The issue arises because the NOH alleged that Can conducted an illegal control distribution, instead of Mainland which seemingly was the registered holder of the Greenwood/Bluforest shares sold to Alberta residents. We construe the definition of control person in s. 1(l) of the Act to refer to beneficial ownership. To view it otherwise would defeat the purpose of the related provisions concerning control distributions, where a control block is held by a nominee – either for an illegitimate purpose such as concealing the beneficial owner's identity, or for the more common legitimate purpose of registering securities in the name of a depositary to allow for efficient trading and clearing. For example, it would be nonsensical that the requirements of National Instrument 45-102 *Resale of Securities* pertaining to advance notice by a control person of an intention to sell would be the responsibility of a depositary rather than the beneficial owner of the securities.

[305] As mentioned, under s. 5 of the Act, Can is deemed to be the beneficial owner of the Greenwood/Bluforest shares sold by Mainland to Alberta investors.

[306] Staff's position was that Can met the definition of a control person under s.1(l)(i) of the Act because he likely held 20% or more of the voting securities of Greenwood/Bluforest given his ownership or control over Mainland and other offshore companies at the relevant time. Staff also argued that Can was a control person under s. 1(l)(ii) because he acted in concert with Miller by virtue of an arrangement or understanding to exercise joint control over the company.

[307] As of April 2012, GEIL held 75 million Bluforest shares, nearly 75% of Greenwood's 100,424,500 issued and outstanding shares at the time. Staff conceded that this ownership position was "evidence to the contrary" to rebut the presumption in s. 1(l)(i) of the Act that a shareholder holding more than 20% materially affects control of the issuer.

[308] However, the preponderance of the evidence did not prove that Can controlled more than 20% of Greenwood/Bluforest shares at the relevant time. While he beneficially held 14,583,333 Greenwood shares through Starglow, Lightship, Lightblue, Atlantis and NAIL, we did not have clear and convincing evidence that Can was the beneficial owner of Derry, Ular or Vlad, who collectively held 10,416,667 Greenwood shares. Accordingly, Staff did not establish that Can held more than 20% of Bluforest shares to trigger the presumption under s. 1(l)(i) of the Act.

[309] We turn now to whether Can materially affected control over Greenwood/Bluforest under s. 1(l)(ii) of the Act, which requires an assessment of whether he acted "in concert by virtue of an agreement, arrangement, commitment or understanding" with Miller, who we found controlled GEIL, which in turn held approximately 75% of Bluforest's common shares.

[310] Staff's position was that Can and Miller came to an "arrangement or understanding" in February 2012 and agreed to jointly operate Greenwood/Bluforest. According to Staff, their agreement was that Can would control 25% of Greenwood's shares while Miller would control 75%. Staff submitted that this was consistent with subsequent share consolidations and debt settlements in March 2012 and January 2013.

[311] Can's argument on this issue was difficult to follow. It started with the proposition that Nikoo was responsible for filing a prospectus because he facilitated Can's share sales. His argument then moved to drawing a distinction between voting control from share ownership and free-trading shares, with the assertion that "[a]t no material time, did Can control stock that could unanimously change." The argument seemed to focus on the first part of the control person definition, and did not directly address the second part. However, Can's submissions disavowed him having any influence over Greenwood/Bluforest, and maintained that he acted as a mere consultant. We took from those submissions that Can was contesting the assertion that he was a party to any arrangement or understanding within the meaning of the second part of the control person definition.

[312] The parties did not directly address the nature or scope of the "agreement, arrangement, commitment or understanding" contemplated by the second part of the control person definition. Specifically, Can did not argue that the agreement must relate to the exercise of voting rights in order to be caught by the provision. There was little evidence that Can and Miller had an agreement in place concerning the exercise of their respective voting rights, although Can may have intimated that there was such an arrangement when he told Donihee that he could arrange for a "principal shareholder resolution" that would have Donihee terminated "in a heartbeat" – a decision which would ordinarily rest with the board of directors, appointed by the shareholders, and not a consultant with a minority share position.

[313] Well-established principles of statutory interpretation require that the words of the Act be read in their entire context and in their grammatical and ordinary sense harmoniously with the

scheme of the Act, the object of the Act, and the intention of the legislature: *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at para. 21. Without necessarily defining the precise scope of the phrase "agreement, arrangement, commitment or understanding", the appropriate construction – consistent with the earlier identified policy objectives – does not limit the phrase to the exercise of voting rights.

[314] We earlier found that Can acquired control over Greenwood in December 2010 – with Jovanovic as his nominee – and that he and Miller were the guiding minds of Greenwood/Bluforest beginning in February 2012. The February 2012 Emails contemplated the change in control to include Miller, who would transfer assets (including the "Juval project") to Can's company so that Can could promote and "leverage . . . the asset". Those emails effectively established a blueprint by which the principal objectives of the company would be achieved.

[315] Following the February 2012 Emails, Dalmy was retained to draft an agreement between Can and Miller. Many of the terms said to be in the draft agreement were incorporated in the Purchase Agreement (by which Greenwood acquired control of the Juval Property), including a debt settlement for 25 million Greenwood shares, the Mainland Consulting Agreement, and an anti-dilution clause. Many Greenwood events corresponded to the terms discussed by Can and Miller and the agreement drafted by Dalmy, including Miller replacing Jovanovic as Greenwood's director, the 2012 Reverse-Split and Dalmy becoming Greenwood's lawyer. Can also stipulated that Miller would "have 75% control" and that Can and Andrews would receive "25% of the total issued and outstanding 100 MM after rollback". Soon after the 2012 Reverse-Split, 25 million Greenwood shares were issued to various IBCs, and 75 million shares to GEIL.

[316] Not all aspects of the deal between Can and Miller materialized – Andrews did not become a director, and there was insufficient evidence to prove that Can controlled all of the IBCs that received the 25 million Greenwood shares. Nonetheless, we are persuaded that Can and Miller agreed to act in concert and exercise joint control over all material aspects of Greenwood and Bluforest in pursuing a common purpose for the company's share capital structure and business operations. We are of the view that the pursuit of that common purpose by Can and Miller, in furtherance of the plan which they articulated in the February 2012 Emails, constituted an "agreement" or "arrangement" under the second part of the control person definition.

[317] Accordingly, we find Can was a control person within the meaning of s. 1(l)(ii) of the Act. We also find that Can illegally distributed Greenwood/Bluforest shares, as he traded shares beneficially held by him to Alberta residents while a control person of Greenwood/Bluforest without complying with applicable securities laws.

VI. ANALYSIS – MISREPRESENTATION

[318] Staff alleged three misrepresentations in contravention of s. 92(4.1) of the Act: (1) Miller made representations or statements to a Bluforest investor that Bluforest had a "tangible asset" valued at US$698,962,128; (2) Bluforest represented in a March 2013 press release and in documents filed with the ASC and the SEC that it had a "tangible" asset valued at nearly US$700,000,000; and (3) Bluforest failed to disclose in any press releases or documents filed with the ASC that Can (a) had control and direction over, and was the guiding mind of, Bluforest; and (b) controlled the majority of Bluforest's free-trading shares.

A. Law

[319] Section 92(4.1) of the Act prohibits the making of untrue or misleading statements in connection with securities transactions. Throughout the relevant period, s. 92(4.1) provided:

> 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 . . .

[320] To establish an untrue or misleading statement, Staff must prove:

> (i) a statement was made by a respondent; (ii) the respondent knew or reasonably ought to have known that the statement was, in a material respect, untrue or omitted a fact required to be stated or necessary to make the statement not misleading; [and] (iii) the respondent knew or reasonably ought to have known that the statement would reasonably be expected to have a significant effect on the market price or value of a security . . . . (*Arbour* at para. 753)

[321] A statement or omitted fact would reasonably be expected to have a significant effect on the market price or value of a security where "it can reasonably be concluded that the misrepresentation would influence an investor's decision to purchase the security and the price that investor would be prepared to pay for it" (*Aitkens* at para. 138). The issue is "whether there is a substantial likelihood that such facts would have been important or useful to a reasonable prospective investor in deciding whether to invest in the securities on offer at the price asked" (*Arbour* at para. 765, citing *Re Capital Alternatives Inc.*, 2007 ABASC 79 at para. 239 and *Sharbern Holding Inc. v. Vancouver Airport Centre Ltd.*, 2011 SCC 23 at para. 61). Misrepresentations made to both prospective investors and existing investors are "within the contemplation of" s. 92(4.1), as misleading information may "prompt existing investors to continue with or augment their investments" (*Re Mandyland Inc.*, 2012 ABASC 436 at paras. 196, 203).

[322] Investor evidence concerning materiality may be of assistance, but it is not required. ASC hearing panels are "well[-]positioned and able to draw inferences as to the objective view of a reasonable investor", in light of their "specialized knowledge of the Alberta capital market and securities regulation" (*Arbour* at paras. 763-65). It is also unnecessary for Staff to prove that any particular investor relied on the alleged statement or omission to constitute a misrepresentation. As explained in *Arbour* (at para. 768):

> Securities regulation does not focus on what the market or investors do with mandated information provided to them. Rather, the objective of securities regulation is to oblige those who seek money

> from public investors and the capital market to provide current, truthful and accurate information in prescribed formats, which can then be used by those in the capital market as a basis for making reasonably informed investment decisions. That a particular investor or investors may not read or rely on such information in making investment decisions does not relieve an issuer of its obligations to provide accurate and reliable information and to comply with Alberta securities laws when soliciting money from the public.

B. Analysis of Misrepresentation Allegations

1. "Tangible" Asset Allegations

(a) "Tangible" Asset Representations

[323] Staff argued that the "tangible" asset misrepresentation occurred in two instances: (1) in Bluforest's 2012 Form 10-K, and (2) in Miller's Asset Email.

(i) The 2012 Form 10-K

[324] The Form 10-K described Bluforest's rights acquired in relation to the Juval Property as follows:

> On March 30, 2012, the Company entered into a purchase of acquisition agreement ("Purchase of Acquisition Agreement") with Global Environmental Investments Limited, a Belize corporation ("GEIL"), regarding a property known as "El Juval" (the "Property") which encompasses approximately 105,000 hectares of property in Ecuador. Previously, GEIL had entered into an acquisition agreement (the "Acquisition Agreement") with Fundacion Nelson Velasco Aguirre, a foundation established pursuant to the law of Ecuador ("NVA") under which agreement NVA transferred control of the Property to GEIL. NVA held title and maintained legal ownership of the Property but permitted control over the Property to pass to GEIL through a voting trust agreement dated March 16, 2012 (the "Voting Trust Agreement") among NVA, GEIL and Fred Nikoo, as voting trustee. On June 15, 2012, the Company appointed Amanda Miller as the voting trustee on behalf of the Company in the place of Mr. Nikoo.

[325] Elsewhere, the Form 10-K described the NVA as the legal and beneficial owner of the Juval Property. Bluforest clearly disclosed that it had acquired from GEIL the right of control over the Juval Property, and that the NVA retained title to the property. However, as discussed earlier, the audited financial statements included in the Form 10-K contained two instances describing the Juval Property as a "tangible" asset. These statements were later corrected in an amended Form 10-K.

[326] Notwithstanding the corrections, the fact remains that Bluforest made two statements in the original Form 10-K that the Juval Property was a tangible asset.

(ii) Asset Email

[327] We also earlier discussed the contents of the Asset Email, and we are satisfied that the reference to "property" in the Asset Email is the Juval Property, which corresponded to some of the disclosure in the Form 10-K. We therefore find that Miller made a statement that the Juval Property had been characterized as a tangible asset in Bluforest's public disclosure.

(b) Representations Were Misleading or Untrue

[328] Klein testified that the Juval Property was always intangible because Bluforest only had rights to use the property. He explained:

> NVA held title and maintained legal ownership of the property but permitted control of the property to pass to GEIL through a voting trust, and [Bluforest] received the rights from GEIL, and all [Bluforest] got was the voting rights - - the control of the rights. [Bluforest] didn't own the property and it wasn't permanent.

[329] Klein also testified that there was considerable discussion about how Greenwood's acquisition of the Juval Property would be presented in the financial statements. On March 16, 2013, shortly before the Form 10-K was finalized, Amanda – apparently after she had resigned as corporate secretary of Bluforest on January 10, 2013, according to the Form 10-K – circulated a "final version" of the Form 10-K, commenting that the document had the corrections from intangible to tangible assets. That same day, Klein emailed Miller (and Amanda):

> We have discussed the correct terminology from the largest asset on your balance sheet. You hold both real and intangible assets for the production of carbon credits.
>
> We have searched the internet and found that a number of companies are using the term "Carbon Assets". These could be an intangible agreement, or real property, or accumulated costs.
>
> Please consider changing the terminology to Carbon assets in all places.

[330] Amanda replied later on March 16, 2013 that Miller "agreed to the terminology change". Klein understood from this that the Form 10-K would incorporate the recommended terminology and change the references to intangible assets. Klein also said that two references to tangible assets remained in the Form 10-K after it had been filed on EDGAR on March 18, 2013, apparently by inadvertence.

[331] Bluforest personnel, including Miller, understood that the Juval Property asset should not be described as a tangible asset.

[332] We find that the references to the Juval Property as a tangible asset in the Form 10-K were untrue. We accept Klein's view that the appropriate characterization of the Juval Property was as an intangible asset, and that other terminology – such as "carbon assets" or simply "properties" – more accurately reflected the nature of GEIL's interest in the Juval Property. This is consistent with: (i) Bluforest's Form 10-K disclosure that it did not own the Juval Property, (ii) Bluforest's management discussions with Klein concerning the appropriate description of the asset, and (iii) the later correction in the amended Form 10-K.

[333] As to the Asset Email, Miller's representation – that Bluforest had characterized the Juval Property as a tangible asset – was perhaps partially true insofar as that is how it was described in two instances in the Form 10-K, but we find the statement was misleading. Before finalizing the Form 10-K on March 18, 2019, Miller knew that the Juval Property in the Form 10-K was not accurately described as a tangible asset, yet he represented the property as such in the Asset Email. Miller was not merely reporting on an asset designation by some third party, but by the company itself of which he was CEO.

(c) Materiality of the "Tangible" Asset Representations

[334] Staff submitted that the impugned statements by Miller and Bluforest concerned virtually all of Bluforest's assets. The difference between a tangible and an intangible asset was discussed

with Bluforest's auditor, who testified that the two types of assets are reported separately and that investors view them differently.

[335] Staff also relied on CB's enthusiastic reaction to the Asset Email, in which he stated:

> I thought our ship has finally come in. Looking at the book value versus what I paid for my shares, it was already a great deal. I was already making money. I thought everything was finally moving forward.

[336] Based at least in part on the Asset Email, CB and his brother met with Nikoo to discuss buying more Bluforest shares at a price seemingly less than book value. CB may also have been motivated by Nikoo's statement to him that "the land had been purchased and was now part of Bluforest". JD testified that Bluforest's land acquisition was discussed in a positive light when she and her husband first invested in Bluforest.

[337] Staff conceded in oral submissions that they led no evidence to refute the value Bluforest ascribed to the Juval Property. Accordingly, we understood Staff's position that it was the characterization of the asset as tangible, and not its purported value, that formed the basis for Staff's misrepresentation allegation.

[338] This was an important concession, since the characterization of the Juval Property in the amended Form 10-K had no apparent effect on the asset's stated book value – it remained the same in the amended Form 10-K as it was in the Form 10-K. Moreover, Klein's evidence concerning the determination of the asset's value was generally consistent with the note disclosure in Bluforest's financial statements, which discussed the factors considered in valuing Bluforest's interest in the Juval Property, including an appraisal conducted by an individual who Klein referred to as a valuation expert and a future discounted cash flow analysis prepared by management.

[339] Klein testified that the proper characterization of the asset was important, but it is clear that materiality was fundamentally based on its value and not the accuracy of the adjective "tangible". Again, the overall disclosure in the Form 10-K accurately reported that Bluforest did not have ownership rights to the Juval Property.

[340] We come to the same conclusion as to the significance of the word "tangible" in the Asset Email. Investor testimony was consistent with the view that the value of Bluforest's rights in the Juval Property and its effect on share price was the important information, not the categorization of the asset as tangible or intangible. We accept Staff's submissions that it was the "massive value attributed to the property" and the fact that the Juval Property was Bluforest's principal asset that made it significant.

[341] It is incontrovertible that intangible assets can have significant value – for example the principal assets of many large public technology companies are various forms of intellectual property. While we have serious doubts concerning the legitimacy of the value ascribed to the Juval Property, there was no evidence led to challenge that valuation. These observations should not be interpreted as a licence to mischaracterize assets in public disclosure. However in this case we are of the view that no reasonable person would make an investment decision concerning Bluforest shares based on the subject references to "tangible". As will be discussed later in this

decision, the fundamental deficiency in the disclosure concerning the Juval Property transaction was the concealment of its non-arms' length nature, not the use of the adjective "tangible" in a few isolated instances.

[342] Accordingly, we are unable to find that the impugned representations were material and therefore dismiss this allegation against Bluforest and Miller.

2. Can's Control and Direction over Bluforest and Its Shares

[343] The NOH alleged that Bluforest failed to disclose "that Can had control and direction over and was the guiding mind of [Bluforest], and that Can controlled the majority of [Bluforest]'s free-trading shares". Those allegations were not limited to a specific time period, although the NOH also alleged that Can, at all material times, owned, controlled, and/or was the directing mind of Bluforest. Staff argued in their written submissions that Bluforest's public filings failed to disclose Can's involvement with, and control over, Bluforest and its free-trading shares, and that this information was material to a reasonable investor. The Respondents replied by maintaining their denial that Can controlled Bluforest.

[344] Staff did not allege that Can was a *de facto* director or officer within the meaning of ss. 1(o) and (ll) of the Act. However we are of the view the NOH is clear in alleging that Can played a central role in the management and operation of Bluforest, and both Can and Miller joined issue on that allegation by arguing that Can was merely a consultant with no actual authority. Similarly, Staff did not specifically identify statements made by Bluforest said to be deficient by the alleged omissions, but we are of the view that these allegations were pled with sufficient particularity as to give adequate notice to the Respondents.

[345] As discussed above, Can was Greenwood's guiding mind as of December 2010, and he continued as such after Miller joined Greenwood in February 2012. Following the 2013 Reverse-Split and the issuance of 100 million shares in January 2013, Can beneficially controlled at least 18 million free-trading Bluforest shares at a time when Bluforest had no more than 28,474,000 million free-trading shares (75 million of the 103,474,000 issued and outstanding shares at the time were restricted). In other words, Can was a guiding mind of Bluforest at a time when he beneficially controlled the majority of Bluforest's free-trading shares.

[346] In a certificate issued pursuant to s. 218 of the Act, the ASC's Corporate Secretary attested to, among other things, all SEDAR filings made by Bluforest from May 24, 2012 (approximately two months before it became a reporting issuer in Alberta) to February 5, 2018. These filings included information about Bluforest's management and principal shareholders, including statements in Bluforest's 2012 Form 10-K that Miller was the sole director, executive officer and significant employee of the company, although the document also disclosed Amanda and Donihee as Secretary and "President (resigned)", respectively. The Form 10-K disclosure implied that Miller was the sole decision maker concerning the strategic direction of the company, whereas the evidence was clear that Can exerted considerable influence over those decisions. The Form 10-K also disclosed "each person known by the Company to be the beneficial owner of more than 5%" of Bluforest shares, but only referenced Miller and two other individuals. Can was not identified as a shareholder, despite his beneficial holdings being well in excess of that threshold.

[347] While the statements concerning management might have been partially accurate in a narrow technical sense – for example, Can was not formally appointed as an officer or director – they clearly did not provide a complete picture of Bluforest's management. In our view, disclosure of Can's role in Bluforest's management was necessary to make those statements in the Form 10-K not misleading. In context, the statements were, at best, half-truths, and as mentioned, the clear implication was that Miller alone was responsible for managing the business. Similarly, Bluforest's disclosure concerning principal shareholders only told part of the story, and omitted Can's significant share position. The preponderance of the evidence persuades us that the concealment of Can's involvement was deliberate.

[348] We were similarly persuaded that the omissions were material. In our view it is axiomatic that the identity, qualifications, biographical history and disciplinary record of management, as well as the identity of control persons, are all critical information that form the cornerstone of public company disclosure, and that such disclosure is particularly crucial for micro-cap companies with limited or no revenues and operating history. It is self-evident that the prospects of an early-stage company are almost entirely dependent on the business acumen of its management team and founders. Accordingly, investors need an accurate and comprehensive description of those individuals before making an informed investment decision. As noted by an ASC panel in *Re Platinum Equities Inc.*, 2014 ABASC 71 at para. 76, Alberta securities laws ". . . require some disclosure about senior management that can help prospective investors assess management's track record". Similarly, an ASC panel in *Arbour* (at para. 799) determined that "[t]he identities of and other details about an issuer's directors – the individuals charged with responsibility for overseeing the issuer's management and business – are generally viewed as material information", and explained (at para. 802):

> It is not unusual for investors considering an investment in a recently reactivated – essentially start-up – entity, such as Arbour, with little or no existing business and operating history, to base their investing decisions largely on the reputation, background and experience of the entity's directors and senior officers. We think it obvious that reasonable investors in making investment decisions would want to know the identity, reputation, background and experience of those who have accepted responsibility for overseeing the management and affairs of the company in which the investors are being solicited to invest their money and trust. We find this is material information – information that would reasonably be expected to significantly affect the market price or value of the securities being offered.

[349] We also believe it was material in the circumstances for investors to understand that a large block of Bluforest shares was controlled by Can, a guiding mind of the company. It is trite that capital market activity by an insider of a public company conveys important information to investors. We heard evidence that Can purposely allocated shares among various IBCs such that each held less than 5% of Bluforest's outstanding shares, and we infer from that evidence that Can did so in order to avoid "early warning" reporting required by US securities laws. The result was to lead the market to believe that Bluforest shares were being sold by non-insiders, when the reality was that such sales were emanating from a significant shareholder of the company. The utility of that information for prospective investors is obvious, especially in circumstances where a substantial majority of all free-trading shares were held beneficially by two insiders of the company, a substantial number of which were later sold in the market.

[350] We are also satisfied from the evidence that Bluforest, through Can and Miller as its guiding minds, knew or reasonably ought to have known that Can's involvement with Bluforest, and control over a significant block of its outstanding shares (most of which were free-trading in the US), was necessary information so as not to make its disclosure materially misleading.

[351] We therefore find that Bluforest breached s. 92(4.1) of the Act, having misrepresented by omission Can's role and shareholdings in Bluforest.

VII. ANALYSIS – MARKET MANIPULATION

[352] The NOH alleged that Can, Miller and Bluforest breached section 93(a)(ii) of the Act, by directly or indirectly engaging in an act, practice, or course of conduct relating to Bluforest's securities that each knew or reasonably ought to have known resulted in or contributed to an artificial price for those securities. Particulars of that allegation were that from approximately November 2012 to November 2013:

- Bluforest engaged in a marketing campaign to artificially inflate the price and volumes traded of Bluforest shares on the OTC;
- the campaign was orchestrated by Can through third-party electronic and hard copy mailers to disseminate false or misleading positive information to the market regarding Bluforest;
- in August 2013, large volumes of Bluforest shares were traded daily and the price per share rose to a closing day high of US$2;
- Bluforest had a market capitalization of almost US$200 million at a time when the company had no business operations, employees, or income and "its assets comprised alleged carbon credit agreements with non-arms length companies in Ecuador"; and
- following the sale of large volumes of controlled shares into the market for profit by Can and Miller, or entities owned or controlled directly or beneficially by them, and the cessation of the Promotional Campaign, the price per share of Bluforest declined to almost zero.

A. Law

[353] Throughout the relevant time, s. 93(a)(ii) of the Act provided:

> 93 No person or company shall, directly or indirectly, engage or participate in any act, practice or course of conduct relating to a security . . . that the person or company knows or reasonably ought to know will
>
> (a) result in or contribute to
>
> . . .
>
> (ii) an artificial price for a security . . .

[354] To establish a contravention of s. 93(a)(ii) of the Act, Staff must prove that the Respondents' impugned activity was an "act, practice or course of conduct relating to a security", the activity would result in or contribute to an artificial price for the security and the respondent knew or reasonably ought to have known this (*Re De Gouveia*, 2013 ABASC 106 at para. 99, *Re Cohodes*, 2018 ABASC 161 at para. 42).

[355] As noted in *Cohodes* at para. 44:

> The impugned conduct in a market manipulation case may involve trading in or purchasing securities, but s. 93(a)(ii) of the Act is broad enough to capture other types of conduct as well. This may include the dissemination of information (or misinformation) which is alleged to have distorted genuine supply or demand by making a security appear more or less desirable than it might otherwise. As the panel stated in *Re Hennig*, 2008 ABASC 363 (at para. 1143), "[a]rtificiality is . . . essentially the product of intentional misrepresentation of genuine demand or supply".

[356] The panel in *Cerisse* (at paras. 140-142) addressed the extent to which a respondent might indirectly contribute to an artificial price for a security:

> [140] The executive director's allegations under section 57(a) of the Act against all three of the respondents require us to consider when a person might ". . . **indirectly**, engage in or participate in conduct relating to securities . . ." where that conduct ". . . results in or **contributes to** a misleading appearance of trading activity in, or an artificial price for a security. . ." We have emphasized the concepts of indirect participation in and contributions to a market manipulation as, at most, that is what the respondents are alleged to have done with respect to the Solanex shares. It is clear from the wording of the section that someone could be found to have contravened the section without having been directly involved in improper trading or improper promotional activity. The question is how broadly to interpret the concepts of "indirectly" and "contributed to".
>
> [141] The concept of "indirect" participation clearly would cover circumstances where a respondent was conducting improper trading activity through the use of nominee accounts or some other indirect manner of executing trades. It is less clear that this concept of indirect participation should apply where the alleged misconduct is tangential to the improper trading activity and/or improper promotional efforts.
>
> [142] There is a spectrum of conduct that is tangential to the core trading and promotional efforts associated with a market manipulation. Where various conduct fits within this spectrum will be highly factual and context specific. Generally, where the conduct is further removed from the actual improper trading or specific improper promotional activities, it will be more difficult to establish that that conduct "results in" or "contributes to" a misleading appearance of trading activity or an artificial price for a security. Examples of conduct on this end of the spectrum would include efforts to establish a general business website for an issuer, maintenance of an issuer's securities regulatory filings, instructing escrow agents or transfer agents and the mere assisting in the opening of brokerage accounts on behalf of others.

B. Analysis of Market Manipulation Allegations

[357] Staff's position was that Can, Miller and Bluforest (through Miller) engaged in various deceptive acts that resulted in or contributed to an artificial price for Bluforest shares and misled the market about Bluforest. According to Staff, Miller caused Bluforest's filings to falsely convey that "good things were happening, deals were being consummated, and valuable assets acquired", while Can used this narrative to orchestrate the Promotional Campaign. Staff also submitted that Can engaged in manipulative trading of Bluforest shares, including block trades and other "nonsensical" trades.

[358] We understood the Respondents' position was centred on the fact that the Promotional Campaign occurred after Bluforest had corrected its public disclosure, and that neither Can nor Miller controlled the published promotional material. The Respondents accepted that Bluforest shares met the definition of a "security" in s. 1(ggg)(i) and (v) of the Act.

1. Miller

[359] Staff acknowledged that they did not show that Miller was directly involved in the Promotional Campaign. Accordingly Staff's position focused on his role in Bluforest's public disclosure, essentially arguing that he caused Bluforest to misstate its significant acquisitions as arm's length transactions, which in turn enabled Bluforest's disclosure to overstate the assets' value in its financial statements. Staff contended that Miller did so knowing that Bluforest's misstated disclosure would be relied on in the Promotional Campaign touts to artificially stimulate the market for Bluforest shares. Staff submitted that the Bluforest public filings, together with the Promotional Campaign, distorted the genuine supply and demand of Bluforest's shares.

[360] We were not persuaded that the evidence established a sufficient connection between Bluforest's public disclosure and the market effects attributable to the Promotional Campaign. The evidence in fact suggested the market reacted very differently to Bluforest's public filings and the Promotional Campaign, including:

- the market for Bluforest shares barely moved following Bluforest's Form 10-K filing, whereas the market response to the Promotional Campaign was immediate;
- the Promotional Campaign misstated Bluforest's public disclosure – for example incorrectly stating that Bluforest owned the Juval Property – and ignored the amended Form 10-K corrections of the references to tangible assets; and
- several touts sent at the height of the Promotional Campaign focused on matters other than the impugned public disclosure, including news releases not in evidence, and purportedly independent and objective reports by Murphy Analytics and Goldman supporting a higher share price.

[361] As mentioned, Staff did not lead evidence that Bluforest's balance sheet, included in the 2012 Form 10-K, was materially incorrect or overstated. Staff conceded in oral submissions that the evidence did not address whether the valuation of the Juval Property (and possibly the San Agustin Property) was appropriate. Although that concession was made in the context of the misrepresentation allegations, it should apply equally to the suggestion that Miller misrepresented – and inflated – the asset values recorded in Bluforest's audited financial statements. Klein testified that the values ascribed to Bluforest's assets were based, at least in part, on verifiable objective factors, including an appraisal of the Juval Property. Although the audit assumption was that Bluforest's assets were obtained from unrelated third parties, and Klein testified that it would have been important to know that they were non-arm's length transactions, we were unable to find a sufficient connection between Miller's responsibility for that deception and the consequent market manipulation.

[362] We therefore do not find that the alleged conduct attributable to Miller resulted in or contributed to an artificial price for Bluforest shares, and we therefore dismiss Staff's allegations that Miller breached s. 93(a)(ii) of the Act.

2. Bluforest

[363] Staff submitted that Miller's knowledge and conduct was attributable to Bluforest, as he was Bluforest's director and CEO and was responsible for Bluforest's public filings. We have dismissed the allegation that Miller breached s. 93(a)(ii), and because Staff's position was that Bluforest was vicariously responsible for Miller's actions and knowledge, we similarly dismiss the allegation that Bluforest breached s. 93(a)(ii).

3. Can

[364] We earlier concluded that Can's involvement in the Promotional Campaign included:

- transferring nearly $300,000 from companies he controlled to RDI which directly or indirectly disseminated at least 29 touts during the Promotional Campaign;
- directing that several touts identify Vino and Ireland Offshore as third party unaffiliated promoters to deflect attention away from Can-controlled companies used to fund the Promotional Campaign;
- engaging Cusimano and Boye to promote Bluforest (including making payments to Boye's company), which was coordinated through websites they controlled; and
- transferring funds from his companies to Murphy Analytics – a purported independent investment research firm – which forecast significant Bluforest share price appreciation, and was referenced in nearly two dozen Bluforest touts during the Promotional Campaign.

[365] We find that Can's participation in the Promotional Campaign constituted an act, practice or course of conduct in relation to Bluforest shares within the meaning of s. 93(a)(ii) of the Act.

[366] Can's written submissions did not clearly address whether the Promotional Campaign resulted in or contributed to an artificial price for Bluforest shares, as the focus of his submissions was that Staff had not proved his involvement in the Promotional Campaign. In *Re Podorieszach*, [2004] ASCD No. 360 (at para. 85), an artificial price, within the meaning of the Act, was described as "a price that differs from the price that would result from the market operating freely and fairly on the basis of information concerning true market supply and demand". In *Re Coastal Pacific Mining Corp.*, 2016 ABASC 301 (at paras. 48-52), an ASC panel determined that a misleading promotional campaign resulted in an artificial price for the security:

> This provision [s.93(a)(ii)] targets artificiality of price, however derived. Such artificiality may originate in, or be coupled with, a distorted appearance of trading activity (as in *De Gouviea*), but such a combination is neither inevitable nor required to establish a breach of section 93(a)(ii).
>
> The evidence here persuades us that the capital market generally, and specific investors who bought Coastal shares in the period of the promotional campaign, were misinformed and misled about the merits of Coastal as a business enterprise, and therefore about the inherent value of a Coastal share. The news release campaign described above communicated supposed good news – extremely good news – about Coastal's supposed mining business when that business was not, in reality, being pursued in a serious way. The sudden burst of near-daily (or more-than-daily) news releases from

> Coastal in the relevant period, and the highly optimistic (at best) content of at least the 1 November 2010 news release (the only one in evidence), conveyed a sense that good things were happening to Coastal, and happening quickly. A similar impression was communicated even more frenetically by the concurrent email campaign, which (as evident from the quoted email of 1 November 2010) also touted an anticipated, vastly higher, share price.
>
> It is clear that this vigorous (but misleading) promotional campaign artificially stimulated investor interest in, and demand for, Coastal shares. Investors bought Coastal shares at higher prices and in higher volumes. That actual trading activity, reported to the market, undoubtedly reinforced the impressions communicated by the promotional campaign. As seen from the table above, trading prices and volumes reached remarkable levels.
>
> When the promotional campaign ended with nothing else to sustain market interest, Coastal's share price "crashed". This corroborated the artificiality of the higher prices that had been temporarily achieved.
>
> We find that the prices at which Coastal shares traded from 20 October into November 2010 were artificial, and that this artificiality was directly attributable to the promotional campaign undertaken during that period. As we concluded above, Coastal itself was among the participants in that campaign.

[367] Over a four-day period in mid-July 2013, a barrage of touts suggested widespread market interest in Bluforest, based largely on an asserted book value approaching $7 per share when Bluforest shares were trading around $1.50. This was followed in early August by a further surge of touts – more than a dozen issued daily from several, seemingly distinct, sources – which then waned to a trickle by the end of the month.

[368] The Promotional Campaign was a staged and coordinated effort to flood the market with overly-optimistic messages about Bluforest's prospects and to give the impression that there was a broad consensus on future share price appreciation. The high volume of touts, seemingly from unconnected sources, had a direct effect on the market. Moreover the touts often endorsed opinions from ostensibly independent investment research firms or concurrently-issued news releases, which compounded the market impact.

[369] Other than the Promotional Campaign, there was no obvious reason for the marked increase in trading volumes and share price in July and August 2013. The news releases cited in some of the touts did not report any significant changes or events for Bluforest's business. Several touts included excerpts from Bluforest's financial statements that had been disclosed months earlier in its Form 10-K, which had no apparent effect on the market for Bluforest's shares when it was filed in March. Subsequent public filings did not report any significant developments in Bluforest's business.

[370] The clear objective of the Promotional Campaign was to stimulate Bluforest trading volumes and give Can the opportunity to sell his shares. That objective was attained, as trading volumes increased significantly during the Promotional Campaign. From very thin trading volumes at the beginning of the year (averaging less than 2,000 shares traded per day in each of the first three months), daily average volumes increased to over 350,000 in August 2013, with particularly high volumes in the first two weeks of the month. As mentioned, the evidence was clear that there was nothing occurring in Bluforest's business at this time that would generate a

dramatic increase in its share trading, and we therefore conclude that the Promotional Campaign did not merely correlate to that increase but that there was a causal relationship between the two.

[371] The Promotional Campaign also influenced Bluforest's share price, which declined precipitously once the touts stopped. In July and August 2013 the average share price was $1.34 and $1.31, respectively, however following the end of the Promotional Campaign, the average share price plummeted to $0.54 in September, and ended the year at $0.035. Again, there was no discernable change in Bluforest's business to explain the rapid deterioration in share price – the only reasonable explanation is the cessation of the Promotional Campaign.

[372] We are satisfied from the evidence that the Promotional Campaign resulted in an artificial price for Bluforest shares within the meaning of the Act.

[373] Finally, we are satisfied that Can knew or reasonably ought to have known that his involvement in the Promotional Campaign contributed to, and resulted in, an artificial price for Bluforest shares. Can, through several IBCs he controlled, paid for the promoters to undertake the Promotional Campaign. He also met with Cusimano for the purpose of promoting Bluforest through websites he and Boye controlled. Can was involved in managing the content of the touts, in part by engaging Murphy Analytics to provide favourable coverage for use in the Promotional Campaign. We also took into account Can's efforts to conceal his involvement by using the Jonny Walker email address to direct payment to the promoters, and by using Ireland Offshore's and Vino's identities as ostensible financial sponsors of some touts.

[374] Witness testimony corroborated the inferences we draw from the documentary evidence as to Can's intent to manipulate the market for Bluforest shares. Donihee testified that he learned about Can's background and reputation and "the potential for [Bluforest] to be run as a pump and dump", that Can talked on a few occasions about the opportunity to move Bluforest's share price, and that "Can had started to refer to the fact that . . . this thing would get run at some point . . .". Fouani testified that Can told him that his plan for Greenwood/Bluforest was to use it as a pump and dump, and that "it was going to be the biggest promotion of the OTC".

[375] We conclude that Can breached s. 93(a)(ii) of the Act.

VIII. ANALYSIS – FRAUD

[376] Staff alleged that Can and Miller perpetrated a fraud in contravention of s. 93(b) of the Act by using Bluforest – a company which was not, and not intended to be, an operating business – as a vehicle for a false promotional campaign to sell secretly-controlled shares into the market. Specific acts, practices, and course of conduct by Can or Miller (or both) alleged to have supported the fraud included:

- creating the NAIL Invoice for a fictitious debt of US$60,000 to NAIL (and listing Anderson's home address as that of NAIL), approving the issuance of 25 million Bluforest shares as payment for that debt, and assigning those shares to entities owned or controlled by Can and Miller, among others;

- causing Bluforest to enter into the Mainland Consulting Agreement for a yearly fee of US$1 million;

- issuing an additional 100 million Bluforest shares for $900,000 of fictitious debt to IBCs owned or controlled by Can and Miller, among others;

- transferring Bluforest shares to Legacy from offshore IBCs owned or controlled (directly or through nominees) by Can or Miller for sale into the market;

- causing Bluforest to enter into non-arm's length agreements with Ecuadorian entities owned or controlled by Miller and with companies owned or controlled by Can, and positively promoting these agreements in press releases; and

- secretly controlling the majority of Bluforest free-trading shares, engaging in the Promotional Campaign, and selling Bluforest shares into the artificially-inflated market for profit.

[377] In their written submissions, Staff asserted that Bluforest "followed the blueprint of a pump and dump to the letter: acquire a trading shell, control the shares, undertake a reverse-split or rollback, create debt and issue shares (often offshore) in settlement, move the shares to brokerages, run a false promotional campaign, and sell the shares into the artificially created and unsuspecting market." According to Staff, Can and Miller negotiated details of the Bluforest pump and dump in February 2012 and the ensuing fraud was littered with examples of deceitful conduct. Staff repeated several of the aforementioned particulars as alleged deceitful acts, and enumerated other allegations in the NOH (i.e., the illegal distribution, the misrepresentation concerning tangible assets, and the creation of an artificial price) as well as the creation of or reliance on false legal opinion letters as further deceitful acts.

[378] Staff submitted that these acts would, on their own, support a finding of fraud, but collectively they establish a dedicated and intentional campaign of deception.

[379] Can and Miller's position was that Greenwood/Bluforest was a legitimate business and that Staff's claims rely on unreasonable speculation and unsupported inferences.

A. Law

[380] Throughout the relevant time, s. 93(b) of the Act prohibited any person or company from "directly or indirectly, engag[ing] or participat[ing] or attempt[ing] to engage or participate in any act, practice or course of conduct relating to a security . . . that the person or company knows or reasonably ought to know will . . . perpetrate a fraud on any person or company".

[381] It was common ground that the requirements to prove fraud under the Act are as described in *Capital Alternatives* at para. 309:

> The term "fraud" is not defined in the Act. The gist of the meaning is not, however, difficult to discern. Johnston and Rockwell [in *Canadian Securities Regulation*, 4th ed., Markham: LexisNexis, 2007)] point to the elements of fraud as enunciated at common law by the Supreme Court of Canada in *R. v. Théroux*, [1993] 2 S.C.R. 5 at 27 [*Théroux*], which has been adopted in the context of

> securities regulation (for example, in *Anderson v. British Columbia (Securities Commission)*, 2004 BCCA 7 at para. 27):
>
> . . . the actus reus of the offence of fraud will be established by proof of:
>
> 1. the prohibited act, be it an act of deceit, a falsehood or some other fraudulent means; and
>
> 2. deprivation caused by the prohibited act, which may consist in actual loss or the placing of the victim's pecuniary interests at risk.
>
> Correspondingly, the *mens rea* of fraud is established by proof of:
>
> 1. subjective knowledge of the prohibited act; and
>
> 2. subjective knowledge that the prohibited act could have as a consequence the deprivation of another (which deprivation may consist in knowledge that the victim's pecuniary interests are put at risk).

[382] The Supreme Court of Canada in *Théroux* (at 17) held that an act of deceit or a falsehood has occurred if someone has "represented that a situation was of a certain character, when, in reality, it was not". "Other fraudulent means" refer to dishonest acts which are not necessarily deceit or falsehood, but are assessed objectively based on what a reasonable person would consider to be a dishonest act; examples cited in *Théroux* (at 16) included "the use of corporate funds for personal purposes, non-disclosure of important facts, exploiting the weakness of another, unauthorized diversion of funds, and unauthorized arrogation of funds or property".

[383] The *mens rea* for fraud is a "subjective awareness that one was undertaking a prohibited act . . . which could cause deprivation in the sense of depriving another of property or putting that property at risk" (*Théroux* at 19). As stated in *Arbour* (at para. 983): ". . . subjective knowledge can be inferred from the prohibited act and surrounding circumstances . . .". We are to determine whether a respondent "intentionally committed the prohibited acts (deceit, falsehood, or other dishonest act) knowing or desiring the consequences proscribed by the offence (deprivation, including the risk of deprivation)" (*Théroux* at 19).

B. Analysis of Fraud Allegations

[384] As noted, the Respondents conceded that Bluforest shares fell within the definition of a "security" in s. 1(ggg)(i) and (v) of the Act.

[385] Staff's position was that Can and Miller planned and carried out the Bluforest pump and dump throughout the relevant time frame. Both engaged in various acts that, individually and in combination, were deceptive, which included exercising secret control over Greenwood/Bluforest, creating fake debt that was used to issue Bluforest shares to offshore companies which they owned or controlled, and obtaining false legal opinion letters. They also engaged in transactions that were not *bona fide* or at arm's length (or both), falsely represented those deals and established an artificial price for Bluforest securities.

[386] A pump and dump scheme was described by the Ontario Court of Appeal as one where "the operators . . . artificially raise, or 'pump' up, the price of stock in a company through misleading statements to other investors, and then sell, or 'dump', their shares in the company when

the stock reaches a higher price" (in *Midland Resources Holding Limited v. Shtaif*, 2017 ONCA 320 at para. 55 (footnote)). We agree that this gives an accurate overview of a pump and dump scheme. The specific steps to complete the scheme may vary in any given case, but will often involve some or all of the following:

- acquisition of a control block of a publicly-traded shell company;
- manipulation of the company's share capital through share splits and consolidations, in conjunction with the issuance of shares to repay inflated or fictitious compensation-related debt, and the dissemination of false legal opinions to clear share resale restrictions, all for the purpose of acquiring control over most, if not all, of the company's free-trading shares;
- creation of a false or misleading perception of potential share value (often based on the company pursuing a new and seemingly promising line of business or technology), through falsehoods and hyperbole in company news releases and third party promoter newsletters and emails; and
- use of illegal trading tactics such as wash trades and matched trades when trading volumes are thin in order to artificially move the share price to the desired level and give the appearance of increased trading.

[387] Once the market has been primed, the schemers sell their shares in unusually heavy trading volumes, the good news then stops, and the inevitable collapse of share price and volume ensues. Invariably, the unwitting purchasers are left holding virtually worthless shares.

[388] Typically, the protagonists of these schemes use various means to conceal their role, including the use of pawns as company officers with apparent, but no real, authority, and other nominees willing to allow trading at the direction of others through brokerage accounts in the nominee's name, often in well-known "secrecy jurisdictions".

1. Prohibited Act

[389] In the following analysis, we address the principal steps which Staff allege were undertaken for the pump and dump scheme. Even though we examined each of these steps individually to determine whether Staff proved on a balance of probabilities that they occurred and that Can and Miller were responsible for their occurrence, for the purpose of determining whether a prohibited act was established, we also analyzed the steps collectively in deciding whether Staff had proved the central contravention alleged – i.e., that Can and Miller ran a pump and dump scheme.

(a) Secret Control Over Greenwood/Bluforest

[390] We found earlier that Can acquired control over Greenwood in December 2010 using Jovanovic as his nominee. In February 2012, both Can and Miller became Greenwood's guiding minds.

[391] While certain terms of the Mainland Consulting Agreement were publicly disclosed, Can's role with Greenwood/Bluforest and with Mainland was concealed. This was deliberate – Can told

Miller in February 2012 that he would not be sitting on the board. He later told Donihee that he could make important decisions for Bluforest while protected from public accountability. Fouani corroborated that evidence.

[392] Miller knew from the February 2012 Emails that Can's involvement would remain hidden while he retained control and influence over Bluforest as a consultant via Mainland. Miller allowed Can's secret influence over the company, and the extent of Miller's control position in the company was also concealed. Miller acquired the majority of his Greenwood shares through McCarthy as his nominee and, following the 2013 Reverse-Split and issuance of new shares in January 2013, he continued to hold the majority of Bluforest shares, directly and indirectly through McCarthy, Classic, Legend and High Bridge.

[393] These actions are consistent with, and evidence of, participation by Can and Miller in a pump and dump scheme.

(b) Issuance of Shares as Settlement of Fake Debt

[394] Can and Miller maintained their respective control positions in Bluforest through share distributions made in satisfaction of Bluforest debt, largely related to their respective compensation arrangements. There were two such instances: (1) the distribution of 25 million shares in March 2012 as settlement of the NAIL Invoice, and (2) the distribution of 100 million shares in January 2013 as settlement of $750,000 owed to Miller and $150,000 owed to NAIL.

(i) NAIL Invoice

[395] The NAIL Invoice documented a Greenwood US$60,000 debt to NAIL for consulting services. Staff alleged that the debt underlying the NAIL Invoice was fake, which we understood to mean that the NAIL Invoice did not reflect actual consulting services provided by NAIL.

[396] Jovanovic testified that he was not aware of any consulting services for Greenwood on or before January 1, 2011, but he acknowledged that consulting services may have been provided and that Can controlled Greenwood's operations at the time. Klein did not recall seeing the NAIL Invoice but suggested that the waiver of the anti-dilution clause implied that the NAIL Invoice was legitimate, as did public disclosure of the debt settlement since it would have been approved by the transfer agent and the corporate lawyer. Klein produced an accounts payable document dated December 31, 2011 that reflected a US$60,000 debt owed by Greenwood to NAIL (which was more than 90 days in arrears). However, we gave this evidence little weight because it was at odds with Bluforest's audited financial statements.

[397] There were several other unusual aspects of NAIL Invoice, the least of which was the unauthorized use of Anderson's home address. The US$60,000 debt was settled for 25 million Bluforest shares having an ostensible value of $200 million. The explanations proffered for this debt settlement, both in the evidence and argument, were nonsensical.

[398] The Lawler Opinion on the 25 million share distribution stated that the issuance of shares was "in connection with the conversion of an interest in a Convertible Promissory Note, dated as of January 15, 2011". It also stated that the applicable hold period had been satisfied since each Assignee was deemed to have held the Greenwood shares since that date, that none of the

Assignees were an "affiliate" of Greenwood within the previous 90 days and that Greenwood was not and had never been a "shell company", as those terms were defined in US securities laws. The Lawler Opinion concluded that the "issuance of Shares to the Investor was, and the public sale of the Stock by the Investor in accordance with the applicable conditions of Rule 144 will be, exempt from the registration requirements of the Securities Act". According to the Lawler Opinion, it could be relied upon by any "broker-dealer and any clearing agency involved in the deposit, holding and/or clearing of the Stock". Shortly before the date of the Lawler Opinion, Can (using the Jonny Walker email) gave instructions to pay US$1,500 to Lawler's firm.

[399] We disagree with Respondents' counsel's contention that the Lawler Opinion was "consistent with the narrative of the transaction". Instead, we are of the view that it misrepresented the NAIL Invoice as a "Convertible Promissory Note" so that the 25 million Greenwood shares would qualify as free-trading shares in the US.

[400] The issuance of 25 million Greenwood shares immediately following the 2012 Reverse-Split resulted in the massive dilution of existing Greenwood shareholders, and gave Can control over a substantial portion of the free-trading shares. Together with the 75 million restricted Greenwood shares issued pursuant to the GEIL Purchase Agreement, these transactions enabled Can and Miller to consolidate their joint (and secret) control over Greenwood as of April 2012, consistent with the February 2012 Emails.

[401] Of the 25 million Greenwood shares issued for the NAIL Invoice debt, more than 14.5 million shares went to IBCs controlled by Can. Donihee recalled being told by Can that these shares were intentionally broken up to ensure a certain threshold had not been crossed. It is obvious that the purpose for this was to avoid US early warning requirements to disclose beneficial share positions exceeding five percent of a public company's issued and outstanding shares. By January 2013, most of the shares issued to Can's IBCs were reissued, via Legacy, so that they could be electronically traded.

[402] When all of the unusual aspects of the NAIL Invoice are considered together, we are of the view that Staff have proved on a balance of probabilities that it did not evidence a *bona fide* debt, and that even if it could be argued that NAIL provided Greenwood with legitimate consulting services, we are left in no doubt that the deceptive manner in which the debt was settled was an integral part a scheme calculated to deprive Bluforest shareholders of their economic interest in the company.

(ii) January 2013 Debt Settlements

[403] In January 2013, Bluforest distributed 100 million shares in satisfaction of $900,000 in debt, comprised of $150,000 owed to NAIL and $750,000 owed to Miller. Again, this occurred immediately after another significant share consolidation which reduced Bluforest's outstanding shares to 3,474,000.

[404] The evidence contained conflicting accounts on the origin of the $150,000 debt. One version of events was that on May 31, 2011, unidentified investors subscribed for Greenwood shares in that amount, however that investment was converted to a debt seemingly held by a single creditor at its instigation after subscription agreements failed to materialize. Later, a Bluforest

director's resolution signed by Miller, dated January 25, 2013, recited a verbal agreement with NAIL whereby "various debt settlement agreements" in relation to a $150,000 debt would be settled for no less than 25 million shares. The Dean Opinion indicated that this debt accrued on November 22, 2011, and the recipients of most of the shares issued in settlement of that debt were several Can-controlled IBCs, and Miller-controlled IBCs (which received as many as 5 million shares). There was no mention in any Bluforest documents of an intervening assignment of debt (as was the case for the NAIL Invoice settlement). In the result, 25 million free-trading Bluforest shares were issued to ten offshore entities.

[405] The Dean Opinion (which we find was paid for by Can) enabled the 25 million shares issued to entities controlled by Can and Miller to be free-trading in the US. Critically, it mischaracterized the distribution of the shares as a "proposed resale" of shares that had been acquired from Bluforest at least six months earlier, such that they could be "reissued without a restrictive legend". The shares issued to Can-controlled IBCs were soon reissued so that they could be electronically traded.

[406] As with the NAIL Invoice, we were persuaded that the provenance of this purported debt was most probably fictitious. Regardless of its origin, the deceptive manner in which it was settled – virtually identical to the NAIL Invoice settlement – was similarly intended to deprive Bluforest shareholders of their economic interest in the company. Bluforest's financial statements recorded share value of $6,250,000 to settle the $150,000 debt.

[407] The $750,0000 debt to Miller apparently derived from his annual salary of $1 million, of which $718,926 was owing as at December 31, 2012 together with $253,909 of other fees, expenses and accrued interest. Although one might question the business judgment of the Bluforest board awarding an annual salary of $1 million to the CEO of a company generating zero revenue, we were not persuaded that the debt to Miller was "fake". While not as incongruous as the NAIL Invoice debt settlement of US$60,000 for shares apparently valued at $200 million, the settlement of the company's CEO $750,000 debt for shares apparently valued at $18,750,000 was obviously questionable. In both cases, dubious compensation arrangements were settled with Bluforest shares on very generous terms.

[408] Several aspects of these debt settlement transactions were indicative of a pump and dump scheme:

- consolidating Bluforest's shares and then immediately issuing significant numbers of shares to various nominees, with attendant massive dilution to shareholders, thereby consolidating control with Can and Miller;
- procuring false legal opinions to enable shares to be freely traded in the US, which facilitated market manipulation;
- allocating free-trading shares to several offshore entities in amounts small enough to evade reporting requirements with the SEC, which frustrated regulations intended to protect market integrity;
- acquiring shares at grossly distorted valuations, well below market prices, to enhance returns upon the sale into the market; and

- using offshore accounts to conceal the identities of those responsible for later trading.

[409] These actions are consistent with, and evidence of, participation by Can and Miller in a pump and dump scheme.

(c) Ecuadorian Transactions

[410] Staff contended that several Greenwood/Bluforest transactions, each with connections to Ecuador and disclosed in public filings, were either not non-arm's length or not *bona fide* (or both). The impugned transactions (the **Ecuadorian Transactions**) consisted of:

- Greenwood's acquisition of rights to the Juval Property from the NVA, indirectly via GEIL;
- Bluforest's acquisition of the San Agustin Property from Ecuador Farms;
- Bluforest's two CERSPA Agreements with Mainland and GBEN; and
- the Carbon Credit Agreement between Bluforest and the MNE.

(i) Non-Arm's Length Transactions

[411] We were satisfied from the evidence that the agreements concerning the Juval Property were non-arm's length transactions among entities controlled by Miller, and that the CERSPA Agreements were non-arm's length agreements between Bluforest (with Can as a guiding mind) and entities owned and controlled by Can. We do not know whether the other Ecuadorian Transactions were non-arm's length transactions.

[412] Non-arm's length transactions involving public companies are not unusual or necessarily problematic, however they do raise legitimate concerns of whether the parties have exchanged consideration reflecting the general market, and thus in the ordinary course they are subjected to enhanced governance procedures (e.g., approval by an independent board committee) and must be fully disclosed. As observed by the panel in *Aitkens* at paras. 215-16:

> . . . related party transactions are susceptible to abuse and can undermine the public's confidence that capital markets are operating efficiently, fairly and with integrity (see s. 1.1 of Companion Policy 61-101).
>
> Candour around self-dealing is important to investors in assessing the integrity of an issuer's management – determining whether those managing the business will act in the best interests of the issuer and its security holders, or will prefer their own interests. This consideration is fundamental to the sound corporate governance of any issuer . . . .

[413] Despite assurances in its public disclosure that Bluforest "discloses all related party transactions", the company did not disclose that the Juval Property agreements and the CERSPA Agreements were non-arm's length. According to Klein, Bluforest's auditor, knowing whether the transactions disclosed by Bluforest were related-party transactions would have affected their valuation. We infer from all of Klein's testimony that Miller purposely misled him concerning the non-arm's length nature of the Juval Property agreements.

[414] Donihee testified that both Can and Miller were the driving forces behind Bluforest's business decisions and he relied on them for all of Bluforest's filings. The preponderance of the evidence indicated that this did not change after Donihee left Bluforest in November 2012. We are satisfied that both Can and Miller were responsible for both the manner in which the non-arm's length transactions were structured and how they were disclosed in Bluforest's public filings.

[415] In light of Miller's position with Bluforest, and his control over the parties to the Juval Property transactions, we conclude that the failure to disclose the non-arm's length nature of these transactions was deliberate. Although Donihee signed Greenwood's Form 8-K initially disclosing the transactions, he testified that he would not have signed off on it without confirmation from Miller that the content was accurate. This likely had implications for the value attributed to the Juval Property rights ($525 million), and in turn the number of Bluforest shares issued as consideration.

[416] Miller signed the Form 10-K for Bluforest, in which the CERSPA Agreements were first publicly disclosed. The non-disclosure of the GBEN CERSPA Agreement as a non-arm's length transaction was noteworthy, as the value attributed to the share consideration in Bluforest's year-end financial statements ($660,000 as of November 12, 2012) was significantly reduced within weeks (to $66,000 as of December 31, 2012), causing Bluforest to record a loss of $594,000 in its financial statements.

[417] Undisclosed non-arm's length transactions are not necessarily indicative of a pump and dump scheme. However, in this case we are of the view that the conduct of Can and Miller – as the guiding minds of Bluforest responsible for the filing and dissemination of misleading public disclosure – was an integral part of an established pattern of deception.

(ii) *Bona Fide* Transactions

[418] Even though each Ecuadorian Transaction appeared legitimate on its face, when viewed collectively they revealed a pattern of Bluforest entering into a series of agreements that were not seriously pursued by management and that did not significantly advance Bluforest's business. To summarize:

- The Juval Property rights – valued in Bluforest's financial statements at $525 million – was significant to Bluforest's overall financial position, yet Bluforest did not undertake any substantive steps to exercise those rights. The evidence indicated that the NVA suspended its activities in 2015 and did not file tax returns after 2012.
- The San Agustin Property agreement (valued at approximately $174 million in Bluforest's financial statements) provided for the issuance of 26.75 million Bluforest shares to Ecuador Farms, which remained in escrow as late as June 30, 2013 – the agreement does not appear to have been completed. Ecuador Farms was ultimately dissolved for not having filed any financial reports.
- The Carbon Credit Agreement required payment by Bluforest of US$600,000 within 30 business days of signing, yet the evidence was that payment was not, nor could be, made. Bluforest did not disclose any update on the status of this agreement, which Staff submitted was consistent with evidence that the MNE had

not entered into any agreement "to develop a program regarding carbon emissions reduction or reforestation".

- The CERSPA Agreements (neither of which were in evidence) were recorded as deferred revenue and as a liability in Bluforest's financial statements. Despite being represented as "advance sales of carbon assets totalling $743,000", Bluforest did not receive any cash for these agreements, but only restricted GBEN shares, which were significantly written down in value soon after the agreement. Bluforest was never in a position to provide the certified emission reduction credits promised by the CERSPA Agreements.

[419] Donihee testified that Bluforest did not receive significant cash as a result of the Juval and San Agustin transactions, which effectively precluded Bluforest from being able to get the certifications which would allow delivery of carbon offsets. He also gained the impression that "there was never any intention to bring moneys directly into the operating accounts of the business, such that it would in fact be starved of finances so that other opportunities that were entirely unacceptable to me would be pursued."

[420] We were not persuaded that there was sufficient evidence adduced to prove that the Ecuadorian Transactions by themselves were not *bona fide*. However, the events surrounding these transactions indicated that they were used in furtherance of a pump and dump scheme. Those events are the subject of distinct allegations which are addressed separately in this decision.

(d) Creating an Artificial Price

[421] We earlier found that Can knew or reasonably ought to have known that his direction of the Promotional Campaign contributed to, and resulted in, the artificial price for Bluforest shares. He orchestrated the Promotional Campaign that distorted the market for Bluforest shares by creating the false appearance of widespread interest in the company.

[422] We also note several small trades of Bluforest shares by Can-controlled IBCs through Legacy which on their face were nonsensical because the commissions approximated the value of the shares traded. These trades were consistent with other evidence that wash trades and matched trades, executed when trading volumes are very low or non-existent, are undertaken for the purpose of manipulating the share price as a step in furthering a pump and dump scheme. For the same reasons as we found Can to have breached s. 93(a)(ii) of the Act, we similarly find that Can was responsible for this aspect of the alleged fraud.

[423] Miller's role in Bluforest's disclosure of the Ecuadorian Transactions was too remote to warrant finding a contravention of s. 93(a)(ii) of the Act. Even though it was clear that Miller was instrumental in effecting several of the predicate transactions that laid the foundation for the "pump" – i.e., the Promotional Campaign – there was insufficient evidence that Miller took any part in that aspect of scheme. However, the creation of an artificial price through the Promotional Campaign was but one of the steps undertaken to effect the alleged pump and dump scheme, albeit an important one. We do not consider a lack of evidence that Miller participated in that step of the plan to be determinative of whether he contravened s. 93(b) of the Act. As mentioned, we analyzed the totality of the conduct which was alleged to constitute the fraud – the absence of one or more steps was not necessarily dispositive of the allegation. In our view the correct approach was to

consider as a whole all of the constituent elements that Staff had proved in relation to each Respondent, and then determine whether those elements collectively constituted a prohibited act as defined in *Théroux*.

(e) Trading in Bluforest Shares

[424] From July 18-26, 2013, at the outset of the Promotional Campaign, Legacy sold 513,100 Bluforest shares for Atlantis, Starglow and Lightship – IBCs that received Bluforest shares from debt settlements. The trades were made through Legacy's omnibus account with Caledonian.

[425] While Staff could not specifically identify the individual who instructed the trades, Can (using the Jonny Walker email) was the only person who provided instructions to Legacy on behalf of Atlantis, Starglow, Lightship (and others). We therefore find that Can directed the trades in these accounts during the Promotional Campaign.

[426] Aside from the trades referred to above, Staff did not adduce evidence identifying the parties selling other Bluforest shares during the Promotional Campaign. Nonetheless, we infer that Can and Miller were both selling Bluforest shares, as they collectively controlled more than 80% of Bluforest's free-trading shares. In light of the volume of Bluforest shares traded during the Promotional Campaign, and the fact that other shareholders had been diluted to holding approximately 3% of Bluforest's outstanding shares shortly before the Promotional Campaign began, it is inconceivable that free-trading shares beneficially owned or controlled by Can and Miller were not sold in that period.

[427] In reaching that conclusion we also took note of an email that Miller sent to Nikoo on July 29, 2013, shortly before the trading of Bluforest shares intensified. In that email Miller complained about his financial position, and wrote: "When are WE coming up with the short fall is when WE FINISH this oil trade or JC gets his magic going and starts to TRADE which he is saying this will be soon." We understood that "JC" referred to Can. We are of the view that this email reflected Miller's expectation of financial gain from the trading of Bluforest shares which occurred proximate to the Promotional Campaign. Even if we were not persuaded on a balance of probabilities that Miller's Bluforest shares were traded during the Promotional Campaign, we do not view Miller's participation in the trading as a necessary element of the prohibited act.

[428] The sale of a significant number of Bluforest shares during the Promotional Campaign by company insiders is consistent with, and evidence of, a pump and dump scheme. The execution of trades using an omnibus account from another offshore brokerage is further evidence of illegitimate trading. The various layers of offshore entities used for trading had no discernable business purpose, other than to conceal the identities of the beneficial holders directing the sale of their Bluforest shares.

(f) Conclusion – Prohibited Act

[429] Pump and dump schemes clearly fall within the meaning of a prohibited act. They are calculated to enrich the scheme's architects by deceiving capital market participants as to the value of the target company's shares, at least for enough time to allow those responsible to sell their shares (usually acquired for no or little valid consideration). These schemes are objectively dishonest and antithetical to the operation of a fair and efficient capital market.

[430] Can and Miller were each centrally involved in virtually all of aspects of Bluforest's pump and dump scheme. Both played significant roles in the secret control of Greenwood/Bluforest and the manipulation of the company's shares – the share splits and consolidations and the exchanges of shares as settlement for debt. Although Miller's various offices with Bluforest were disclosed, the extent of his beneficial share ownership and his interest in GEIL was not disclosed. Can secretly maintained a control position in Bluforest with Miller, was involved in the Ecuadorian Transactions, directed the Promotional Campaign and was pivotal in the use of various offshore entities to hold and trade Bluforest shares. Can and Miller controlled most of the free-trading Bluforest shares – from which the removal of resale restrictions resulted from the false legal opinions procured by Can – and sold a significant number of those shares during the Promotional Campaign.

[431] We find that both Can and Miller participated in a pump and dump scheme, which is a prohibited act.

2. Deprivation

[432] We have no doubt that many of the Bluforest investors who acquired shares during the Promotional Campaign experienced actual economic loss once Bluforest's share price plummeted. Economic loss to investors who acquired shares in the midst of a contrived media campaign designed to create an appearance of broad market interest is a virtually certain outcome. We also note that the element of deprivation is proved if there is sufficient evidence of an increased risk of loss or prejudice to another's economic interest. The risk of deprivation to the Alberta investors was exacerbated by the fact that they were sold illiquid restricted Greenwood/Bluforest shares by Can and Miller. We were left in no doubt that Can's and Miller's participation in the pump and dump scheme increased the risk of economic loss, and as such, their conduct caused deprivation.

3. Subjective Knowledge

(a) Can

[433] From the outset, Can's intention was to acquire Greenwood for the purpose of engaging in a pump and dump scheme. Fouani testified that Can's plan was to acquire a shell company so he could transfer in an asset, promote the company on the OTC market, and then sell shares in a pump and dump. That evidence was consistent with and corroborated Donihee's testimony that Can told him Bluforest "would get run at some point" and "that this was the eventuality that Bluforest would come to", which Donihee understood to mean that Can planned to use Bluforest for a pump and dump. Donihee learned that Can's had a reputation for being involved in other pump and dump schemes, and Donihee protested vociferously on numerous occasions that he would not be part of it.

[434] We are satisfied that Can took several steps for the sole purpose of using Greenwood/Bluforest to execute his plan. He was a guiding mind of Greenwood/Bluforest while concealing his involvement. He arranged for newly-issued shares to be transferred to offshore IBCs that he controlled while avoiding important securities reporting requirements. He arranged for false legal opinions so that his shares would be free-trading in the US. He was also instrumental in manipulating Bluforest's share capital through reverse-splits and consequent debt settlements which consolidated control of virtually all of Bluforest's free-trading shares with his and Miller's

nominees. He directed the Promotional Campaign, using an alias email to direct payment to promoters from the IBC offshore accounts he controlled, and he sold his shares from some, if not all, of these IBCs once an artificial market for Bluforest shares was created.

[435] We are also satisfied that Can was aware that his conduct could result in deprivation to others. The only objective of a pump and dump is to profit from the sale of shares to unsuspecting investors, who bear the loss once the target company's share price inevitably collapses after the marketing campaign ends. It was Can's intent that he profit from his scheme at the expense of others.

(b) Miller

[436] Evidence as to Miller's intent to use Greenwood/Bluforest as a pump and dump scheme was perhaps less obvious. Donihee gave some evidence on this point, and testified that he had received assurances from Miller that Bluforest was an honest business. Donihee had some hope that Miller intended to develop Bluforest's business plan, but he was concerned about the direction of the company once he started to see things that were inconsistent with those assertions. Specifically, Donihee came to believe that there was never any intention to bring funds into the business, with the result that it would have no working capital so that "other opportunities . . . would be pursued". Donihee testified that he was not certain of whether Can and Miller had discussed and decided to pursue a pump and dump scheme, but he thought that Miller had to know Mr. Can's reputation and that he must have been aware of the possibility that Bluforest would be used to that end.

[437] Despite the lack of direct evidence concerning Miller's intentions, the evidence of his conduct and the surrounding circumstances persuaded us that he knowingly engaged in a pump and dump scheme aware of the risk of deprivation to Bluforest investors. In his initial communications with Can, Miller's role with Greenwood was premised on his contribution of an asset (with the possibility of more) into Can's company, on the understanding that Can could leverage it "for close to or better than 50% of the asset". Miller acquired control of a majority of Greenwood's shares pursuant to the Juval Property agreements.

[438] Miller signed the resolutions authorizing the share consolidations and debt settlements, which had the principal objective of consolidating control of Bluforest's shares in the hands of Can and Miller, to the detriment of existing shareholders. After Donihee resigned – due, in part, to his concerns that Bluforest would be used for a pump and dump – Miller settled salary he was owed for additional Bluforest shares at a grossly inflated exchange ratio, by which he reasserted control of Bluforest and acquired an additional 5 million free-trading shares through IBCs he controlled.

[439] We also took into account Miller's sale of Greenwood/Bluforest shares to Alberta residents at prices that were thousands of times higher than the debt settlement values, proximate in time to his dissemination of the Asset Email.

[440] Significantly, Miller misled Bluforest's auditor about the Juval Property, denying that it was a non-arm's length transaction.

[441] Although we saw little evidence of his personal involvement in the Promotional Campaign, Miller was not expected to be involved in that aspect of the plan – the agreement between Can and Miller was that Can would promote the company once Miller had transferred assets into the shell company. As mentioned, we saw documentary evidence that Miller had an expectation of personal financial gain from trading that was to occur proximate to the Promotional Campaign. Despite the lack of evidence connecting Miller to the implementation of the Promotional Campaign, his extensive involvement with other critical elements of the scheme, which collectively formed a pattern of deception, is enough to persuade us on a balance of probabilities that Miller knew his conduct would likely result in deprivation to Bluforest shareholders.

C. Conclusion on Fraud Allegations

[442] Based on our above analysis, we conclude that Can and Miller breached s. 93(b) of the Act by engaging in a course of conduct that perpetrated a fraud on investors.

IX. ANALYSIS – CONDUCT CONTRARY TO THE PUBLIC INTEREST

[443] The NOH alleged that "the Respondents' actions were incompatible with a fair and efficient capital market operating on accurate information and genuine supply and demand, clearly abusive, and therefore contrary to the public interest".

[444] Staff's written submissions argued that each of the Respondents engaged in a protracted course of conduct that was clearly abusive of the capital markets. According to Staff, certain of the Respondents' actions – such as the reverse-splits and rollbacks of Bluforest shares, the issuance of Bluforest shares to settle corporate debt, and the transfer of shares to offshore brokerages and into electronic form for trading – were not necessarily offensive, as they had potentially legitimate purposes, but in the context of the Respondents' pump and dump scheme this conduct was clearly abusive and contrary to the animating principles of the Act. Staff acknowledged that this conduct was generally captured in the prohibitions against fraud and market manipulation although not "prohibited by express reference in the *Act*".

[445] Can and Miller submitted that Staff failed to prove that they engaged in a course of conduct that was clearly abusive to the capital markets.

A. Law

[446] The ASC has a broad (but not unlimited) discretion to issue orders under s. 198(1) of the Act in circumstances where specific Alberta securities laws have not been breached, so long as it is in the public interest to do so (*Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, 2001 SCC 37 at para. 45). This jurisdiction is to be exercised with caution and restraint, and only in situations where the impugned conduct is so egregious that it is clearly abusive of shareholders and the capital market generally (*Re PointNorth Capital Inc.*, 2017 ABASC 121).

B. Analysis of Public Interest Allegations

[447] We have found various breaches of specific provisions of the Act. Staff's position that Can's and Miller's conduct was also contrary to the public interest pertained to actions that were largely, if not entirely, encompassed within Staff's fraud and market manipulation allegations. Even though certain of Can's and Miller's activity might not be specifically proscribed by the Act, in this case

the entire course of conduct resulted in findings that each of Can and Miller breached the Act. Accordingly, it is unnecessary to make an additional finding that such misconduct was contrary to the public interest.

X. CONCLUSION AND NEXT STEPS

[448] Having found the Respondents breached Alberta securities laws, this proceeding will now move into a second phase for the determination of what, if any, orders for sanctions and costs ought to be made against them in light of our findings.

[449] A hearing management session is scheduled to take place at 08:00 on Friday, September 11, 2020. The purpose of this session will be to set a timetable for the delivery and hearing of evidence (if any) and submissions on the issue of appropriate orders.

August 24, 2020

For the Commission:

"original signed by"
Tom Cotter

"original signed by"
Steven Cohen

"original signed by"
Kari Horn