ALBERTA SECURITIES COMMISSION

DECISION

Citation: Re Cawaling, 2024 ABASC 194 **Date: 20241213**

Raymond Cawaling and RTAX Financial Corp.

Panel:	Tom Cotter Gail Harding, K.C. Kari Horn, K.C.
Representation:	Sakeb Nazim Richard Van Dorp for Commission Staff Raymond Cawaling for the Respondents
Submissions Completed:	May 1, 2024
Decision:	December 13, 2024

TABLE OF CONTENTS

I. INTRODUCTION

[1] On December 19, 2022, staff (**Staff**) of the Alberta Securities Commission (**ASC**) issued a notice of hearing (the **NOH**) alleging that Raymond Cawaling (**Cawaling**) and RTAX Financial Corp. (**RTAX**, and together with Cawaling, the **Respondents**) breached the *Securities Act* (Alberta) (the **Act**) by illegally distributing securities and perpetrating a fraud.

[2] The matter proceeded to a hearing on the merits of Staff's allegations over seven days between December 4 and 14, 2023 (the **Hearing**). Staff called 12 witnesses, including Staff senior investigator Vi Pickering (**Pickering**), Staff investigative analyst Sean Bonazzo (**Bonazzo**), and 10 individuals who entered into agreements with or facilitated by RTAX, either directly or through personal corporations. Cawaling represented and testified on behalf of the Respondents, but did not call any other witnesses. Numerous documents were entered into evidence by agreement of the parties or through the witnesses.

[3] Following the evidentiary portion of the Hearing, we received written argument from Staff (the **Staff Submissions**). Although the Respondents were given the opportunity to submit written argument – and, at their request, were given an extension of time to prepare their submissions – they did not do so. However, we heard oral argument from all parties on May 1, 2024.

[4] After considering the evidence and arguments, we have concluded for the reasons that follow that Staff have proved their allegations against the Respondents.

II. PRELIMINARY MATTERS

[5] Before reviewing the facts, we set out some of the principles that guided our analysis and assessment of the evidence.

Burden and Standard of Proof

[6] In ASC proceedings, Staff have the onus to prove their allegations on the civil standard of proof, a balance of probabilities. This means that they must lead sufficient clear, convincing, and cogent evidence to persuade us that it is more likely than not that the conduct alleged occurred (*F.H. v. McDougall*, 2008 SCC 53 at paras. 40, 46, and 49).

Admissibility of Evidence

[7] Pursuant to s. 29(f) of the Act, "the laws of evidence applicable to judicial proceedings do not apply" to ASC proceedings. Accordingly, all relevant evidence is admissible, subject to the rules of natural justice and procedural fairness, and our discretion as to the evidence we will admit (*Re Aitkens*, 2018 ABASC 27 at para. 50 and cases cited therein). This includes hearsay evidence, such as the transcripts of interviews conducted during Staff's investigation (*ibid.*; *Alberta Securities Commission v. Brost*, 2008 ABCA 326 at paras. 31 and 35-36). However, "transcripts of investigative interviews are not the same as live testimony" and must be treated with some caution (*Brost* at para. 34; *Re Kapusta*, 2011 ABASC 322 at para. 10).

[8] The only transcripts that were entered into evidence at the Hearing were of two interviews of Cawaling that Staff conducted on May 25, 2022 and August 31, 2022 (collectively, the

Interview). Although Cawaling was not represented by counsel at the Interview, he was sworn and cautioned about the consequences under the Act of being untruthful. We found that this contributed to the reliability of his Interview evidence (*Re Magneson*, 2021 ABASC 129, aff'd. 2023 ABCA 348, at paras. 49 and 51).

Witness Credibility and Reliability

[9] Just as we were required to determine the weight to be given to the documentary evidence we admitted at the Hearing, we were also required to assess the credibility and reliability of the witnesses who testified.

[10] To do so and to reconcile conflicting evidence, we considered the source of the evidence, its consistency with other reliable evidence, and whether it was internally consistent and logical in the overall circumstances (*Re Ward*, 2022 ABASC 139 at para. 31 and cases cited therein).

[11] We agreed with Staff that the evidence given by their witnesses was generally reliable and supported or corroborated by the documentary evidence and the testimony of other witnesses. Cawaling cross-examined each witness, but the witnesses mostly confirmed their direct examination testimony. As the events at issue occurred as long as eight years ago, we attributed minor inconsistencies and memory lapses to the passage of time, not to an attempt to deceive.

[12] Cawaling's Hearing testimony, however, differed in a number of significant respects from his Interview evidence. We addressed these differences where necessary in these reasons, but we accepted his evidence on non-controversial matters, whether it was given at the Hearing or in the Interview.

Inferences

[13] We must often draw inferences from the evidence, including circumstantial evidence (*Ward* at para. 33; *Magneson* at para. 47). We have done so where necessary and the inference was supported by other evidence.

[14] It is common for Staff in ASC matters to call only a representative sample of parties to securities transactions with named respondents. This supports hearing efficiency, but typically requires a hearing panel "to draw broader conclusions and inferences" based on the testimony of those who appeared to testify and other reliable evidence (*Ward* at para. 64).

[15] This matter involved a comparatively small number of alleged investors, and Staff had most of them testify. Their testimony, together with the documentary evidence, provided a sound basis from which to draw conclusions about the likely experiences of those who did not testify.

III. FACTS AND EVIDENCE

A. The Respondents

[16] Cawaling resided in Calgary throughout the **Relevant Period**, defined by Staff as the beginning of October 2016 to the end of November 2019.

[17] Cawaling has an accounting degree, and was a financial advisor licensed with the Alberta Insurance Council for approximately 10 years. He also held mortgage and insurance licences and ran an insurance brokerage. Between 2005 and 2013, he was employed as a trust safety audit technician at the Law Society of Alberta (**LSA**), where he said he was trained in fraud and forensic accounting.

[18] In 2013, Cawaling began operating his own business full-time, with the goal of establishing a one-stop financial services provider focused on serving immigrants. Through his company, RTAX Business Solutions Inc., Cawaling provided tax preparation services, but stopped after he had issues with the Canada Revenue Agency concerning his own taxes.

[19] During the Relevant Period, RTAX was an Alberta company that Staff alleged was in the business of providing accounting services, giving tax advice, selling insurance, and investing. Cawaling was a director, the guiding mind, and the majority shareholder of RTAX. His spouse was RTAX's other director and shareholder, but Cawaling said in his Interview that she had no active role with the company.

[20] The evidence confirmed that neither of the Respondents has been registered with the ASC in any capacity since at least 2016. RTAX has never been a reporting issuer, and no offering memoranda, reports of exempt distribution, or prospectuses have been filed for any RTAX securities.

B. Overview of the Loans / Investments

[21] During the Relevant Period, the Respondents raised capital from the public under two forms of agreement.

[22] The first set of agreements were titled, "Short Term Loan Agreement" (or something similar), between RTAX (as the "Borrower") and individuals or companies that provided funds to RTAX (as the "Lender"). Staff argued that these agreements were related to investments in or loans to Chimera Corporation (**Chimera**), which was ostensibly involved in overseas mining ventures. We will refer to these agreements collectively as the **RTAX Chimera Agreements**.

[23] Staff and the Respondents differed as to whether the RTAX Chimera Agreement counterparties should be described as "investors" or "lenders". Nothing turned on how these counterparties were designated, and we will refer to them as the **RTAX Chimera Investors**. At least 17 RTAX Chimera Investors – all but one from Alberta – entered into RTAX Chimera Agreements, and paid RTAX an aggregate of $675,500 (unless stated otherwise, all dollar amounts in these reasons are CAD).

[24] The second set of agreements were each titled, "Partnership/Joint Venture Agreement" (or something similar; we will refer to them as the **RTAX JV Agreements**). They were between RTAX as "Party B" or the "Program Manager" and investors described as "Party A" or the "Client". Two of the RTAX JV Agreements were accompanied by a promissory note issued by RTAX as the "Borrower/JV Partner" in favour of the "Lender/JV Partner" (the **JV Promissory Notes**; we refer to the "Clients" or "Lenders/JV Partners" as the **JV Investors**, and the RTAX Chimera Investors and JV Investors collectively as the **RTAX Investors**).

[25] Staff asserted that the RTAX JV Agreements related to an investment in a ruby with a Portuguese company, Definitely Green Investments LDA (**Definitely Green**). Four JV Investors entered into RTAX JV Agreements, and provided RTAX with a total of $61,000 and $174,084.61 USD.

[26] A common feature of the RTAX Chimera Agreements and the RTAX JV Agreements (which we refer to collectively as the **RTAX Investments**) was that both promised extraordinarily high rates of return in short periods of time. The RTAX JV Agreements, for example, promised a return of four to 10 times the amount invested within 45 to 90 days.

[27] Under each of the RTAX Investments, the RTAX Investors paid their funds to the Respondents, or to other accounts under Cawaling's direction and control.

C. Chimera

1. Background to Cawaling's Involvement

[28] During his testimony at the Hearing, Cawaling explained how he became involved with Chimera, consistent with his Interview evidence.

[29] In approximately 2015, Cawaling's friend, Tyrone Phipps (**Phipps**), told Cawaling about a business opportunity related to a gold mining venture in Guyana. They developed a plan to operate a business that would sell supplies to the people working at the mine in exchange for gold, which Cawaling and Phipps would then sell to the local government for a profit.

[30] Cawaling approached another friend, **RM** (for privacy reasons, we identify certain parties only by initials), to inquire whether RM would like to participate. When RM agreed, Cawaling and RM incorporated 9800590 Canada Inc. (**9800 Canada**) for that purpose. RM obtained a line of credit on his house to put $200,000 into 9800 Canada, and Cawaling agreed to pay the interest on the line of credit. $100,000 was put toward the proposed business in Guyana.

[31] In approximately September 2016, Phipps introduced Cawaling to Chimera, which Cawaling understood was in the business of providing project funding. If Phipps and Cawaling provided funds to Chimera, they were supposed to earn substantial returns.

[32] Several versions of Chimera promotional documents were in evidence at the Hearing. Pickering testified that she received certain of them from Cawaling, but also received copies of them from some of the RTAX Chimera Investors she interviewed, who said that they had received them from Cawaling.

[33] One such document was undated and untitled. It discussed Chimera and its principal, Michael Bridge (**Bridge**), as well as Chimera's business and the loan or investment opportunity (we will refer to this as the **Chimera Brochure**). The Chimera Brochure included the following information:

> Chimera Corporation . . . manages $5 Billion Dollars diversified across various asset classes. The principal [i.e., Bridge] has a 15 year history of structuring, underwriting and trading of collateralized securities, with a heavy focus on Oil and Gas derivatives.

> Chimera specializes in creating bespoke investment solutions for institutions such as banks, insurance companies, sovereignties, hedge funds, pension funds, and mutual funds. His [sic] active participation, comprehensive analysis and strategic advice includes [sic] but [are] not limited to[:] Asset Backed Commercial Paper Conduits, Oil and Gas Derivatives Trading, Fixed Income Trading, Credit Enhancement Strategies and Project Funding.
>
> . . .
>
> Mr. Bridge the is [sic] CEO and Chairman of Chimera Corporation[,] a company specialized in the trading of Oil and Gas contracts and Project Funding[.] He is responsible for the successful day-to-day operations of all aspects of the business.
>
> . . .
>
> Chimera Corporation engages in energy trading worldwide. . . .
>
> Chimera Corporation is dedicated to the sale and delivery of bituminous products to our global client base. . . .
>
> A key part of our business is the facilitation of equity financing for companies at various stages of their capital requirement [sic], from start-ups to late stage companies.
>
> Over the past 15 years, our team consisting of leading international project financiers have placed over 5 Billion dollars of equity into an extremely wide variety of projects including eco and green projects, golf courses, hotels and hotel resorts, manufacturing, transportation, including rail, road and shipping, Energy projects, Real Estate Development, Schools, Bridges, Hospitals, Oil&Gas, Coal, Copper, Gold & Diamond Transactions, Import & Export, and many other types of project in over 30 countries worldwide. . . .
>
> Chimera Corporation offers a unique opportunity for individuals looking to invest a minimum of $150,000 with no upper limit, with 100% security of the principal. Participation is by invitation only.
>
> The security against the investment will be provided to the client's escrow attorney with the client as beneficiary. The security provided will be equal to 100% of the investment amount and will be provided by Santander Bank, the 17th Largest bank in the world in the form of a cashed back [sic] SBLC (Standby Letter of Credit).

[34] The Chimera Brochure set out the terms of an "investment agreement" with Chimera. Over a four-month term, it was to pay:

> 2% per month with a loan amount of $10K to $250K
> 3% per month with a loan amount of $250K to $500K
> 4% per month with a loan amount of $500K to $1 Million
> 5% over 1 Million

[35] A second promotional document was also undated and untitled; we will refer to it as the **Chimera Profile**. It repeated some of the content from the Chimera Brochure, again describing Chimera's "principal business" as "the facilitation of equity financing for companies at various stages of their capital requirement [sic], from start-ups to late stage companies", and listing the same types of projects into which Chimera claimed that it had "placed over 5 Billion dollars of equity". It set out Chimera's process for reviewing and accepting project funding requests, which included a requirement for the applicant to provide proof that it already had 10 percent of the

amount of equity investment it was seeking. According to the Chimera Profile, the reason for that requirement would be "explained on a confidential phone call".

[36] The last few pages of the Chimera Profile gave an example of a project Chimera had purportedly financed in Colombia.

[37] Cawaling said that he did some searching on the internet to try and satisfy himself that Chimera was legitimate. Phipps sent him a recording of an American lawyer, Stuart Anderson (**Anderson**), discussing his client, Chimera, and Bridge. Cawaling decided to get involved after listening to the recording, because he thought that his LSA work experience gave him an understanding of lawyers' ethical obligations and he could therefore trust that Anderson was being truthful.

2. Agreements with Chimera

[38] Cawaling wired 9800 Canada's remaining $100,000 to Anderson, and 9800 Canada and Chimera entered into a Short Term Loan Agreement dated September 3, 2016 (the **September Chimera Agreement**). As its president and chief executive officer (**CEO**), Cawaling executed the September Chimera Agreement for 9800 Canada, and Bridge signed as Chimera's CEO and chairman.

[39] The September Chimera Agreement provided that as a return on 9800 Canada's $100,000 loan, 9800 Canada would receive $200,000 from Chimera after one month. The agreement contemplated that 9800 Canada could make a further loan of $100,000 under a separate agreement, on which the return would be $1,000,000 after six weeks. Cawaling testified that he and his business associates intended to proceed with a second loan and use the $1,000,000 return to fund projects in Guyana.

[40] In October 2016, Cawaling asked Chimera personnel about receiving the return on 9800 Canada's initial $100,000 loan, as well as the paperwork for the further $100,000 loan on which 9800 Canada would earn the $1,000,000. In an email dated October 11, 2016, Bridge advised that the funds would be sent within the next 48 hours, and the new loan contract later that day.

[41] 9800 Canada and Chimera entered into another Short Term Loan Agreement dated October 12, 2016 (the **October Chimera Agreement**). This agreement provided for the further $100,000 loan and $1,000,000 return, to be paid in a $350,000 installment after one month, and a $650,000 installment after an additional month. 9800 Canada did not provide any additional funds, but instead re-loaned $100,000 of the total $200,000 it was to have received from Chimera under the September Chimera Agreement.

[42] In approximately the same time frame, there had apparently been discussions with Chimera about investing the $1,000,000 return expected under the October Chimera Agreement to secure a $10,000,000 investment from Chimera in a mining project in Guyana. In exchange, Chimera was to obtain a 40 percent equity position in the project. A Binding Term Sheet dated October 13, 2016 (the **Chimera Term Sheet**) was executed, this time by Cawaling as president and CEO of RTAX Mining Inc. (**RTAX Mining**) at an address in Georgetown, Guyana, and by Bridge for Chimera.

[43] According to the Chimera Term Sheet, Chimera's $10,000,000 "Investment" was "[t]o provide funding for the purpose of helping [RTAX Mining] execute on its business plan". The "business plan" was set out in an attached schedule that described a gold mining project in Guyana. RTAX Mining was required to provide $1,000,000 "to start the process of securing" Chimera's equity investment of $10,000,000. RTAX Mining's $1,000,000 was to be secured:

> . . . by a Stand-by Letter of Credit ("SBLC") from Santander Bank, after the Deposit is received by Chimera's attorney's IOLTA Bank Account, being a Trust Account that is regulated by the governing law society of Chimera's attorney, with Chimera's attorney acting as Escrow Agent.

[44] If Chimera were to fail to disburse its initial $3,500,000 investment within four weeks of receipt of RTAX Mining's $1,000,000 deposit, the Chimera Term Sheet provided that RTAX Mining could claim against the Stand-by Letter of Credit (**SBLC**) for reimbursement.

[45] Again, no further consideration was actually provided. Instead of Chimera paying the $1,000,000 return due to 9800 Canada under the October Chimera Agreement, Chimera retained it as the deposit due under the Chimera Term Sheet.

[46] Cawaling testified that in the later part of 2016, he arranged to do some due diligence on Chimera by travelling to Europe to meet with Bridge and someone from Santander Bank (**Santander**). Due to a supposed scheduling issue, Cawaling did not meet with the banker, but he and Phipps met Bridge in Switzerland. Cawaling was further satisfied by the assurances he received from Chimera's Canadian lawyer, John Mavridis (**Mavridis**), who said his due diligence had confirmed that the banker and the SBLC were legitimate.

[47] Cawaling told Staff that he did not seek his own legal advice, but instead simply trusted Chimera's lawyers. At the Hearing, he acknowledged that the returns Chimera promised were "crazy", but because he thought he had done his due diligence and had two lawyers who vouched for Chimera, he did not conclude that the opportunity was too good to be true.

[48] On December 14, 2016, Miguel Centinos Rubalcava (**Rubalcava**) – ostensibly a "Risk Manager" with Santander – sent an email to Mavridis (copied to Anderson, Cawaling, and Bridge) stating:

> As per request of our client Chimera Corporation, which is in good standing with our bank and who has as per today's date a balance on the account which exeed [sic] 285,000,000.00 Euro, we have issue [sic] the attached Stanby [sic] Letter of Credit.

[49] Attached to the email was a copy of a document on what appeared to be Grupo Santander Private Banking letterhead with the title, "Standby Letter of Credit". It was dated December 14, 2016, and provided that it would expire on December 15, 2017. The first paragraph stated:

> We, Banco Santander S.A., located at Plaza de Canalejas 1, 28014, Madrid, Spain, hereby issue our irrevocable, unconditional and transferable Standby Letter of Credit No. 826193-1422-16 in favor of RTAX Financial Corp., . . . , as beneficiary, for a sum not to exceed in the aggregate One Million Canadian Dollars (CAD$ 1,000,000.00).

[50] The SBLC was signed by Rubalcava and another individual, each as an "Authorized Officer" for Santander.

[51] Also in the latter part of 2016, Cawaling reached a separate agreement with Bridge to raise money or find new lenders for Chimera. While Chimera would offer a five percent monthly return on loans of at least $50,000, RTAX could enter agreements with and pool smaller amounts from those who wanted to take advantage of the opportunity but could not afford to advance at least $50,000. RTAX was then to provide the pooled funds to Chimera. This arrangement was formalized by another $1,000,000 Short Term Loan Agreement, this time between RTAX and Chimera (the **December Chimera Agreement**).

[52] The return payable to RTAX was not specified in the December Chimera Agreement, but Cawaling told Staff that Chimera would pay RTAX a 13 percent return on all funds RTAX raised. From those returns, RTAX would pay five percent to its clients, and split the remaining eight percent with Phipps.

[53] Like the Chimera Term Sheet, the December Chimera Agreement referred to the SBLC from Santander as security for the loan. It contemplated that the loan amount of $1,000,000 would be delivered by RTAX to Chimera "in multiple tranches . . . as per instructions from the Borrower to the Lender for each specific tranche", and stated that:

> . . . It is understood by both parties that the different tranches will be coming from various clients that will have their own contract/understanding with the Lender. Each tranche will be supported by a specific agreement between the client and the Lender. The Borrower is not a party to these agreements between the Lender and his clients.

[54] In addition, the December Chimera Agreement provided that Chimera could instruct RTAX to send loan funds to its lawyer, "or any other entity designated by the Borrower . . . or from time to time in specific written instructions". It also provided that:

> From time to time, in certain instances, the Lender will have the right to take from a specific tranche certain fees, as to be instructed by the Borrower. In said instances, only the balance of these tranches will go to the Escrow Agent or the designate of the Borrower.

[55] This was followed by a provision requiring RTAX to keep track of the tranches received from its clients along with the monthly interest payments due, and submit it to Chimera in spreadsheet form "from time to time". Cawaling maintained such a spreadsheet and provided it to Staff investigators (the **RTAX Loan Details Spreadsheet**), but Staff determined that it was missing several of the known RTAX Chimera Investors.

3. The RTAX Chimera Investors

Cawaling's Evidence

[56] Cawaling testified that when he met with prospective lenders or spoke to them on the telephone, he discussed the mining venture and RTAX's relationship with Chimera, as well as the opportunity to enter into an agreement directly with Chimera if the individual had the necessary

funds. He also showed or gave them a copy of the Chimera Brochure and the SBLC, and explained the security provided by the SBLC.

[57] However, Cawaling insisted in both his direct evidence and cross-examination at the Hearing that he did not tell anyone that he would transfer their money to Chimera or otherwise indicate what he was going to do with the money – in his view, the RTAX Chimera Investors were simply loaning funds to RTAX, and RTAX's plan for the funds was "irrelevant for them".

[58] Staff directed Cawaling to a number of passages in the Interview transcripts in which he clearly stated that he collected loan funds from RTAX Chimera Investors and transferred them to Chimera or to other parties at Chimera's direction. Concerning RTAX Chimera Investors **JA**, **DN**, and **NS**, for example, Pickering asked Cawaling in the Interview, "…what did you tell them the money was to be used for?", and he replied, "[i]t's to lend to Chimera." More generally, Pickering asked him this question and he gave this response:

> Q And all the other loans that you were talking about, individuals that lent you money and you entered agreements, and you provided us with some of those. What did you tell those individuals or investors the money would be used for?
>
> A Okay. It looks like I have been repeating this, but as I said, it's Chimera. I showed them the Chimera overview and investment overview, right?

[59] At the Hearing, Cawaling suggested that he could explain the inconsistency between his Interview deposition and his Hearing testimony, but Staff did not seek that evidence and Cawaling did not address the point when he gave re-direct testimony. However, earlier in his cross-examination when he acknowledged that he told Pickering all of the money had been sent to Chimera and that he deliberately did not tell her about the loan funds he collected but did not remit to Chimera, he testified that she was "fishing" during the Interview, and should have asked him further or better questions if she wanted more information.

LB

[60] Cawaling's client, **LB**, was the first person to loan funds to Chimera through RTAX, in October 2016. LB was not a Hearing witness, but Pickering interviewed him informally during Staff's investigation and recorded the interview. She testified that LB told her Cawaling approached him about the Chimera opportunity, and LB agreed to lend $100,000.

[61] LB's loan agreement could not be found, but he told Pickering that he contracted directly with Chimera, and that he had received other documentation about Chimera before proceeding. Cawaling confirmed in the Interview that LB had a contract with Chimera, and said that LB either paid his $100,000 to Chimera, or he paid it to RTAX and RTAX sent it to Chimera on his behalf.

[62] Bank records in evidence confirmed that $97,500 from LB was deposited to an RTAX account on October 25, 2016. It was used in various ways that are discussed later in these reasons, but – as Cawaling confirmed on cross-examination at the Hearing – none of it was sent directly to Chimera. Cawaling explained that LB paid RTAX $97,500 instead of $100,000 because he and LB had agreed to split the five percent referral fee Chimera was to pay to Cawaling.

[63] According to Cawaling, RTAX received LB's funds but did not remit them to Chimera based on Chimera's instructions. By early October 2016, the $200,000 payable under the September Chimera Agreement was due. As mentioned, $100,000 of that was re-loaned under the October Chimera Agreement, but the $100,000 balance remained owing. Bridge sent an email to Cawaling claiming that he had sent the funds owed to a 9800 Canada bank account. Cawaling testified that the funds never appeared, even after he followed up with Bridge.

[64] Cawaling and Bridge continued their correspondence about the outstanding payment. On November 1, 2016, Bridge wrote to Cawaling and said that in lieu of a payment from Chimera, Cawaling should simply "keep the 100k" LB provided, and that when Cawaling closed loans from "other clients", they could "work through" what should be transferred to Chimera. Despite telling Cawaling to keep the full $100,000 owed, however, Bridge instructed Cawaling to use some of the funds to pay others, including $12,000 to Phipps and $3000 USD to a "Project co[o]rdinator" in the Dominican Republic.

[65] LB told Pickering that he was not repaid any of his capital, but did receive some interest payments. It was unclear from the evidence how much he received. In his Interview, Cawaling claimed that he paid LB $5000 per month for approximately one year. However, the bank records indicated that LB and his spouse only received $20,000 between November 2016 and March 2017.

FB, KO, JA, DN

[66] The first RTAX Chimera Investors who dealt solely with RTAX were **FB** and **KO**. Under RTAX Chimera Agreements dated December 16, 2016, FB advanced $10,000, and KO advanced $30,000 in his spouse's name.

[67] The RTAX Chimera Agreements were similar in form and content to the September, October, and December Chimera Agreements, which Cawaling said he used as a template. The earliest versions specified that the rate of return was five percent monthly, for a term of four months. Later versions also stipulated a five percent monthly return, but payable in a lump sum after four months. Other versions gave lenders the option to receive monthly three percent interest payments, or a lump sum calculated at five percent per month paid at the end of the four-month term.

[68] The RTAX Chimera Agreements did not mention Chimera, but most referred to the SBLC. Early versions made the loan to RTAX contingent on the "Lender" receiving "proof" of the SBLC, while later versions provided, "Lender funds are secured by **the SBLC issued by Banco Santander S.A. to RTAX Financial Corp. in the amount of $1,000,000.00 CAD**" (original emphasis). During his Interview, Cawaling deposed that he relied on the SBLC as a guarantee he could use to assure RTAX Chimera Investors that they would get their money back.

[69] Although neither FB nor KO had a contract with Chimera, the evidence indicated that both were aware of Chimera, understood that the Respondents had a commercial relationship with Chimera, and believed that their loans to RTAX were linked to Chimera. Cawaling testified that he showed FB a document providing an overview of Chimera, explained the plan for investment

in Guyana, and told FB that his loan to RTAX was guaranteed by the SBLC. FB did not appear at the Hearing, but according to Pickering, he told her that he understood his loan funds would be used for Chimera.

[70] Like FB, KO was not a witness at the Hearing, but his friends JA and DN appeared and testified that they became involved with RTAX through KO in 2017. According to DN, KO told him there was an exclusive opportunity to invest in a mining project in South America, and that it paid a good return. JA and DN testified that they were introduced to Cawaling at a meeting at KO's home, at which Cawaling explained his business and his involvement financing a very profitable mining operation in Guyana through a company called Chimera. He showed them the Chimera Brochure and explained that he was seeking funds for investment, which would be guaranteed by a $1,000,000 SBLC.

[71] Cawaling confirmed that discussion, testifying that he met with JA, DN, and KO to explain "what Chimera is all about, the instruments that I have". JA testified that he understood that his funds would be used for the "[m]ining activities" in Guyana, and nothing else. On cross-examination, DN was clear that Cawaling specifically said that the funds were "to finance an investment mining project in South America" relating to Chimera, and did not indicate that the money would or could be used in any other way. In his Interview, Cawaling deposed that the funds from all three were to be loaned to Chimera, and that was what he did.

[72] Under his company's name, JA loaned $60,000 to RTAX under two RTAX Chimera Agreements dated in June and July 2017. DN loaned $50,000 under two agreements dated in June (in his company's name) and October 2017. Both used lines of credit to fund the loans, although JA also used some of his savings.

[73] None of FB, KO, JA, or DN received full repayment of their capital or the interest due. There was evidence of several payments from RTAX to FB in varying amounts from January through November 2017 (totalling $8800), but FB told Pickering that he was not repaid any of his principal. The RTAX Loan Details Spreadsheet recorded that he was not paid any interest.

[74] The RTAX Loan Details Spreadsheet also recorded that KO's $90,000 principal (the initial $30,000 plus two later advances of $30,000 each) was not repaid, but that he or his spouse received the full amount of interest owing: $50,000. Cawaling testified that he paid monthly interest to KO or his spouse until approximately April 2018. However, the bank records reflected only three relatively small payments to KO or his and his spouse's corporation, for a total of $5000. In his Hearing testimony, Cawaling acknowledged that most of the money KO provided was not sent to Chimera.

[75] JA said he received $18,000 from the Respondents, but estimated that at the time of the Hearing, he was still owed $84,000 in principal and outstanding interest. The bank records showed that JA or his company received $12,000 from RTAX, paid in varying amounts from July 2017 through January 2018. The RTAX Loan Details Spreadsheet indicated that JA's company received $9000 in interest, and no repayment of principal.

[76] Similarly, DN testified that Cawaling paid him $18,500 of the interest owing under his RTAX Chimera Agreements, but – as Cawaling acknowledged – he was not repaid his principal. The RTAX Loan Details Spreadsheet indicated that DN received a total of $18,500 in interest, but the banking evidence only showed that his company received $1500 in July 2017.

[77] On cross-examination at the Hearing, Cawaling acknowledged that none of JA's or DN's money was sent to Chimera.

ML

[78] After FB and KO, **ML** was next to advance a loan through RTAX in 2016. Because he had the requisite $50,000, he was able to contract with Chimera directly.

[79] At the Hearing, ML testified that Cawaling, a family friend, approached him about the opportunity and told him that he would double his money in 90 days. He did not recall specifically discussing Chimera with Cawaling until he saw Chimera's loan agreement, but said that he came to understand that Cawaling was "really good friends" with someone at Chimera, and had been working with them to raise funds for a business in Guyana.

[80] An unexecuted version of ML's Short Term Loan Agreement with Chimera dated December 21, 2016 was in evidence. It did not mention any security for the transaction, but provided that ML would loan Chimera $50,000 and receive $100,000 after 90 days. In his testimony at the Hearing, ML confirmed that there was no "insurance" given for his money.

[81] Although ML's agreement was with Chimera, the agreement provided that his $50,000 was to be paid to RTAX, and ML recalled returning his signed copy of the agreement to Cawaling. RTAX's bank records confirmed that the payment was deposited to one of its accounts on December 22, 2016. ML testified that he did not question the arrangement because he trusted Cawaling. He simply expected that Cawaling would transfer the funds to Chimera, Chimera would pay the return to RTAX, and Cawaling would transfer the return to ML. In his Interview, Cawaling deposed that RTAX sent all of ML's money to Chimera.

[82] ML testified that after the 90-day term had elapsed, he received an email from Bridge asking for his banking information so that Chimera could send him his return. In an email dated April 7, 2017, Bridge – copying Cawaling – wrote to ML to advise that he had processed ML's payment and would forward it shortly, plus an extra $10,000 to reward ML for his "patience over the last week".

[83] ML did not receive any of his principal or any return. He concluded that everyone "got scammed" by Chimera.

RA

[84] The last RTAX Chimera Agreement in 2016 was with **RA**, who did not know Cawaling but was referred to him by her co-worker, FB. At the Hearing, RA testified that FB told her the rate of interest was better than what a bank would pay, and no one risked losing any money because

it was secured. She was in touch with Cawaling by phone to discuss the opportunity, and he reiterated that there was no risk she would lose her capital. Because it sounded like a "win-win situation", she advanced $10,000 under an RTAX Chimera Agreement dated December 24, 2016.

[85] When asked about what Cawaling told her about the opportunity and how her funds would be used, RA testified that he said the money would be invested "[o]verseas", but she did not recall any further details. Under cross-examination by Cawaling, RA reiterated that she understood she was making an investment, not "a loan for personal use".

[86] The RTAX Loan Details Spreadsheet recorded that neither RA's principal nor her interest was paid, but RTAX's bank records showed $500 payments to RA approximately monthly from January through July 2017, totalling $6500.

Additional RTAX Chimera Agreements and Renewals

[87] The Respondents continued to accept funds and enter into RTAX Chimera Agreements from January through to at least December 2017. Some RTAX Chimera Investors advanced more money under additional agreements following their initial loans, and some renewed their loans for an additional term or terms – the latter typically because they had not yet been paid out on earlier loans.

[88] For example, FB entered into three more RTAX Chimera Agreements for $10,000 each in March, July, and August 2017. FB also entered into a renewal agreement (an **RTAX Chimera Renewal**) dated April 7, 2017 after RTAX did not pay him under his December 16, 2016 RTAX Chimera Agreement when it came due.

[89] Apart from their titles – "Renewal Short Term Loan Agreement" (or a variation thereof) – RTAX Chimera Renewals were very similar in form and content to the RTAX Chimera Agreements. In some cases, multiple loan amounts were consolidated into one renewal, or the renewal agreement was in a larger amount than had been loaned initially because the lender was ostensibly re-investing accrued interest. In a few cases, the term of the renewed loan was shortened from four months to one month.

[90] Four other RTAX Chimera Investors appeared at the Hearing. **EA**, **RP**, **NSh**, and **PS** each testified about their loans to RTAX, the outcome, and their understanding of the use of the loan proceeds.

EA

[91] According to EA, he was referred to Cawaling by his friend and RTAX Chimera Investor, **JB**, who had been introduced to Cawaling by KO. EA met with Cawaling to discuss the opportunity, and Cawaling told him that any funds he advanced would be invested with Chimera on a short-term basis. Cawaling showed EA some documents on his tablet pertaining to Chimera's business and the purpose of the short-term contract. They included the Chimera Brochure or a similar document, as well as the SBLC, which EA referred to as "the insurance" or "safety net" proving that investor money was secured.

[92] Under cross-examination by Cawaling, EA testified that while his deal was with RTAX, he understood from Cawaling that Cawaling was dealing with Chimera and pooling smaller amounts of money from people like him to reach the $1,000,000 Chimera was seeking. He referred to an email in that regard, and said that he understood that Cawaling had sent him the email to introduce him to Chimera. EA further testified that based on what Cawaling told him, he expected that RTAX would send his funds on to Chimera. He did not think there would have been any reason for Cawaling to mention Chimera if it did not have a role in the transaction.

[93] In the Interview, Cawaling said he sent all of EA's money to Chimera's lawyer. At the Hearing, Cawaling acknowledged that when he met with EA, they talked about Chimera. He further acknowledged that he told EA that he (EA) could lend money to RTAX if he did not have the money necessary to deal directly with Chimera, and that RTAX would pay him the return. Initially, he denied that he wanted EA to believe his loan was for Chimera, but then acknowledged on cross-examination that the funds were a loan to RTAX "[f]or the purpose of providing the funds to Chimera".

[94] EA incurred bank debt to make his $20,000 loan to RTAX. He was one of the few RTAX Chimera Investors who said he received full repayment of his capital and the interest due under his January 18, 2017 RTAX Chimera Agreement, but not until late October 2017. The bank evidence showed that he received $25,000 at that time, but the RTAX Loan Details Spreadsheet recorded that EA was paid a total of $28,000.

RP

[95] RP was the only person who was both an RTAX Chimera Investor and a JV Investor. He testified that he was introduced to Cawaling by a co-worker because he needed someone to prepare his income tax returns, but on a few occasions, Cawaling introduced him to investment opportunities.

[96] According to RP, he and his spouse had a meeting with Cawaling in January 2017. Cawaling explained the Chimera opportunity (which RP recalled had something to do with gold mining), and gave him copies of the Chimera Brochure and the SBLC. RP said he understood that his $25,000 would "[p]rimarily" be used for the gold mining venture, and that Cawaling did not tell him it might be used for anything else.

[97] RP used retirement savings to fund his loan to RTAX. Like EA, he was repaid in full on this investment by October 2017. The bank records showed that he received $30,000. He was not listed on the RTAX Loan Details Spreadsheet.

NSh

[98] NSh testified that he was introduced to Cawaling in 2017 by Cawaling's brother, with whom NSh worked. He initially had Cawaling prepare his income tax returns, then learned that Cawaling had a short-term investment opportunity. He understood from Cawaling that it involved a company in the oil and gas business, and said that he received some documentation about it. A

July 31, 2017 email from Cawaling to NSh in evidence attached a document titled, "Chimera Overview & Investment overview CDN 10K", and stated, "[p]lease see attached overview of the short term loan. The deal right now is if you lend minimum $100K for 4 months term, you have two options". Only one option was listed, "**10% paid every 4 months**" (original emphasis).

[99] The attachment was another version of the Chimera Brochure and included the same rates of interest set out in at least one of the other versions of that brochure. However, what was described in other versions as an "investment agreement" was described in this version as a "Short-Term Loan agreement". It also differed as to the minimum investment amount: $10,000 instead of $150,000. It then provided that funds would be secured by the SBLC issued to RTAX.

[100] In an August 11, 2017 email, Cawaling sent NSh a link where he could view "the security of [the] Standby Line [sic] of Credit from Chimera's bank issued to RTAX Financial Corp." NSh testified that he reviewed the SBLC, and recalled Cawaling telling him that he did not have to worry about losing his money.

[101] Like a number of others, NSh used a line of credit to finance the $50,000 he advanced to RTAX under an RTAX Chimera Agreement dated August 16, 2017. He testified that he understood that the money would be used by Chimera for an oil and gas business or project, and that he was not told it might be used for other purposes. Although Cawaling appeared to suggest to NSh on cross-examination that he had said funds would only go to Chimera if the lender provided a minimum of $100,000, NSh reiterated that Cawaling told him his investment funds would be provided to Chimera.

[102] As of the date NSh testified at the Hearing, he had not received payment of any of his principal or the interest due. The bank evidence reflected no payments to NSh, and he was not included on the RTAX Loan Details Spreadsheet.

[103] On cross-examination at the Hearing, Cawaling acknowledged that none of NSh's money was sent to Chimera.

PS

[104] PS testified that he had been referred to Cawaling by his colleague at the time, EA, and called Cawaling to discuss an investment. After he decided to proceed, he met with Cawaling to provide the funds he had taken from his savings for the loan, and received a copy of his RTAX Chimera Agreement. PS said he also received a copy of what he described as the document that was "supposed to guarantee the money would be paid back if something went wrong" – presumably, the $1,000,000 SBLC. It was the only occasion on which PS and Cawaling met in person.

[105] According to PS, he asked Cawaling what the funds raised would be used for, and Cawaling told him they would be loaned to Chimera. PS understood that Chimera was "a large conglomerate of a mining company" that would pay a good rate of interest to RTAX, which would then pay its lenders. He was certain that Cawaling had mentioned Chimera, because he looked it up on the internet to confirm that it existed and was a *bona fide* company.

[106] PS received neither repayment of his $25,000 in principal nor interest. This was consistent with the RTAX Loan Details Spreadsheet. No payments to PS were reflected in the bank evidence.

Others

[107] Of the remaining RTAX Chimera Investors, Pickering testified that she conducted telephone interviews of **NB**, JB, and RM, and interviewed RM's daughter, **AM**.

[108] NB loaned $15,000 under an RTAX Chimera Agreement dated February 6, 2017. According to Pickering, he said he did not receive repayment of his principal, but bank records showed that he received $750 payments approximately monthly from March 2017 through October 2018, for a total of $12,750. This varied from Cawaling's evidence that he paid NB monthly interest, but only until April 2018. It also varied from the $10,500 amount shown on the RTAX Loan Details Spreadsheet as the total amount of interest NB was owed and paid under his RTAX Chimera Agreement.

[109] JB loaned $30,000 in his spouse's name under an RTAX Chimera Agreement dated April 26, 2017. Although the RTAX Loan Details Spreadsheet indicated that JB was repaid half of his capital and all of the $12,000 interest due, Pickering noted that JB did not confirm he had been paid. The bank records reflected only $12,000 paid to JB between June and December 2017.

[110] Pickering testified that JB said he understood the funds would be used by Chimera for a mining project, and for no other purpose. In his Interview, Cawaling stated that JB's money was to be loaned to Chimera, and that he had sent it all to Chimera.

[111] RM – the same RM who was involved with Cawaling in 9800 Canada – loaned $30,000 to RTAX in his daughter AM's name, under an RTAX Chimera Agreement dated September 29, 2017. This agreement made no reference to the SBLC or any other security. It provided for five percent monthly interest, but only for two months.

[112] The RTAX Loan Details Spreadsheet confirmed that the loan in AM's name was not repaid, but claimed that the full $9000 in interest owing had been paid. The bank records included evidence of a number of payments to RM from January 2017 through to January 2021 totalling at least $43,900, but it was apparent from other evidence that RM and Cawaling had other transactions between them before, during, and after the Relevant Period, making the purpose of these payments unclear. Cawaling testified that at RM's request, he made interest payments to RM in cash until he ran out of money in 2021.

[113] According to Pickering, RM told her that he expected his funds to be used for investment purposes only. At first, Cawaling's Interview evidence was that this loan was not related to Chimera, but he then acknowledged it was "a Chimera investment".

[114] Pickering did not speak to either NS or **GOJ**. The RTAX Loan Details Spreadsheet indicated that $5000 of the $25,000 NS and her spouse had loaned in March and June 2017 was repaid, plus the full amount of interest owing, $14,000. The bank records included a July 13, 2018

RTAX cheque for $4250 payable to NS with the notation, "Principal Balance", but it was returned because there were insufficient funds in the account. The bank records confirmed a $5000 payment to NS on March 19, 2018.

[115] GOJ loaned $10,000 to RTAX under an agreement dated August 1, 2017, and Cawaling testified that he paid her $2000 in interest. That sum was shown on the RTAX Loan Details Spreadsheet, but it was not substantiated by the bank records.

[116] As mentioned, during his Interview, Cawaling deposed that he told NS that her and her spouse's funds would be loaned to Chimera, and deposed that he sent all of their funds to Chimera. He further stated that GOJ's funds were also intended for Chimera, and that is where they were sent.

[117] We did not know whether Pickering spoke to the final RTAX Chimera Investor, **ER**, who loaned $20,000 under his company's name pursuant to an RTAX Chimera Agreement dated September 15, 2017. The RTAX Loan Details Spreadsheet indicated that no principal was repaid, but that the company received $7000 in full payment of the interest owed.

[118] Cawaling testified at the Hearing that he had recently paid ER in full, after the spreadsheet was created. The bank records showed that ER's company received numerous payments from RTAX between June 2018 and July 2021, totalling $55,000. This exceeded the principal and interest owing under the RTAX Chimera Agreement between RTAX and ER's company.

4. Breakdown of Relationship with Chimera

[119] According to Cawaling, he started to have some concerns about Chimera's legitimacy at around the time in late 2016 that 9800 Canada was due to be paid the amount owing under the September Chimera Agreement, but Bridge instructed him to "keep" LB's $100,000 instead. He testified that he was worried that Chimera could be a Ponzi scheme, but said he was reassured by having met Bridge and the involvement of two lawyers. He relied on Anderson's assurances of having worked with Chimera for several years without a problem.

[120] Cawaling admitted that he continued to raise money from lenders under RTAX Chimera Agreements despite his concerns, using Chimera marketing materials. He did not tell them that Chimera was delinquent in its payment obligations. He maintained that he still believed that Chimera would pay eventually and did not think that it was a fraud. He also continued to rely on the SBLC to backstop the loans.

[121] Because Chimera was not paying amounts owed – ostensibly due to delays overseas – as interest started to become due to the earliest RTAX Chimera Investors, Cawaling paid some of the interest himself. In his Interview, he deposed that he used money that he had earned from other ventures, and believed at the time that Chimera would reimburse him later and pay the other amounts it owed.

[122] By spring 2017, little had changed. The Respondents had received some modest amounts from Chimera or its counsel to assist them in paying interest to RTAX Chimera Investors, but Bridge continued to make excuses for the delays. Sometimes, the Respondents were unable to

make the interest payments. By the time Bridge sent ML the April 7, 2017 email promising ML payment imminently and the funds still did not arrive, Cawaling testified that became "really worried".

[123] Given his concerns, Cawaling testified that he stopped forwarding any RTAX Chimera Investor funds to Chimera. For example, when RA loaned an additional $10,000 in April 2017, Cawaling did not inform Chimera and kept the funds for RTAX. However, he did not change what he told RTAX Chimera Investors and continued to accept their money.

[124] Cawaling testified that he had originally intended to raise and remit to Chimera the full $1,000,000 pursuant to the December Chimera Agreement, but he stopped trying to achieve that goal when he knew that Chimera was not fulfilling its payment obligations. Bonazzo confirmed that the last time the Respondents sent funds to Chimera was April 13, 2017.

[125] On August 29, 2017, Cawaling received an email from Mavridis notifying him that because "no project has been concluded between RTAX and Chimera", there was no longer any purpose for the SBLC, and Santander had withdrawn it. Cawaling testified that he did not believe the email because the SBLC expiry date (December 15, 2017) had not occurred, and it stated on its face that it was "irrevocable". He also did not believe that Mavridis had the authority to cancel the SBLC; he thought that only Rubalcava could do so.

[126] On December 14, 2017, Cawaling wrote to Rubalcava to claim the $1,000,000 under the SBLC. He then followed up on December 20, 2017 and January 12, 2018. Rubalcava finally acknowledged the communications on January 22, 2018, and said he would provide a formal response within 30 days. When Cawaling still received no response, he followed up several more times in February 2018 and threatened to go to the "right authorities", and to start posting about everyone involved on social media.

[127] On February 15 and 16, 2018, Cawaling and Bridge exchanged emails with mutual accusations and threats. Cawaling referred to Bridge as "Mr. BS" and Bridge addressed Cawaling as "Mr[.] Cowardling" – which provides a sense of the overall tenor of these communications. Nevertheless, Bridge still suggested that a lawyer would be in touch the following week and said that he hoped the lawyer could assist "to just resolve this amicabl[y]".

[128] In an email to Rubalcava on February 20, 2018, Cawaling noted Bridge's ongoing failures to pay and his excuses, and speculated whether Rubalcava was "in collusion". He again stated that if he did not receive a response by the next day, he would go to "the right authorities" and start posting about it on social media.

[129] Cawaling sent two final emails to Rubalcava and Bridge on February 22, 2018 to advise that he had sent a report to a website called "ripoffreport.com" and would continue to post about it on other social media. One of the emails concluded with, "YOU GUYS CAN RUN BUT YOU GUYS CAN'T HIDE…[expletive] SCAMMERS AND … FRAUDSTERS!!!!"

[130] Cawaling testified at the Hearing that not long after these email exchanges, he received a call about Chimera from the United States (**U.S.**) Federal Bureau of Investigation (**FBI**). The FBI

sent him a letter dated March 29, 2018, in which the "RTAX Group of Compnanies [sic]" was identified as a possible victim of crime in a case the FBI had under investigation. The letter did not mention Chimera or Bridge, but Cawaling deposed in his Interview that Chimera was a fraud, that he had been a witness in U.S. proceedings, and that at some point, the FBI confirmed that the SBLC was a forgery. He was also in touch with someone who was suing Mavridis for misrepresenting Chimera, and later learned that Anderson had been imprisoned, and that the other people behind Chimera were fugitives from the law.

[131] Cawaling said that he had to tell the RTAX Chimera Investors in approximately April 2018 that he could not repay the loans or pay interest because the SBLC was fake and he could no longer afford to keep paying them from his own resources. In his Interview, he noted that Bridge owed him "a lot of money".

[132] Several of the RTAX Chimera Investors who testified at the Hearing described their efforts to have the Respondents repay their principal and pay the interest they were owed. They had little success, as Cawaling gave them different excuses why their money was not forthcoming. Typically, he passed on the excuses he had been given by Chimera, including that the money was tied up in various overseas locations.

[133] Although Cawaling deposed in his Interview that he was still trying to pay some people, others had sued him, obtained a judgment, and put a lien on his home. The house was eventually foreclosed, but the RTAX Chimera Investors involved in the litigation still did not get paid because of other claims.

D. Joint Venture

Cawaling's Evidence

[134] In 2019, Cawaling engaged in the second group of transactions at issue in these proceedings, the Definitely Green **Joint Venture**.

[135] According to Cawaling's Hearing testimony, he was referred to Definitely Green by a contact he had at Destiny Global LLC (**Destiny Global**), who vouched for its reliability. Definitely Green was purportedly raising funds to monetize a ruby, and offered a return of $1,000,000 USD on a $150,000 USD investment, guaranteed to be paid within 45 days. If Definitely Green failed to pay the return within that time frame, it was to add another 20 percent ($200,000 USD) to the return.

[136] Cawaling testified that before advancing funds, he conducted due diligence. This included verifying the legitimacy of the Portuguese lawyer involved before he sent the first $100,000 USD investment. In July 2019, he sent the remaining $50,000 USD investment to Destiny Global, apparently because that was its commission on the transaction. RTAX entered into a contract with Definitely Green and received a $1,000,000 promissory note.

[137] The contract was titled, "Guaranteed Return Investment Agreement" and dated July 16, 2019. Its first page stated, "[t]his Program is operated by a Finance Industry Expert whose business Partner is a former member [of] HSBC London's Financial Department." It then stated:

> ***Quadruple Security***
>
> Most Investments offer little or no security, this investment is unique because it offers Comprehensive Security with 4 Separate Layers which include:
>
> 1. Personal Guarantee from Finance Industry Expert [on p. 5, the "Expert" is identified as "[Definitely Green] Managing Director Paulo Jorge Correia Magalhaes Cerqueira"]
> 2. Corporate Guarantee from [Definitely Green] completing the Transaction which has Millions in Assets & Projects
> 3. Promissory Note
> 4. Detailed 47 Page Investor Agreement
>
> ***Safety & Transparency***
>
> The Transaction will be completed in Switzerland with two Swiss Banks, a Banking Attorney and the Finance Industry Expert and his business Partner who is a former member [of] HSBC London's Financial Department. As an investor in the transaction you have unrestricted access:
>
> 1. Meet the Finance Industry Expert completing the transaction at any time.
> 2. Attend Transaction Meetings with the Finance Industry Expert and his Business Partner
> 3. View all Transaction documents and communications
>
> This level of access and disclosure is rare and unprecedented. It validates this is a genuine transaction with proven, authentic, serious and responsible finance industry professionals.

[138] Although it was apparent that the Joint Venture was unrelated to Chimera, the Guaranteed Return Investment Agreement provided that the account to which the first $100,000 USD was to be sent was a lawyer's trust account at Banco Santander Totta S.A. in Portugal.

[139] The Guaranteed Return Investment Agreement was between RTAX and Definitely Green, but Cawaling described RTAX as an "intermediary" in the transaction between Definitely Green and the four JV Investors, who entered into RTAX JV Agreements with RTAX.

AP and KP

[140] During his Interview, Cawaling deposed that AP and KP were the original JV Investors – he approached KP to participate, and KP brought in his friend, AP. AP testified at the Hearing that he met Cawaling through KP, but was unsure whether it was Cawaling or KP who first contacted him about the opportunity.

[141] Cawaling acknowledged that he received $125,000 USD from KP and approximately $50,000 USD from AP, which he pooled and used to pay Definitely Green and Destiny Global. When Staff investigators pointed out during the Interview that it appeared RTAX had kept the remaining funds, Cawaling said that he could not recall why he did that, or whether he told AP or

KP that that was what he intended to do with their money. He also suggested that he added some of his own money to the pool, but could not remember how much.

[142] Both AP and KP executed RTAX JV Agreements dated July 16, 2019, and received unsecured JV Promissory Notes from RTAX. KP's JV Promissory Note was dated May 16, 2021, and AP's was dated October 4, 2020. According to Cawaling, he issued the JV Promissory Notes to AP and KP so that they could hold him and RTAX liable if the Joint Venture did not pay out as expected.

[143] AP's and KP's RTAX JV Agreements were similar, but differed in the amounts provided and the amounts of the "guaranteed prorated return": on his $125,000 USD, KP was to earn $500,000 USD within 45 days, and on his $50,000 USD, AP was to earn $200,000 USD, accounting for 70 percent of the total $1,000,000 USD return. These RTAX JV Agreements did not identify who would be paid the remaining 30 percent of the return, but Cawaling deposed in his Interview that it was to be split between himself and Phipps.

[144] AP's and KP's JV Promissory Notes were identical, differing only in amounts. RTAX was identified as the "Borrower/JV Partner", and each investor was identified as the "Lender/JV Partner". Unlike the RTAX JV Agreements that did not mention Definitely Green, Definitely Green was referenced in the JV Promissory Notes. Each note provided that if Definitely Green "fail[ed] to perform, satisfy or observe the terms and conditions of the Investor Guaranteed Return Investment Agreement", RTAX "promised to pay or return their principal back within a reasonable period **plus 5% per month starting August 1, 2019**" (original emphasis).

[145] KP did not appear at the Hearing, but Pickering testified that she interviewed him by telephone during her investigation. KP told Pickering that he understood his funds would be paid to a Portuguese company to monetize a ruby, and that he was not told his funds would be used otherwise.

[146] KP also told Pickering that he did not receive any of his capital back, nor any returns. While the bank records showed that he received a total of $11,000 from the Respondents between January 20 and June 11, 2021, as Staff argued, there was no indication of the purpose of these payments. There was evidence that KP had other business with the Respondents apart from the Joint Venture (e.g., he made a $50,000 payment that was deposited to a 9800 Canada account on March 4, 2020).

[147] In his Hearing testimony, AP confirmed that he invested $65,000 (or approximately $50,000 USD) from his savings in the Joint Venture with Cawaling, which he also understood involved a ruby somewhere in Europe. He stated that Cawaling told him the return on his investment would be 400 percent, but that Cawaling would take a portion of the return as his commission. AP further confirmed that he was not told his money would be used for anything other than the ruby project. He believed that if Cawaling wanted to pay other investors or use funds for his personal expenses, he would do so from his portion of the return.

[148] According to AP, Cawaling did not tell him there was any risk of losing his principal, but AP received neither repayment of his funds nor any return. The bank records showed that one

payment of $562.50 was made to AP from an RTAX account on October 15, 2018, but as with KP, there was no indication of its purpose. It pre-dated AP's Joint Venture investment by approximately nine months.

[149] AP testified that he received the JV Promissory Note from RTAX that was supposed to secure the return of his principal if the Joint Venture did not pay as expected, but RTAX did not pay him either. Under cross-examination by Cawaling, AP acknowledged that the JV Promissory Note was issued after he entered into his RTAX JV Agreement, and that the note in evidence was a revised version providing that RTAX would pay a 5 percent return. Apparently, the original version provided that RTAX would only be responsible for the principal.

[150] Cawaling testified that Definitely Green did not pay the returns under the Guaranteed Return Investment Agreement within 45 days, nor since. Cawaling attributed the delay to the death of someone involved, the assets getting "stuck", and ongoing litigation.

RP and DP

[151] Cawaling testified that when the Joint Venture did not pay out as expected, he approached RTAX Chimera Investor and tax preparation client, RP, to see if he wanted to get involved. RP in turn approached his co-worker, DP, and asked if DP would be interested in joining him in the investment. According to RP, Cawaling was looking for a total of $61,000, so he and DP each put in $30,500. RP funded the investment from his retirement savings plan (**RSP**) and his wife's savings, and DP funded it from his RSP and a loan.

[152] RP and DP each entered into an RTAX JV Agreement dated October 24, 2019. Their agreements were identical, and provided that after 90 days, RP and DP would each be paid $305,000. Their agreements were very similar to those AP and KP executed, the most important difference being that the RP and DP agreements included a clause stating that if they did not receive their $30,500 within six months, RTAX would "return the initial funds plus 20% interest of the funds [sic] as an option of Party A [i.e., RP or DP]". This clause appears to have replaced RTAX issuing additional JV Promissory Notes.

[153] Both RP and DP were somewhat unclear in their testimony about the purpose of the Joint Venture investment and how they thought their money would be used. However, in response to Cawaling's suggestion during cross-examination that "the money could be used for different things", RP said, "[f]rom what we understood from -- from [Cawaling] is that the money will be invested to this bank instruments [sic]". DP testified that he understood the money would be used for "some investment overseas". He also confirmed that he was never told his funds might be used in any way other than to make an investment – not to pay back other investors, pay fees or commissions to Cawaling, or pay Cawaling's personal expenses.

[154] In his Interview, Cawaling first said that he could not recall what he told RP about where his money would go or how it would be used. He later agreed with Pickering that the $30,500 RTAX received from RP on October 24, 2019 was "for the opportunity in monetizing this ruby with this Portuguese company". Cawaling also acknowledged that in discussing the opportunity with prospective JV Investors, he showed them documents about the project, including information

about the Portuguese company, its assets, a business evaluation, and a report about the ruby, and that he showed RP a copy of Definitely Green's $1,000,000 promissory note. Cawaling may also have provided prospective JV Investors with copies of RTAX's Guaranteed Return Investment Agreement with Definitely Green, as Pickering testified that she obtained a copy from KP, who had obtained it from Cawaling.

[155] Neither RP nor DP have been repaid their principal, nor any returns. They both said that they had followed up with Cawaling in this regard many times, but DP said the only explanation he ever received was that payout had been delayed.

E. Source and Use of Funds

[156] In support of their arguments about the amounts received by the Respondents from the RTAX Investors and how they were spent, Staff relied on a set of spreadsheets referred to as a Source and Use of Funds Analysis (the **S&U Analysis**). Bonazzo prepared the S&U Analysis from the bank records for the Relevant Period, and from other documents collected during Staff's investigation.

[157] The Respondents relied on the RTAX Loan Details Spreadsheet, but that document only showed amounts collected from some RTAX Chimera Investors, whether they were repaid, whether interest was paid and, if so, how much. It did not show how the Respondents used the funds once collected.

[158] At the Hearing, Cawaling introduced another spreadsheet that set out RTAX's "Accounts Receivable" due from Chimera as at April 18, 2017, which he said he sent to Bridge on April 19, 2017. This document included a few references to how the Respondents ostensibly used certain funds, but focused on what the Respondents claimed Chimera owed them for expenses they paid on Chimera's behalf, or for referral fees or commissions owed on funds advanced by certain RTAX Chimera Investors.

[159] Cawaling created one further spreadsheet that itemized some of the loans from RTAX Chimera Investors between October 31, 2016 and April 12, 2017. It showed the referral fees or commissions on the loans that Cawaling maintained were supposed to have been paid to him and Phipps, plus the amounts from each loan that Cawaling claimed were either remitted to Chimera or paid to other parties on Chimera's instructions. Like the Respondents' other spreadsheets, it did not reference any supporting documents to substantiate these purported transactions.

[160] Cawaling argued that Staff's S&U Analysis was incomplete, because it did not include information for all of the bank accounts he and his companies had at the time. Specifically, he mentioned several accounts at the Canadian Imperial Bank of Commerce (**CIBC**), to which he said RTAX sometimes transferred funds or deposited cash, and from which he made interest payments to LB because LB had a CIBC account. He also said that there was at least one account at the Bank of Montreal.

[161] Cawaling did not tender into evidence any of the bank records for the accounts he purported were missing from Staff's analysis, but said that his RTAX Accounts Receivable spreadsheet

included transactions involving some of those accounts. We noted that at the Interview in August 2022, he said he had only opened his CIBC account a "few months" before.

1. Chimera

(a) Sources

[162] According to Staff and the S&U Analysis, between October 2016 and December 2017, the Respondents received $675,500 from the 17 RTAX Chimera Investors discussed in these reasons.

[163] All of these funds were deposited to an RTAX account with an account number ending in 6613 at Toronto Dominion bank (**T.D.**, and **RTAX T.D. 6613**), an RTAX account with an account number ending in 8982 at Royal Bank of Canada (**RBC**, and **RTAX RBC 8982**), a 9800 Canada account with an account number ending in 196-15 at the Bank of Nova Scotia (**BNS**), or a 9800 Canada account at BNS with an account number ending in 310-11 (**9800 Canada BNS 310-11**).

[164] Staff's calculation accorded with the RTAX Loan Details Spreadsheet, except that as Cawaling acknowledged at the Hearing, the RTAX Loan Details Spreadsheet was missing the $222,500 in loans from LB, ML, RP and his spouse, and NSh. Staff's calculation also accorded with Cawaling's other spreadsheets showing some of the loans made between October 2016 and April 2017.

[165] The Respondents did not contest Staff's calculation of the amounts from RTAX Chimera Investors that were deposited to the aforementioned T.D., RBC, and BNS accounts (collectively, the **Corporate Accounts**).

(b) Uses

[166] Also according to Staff and the S&U Analysis, from the same Corporate Accounts, $221,345 was paid to RTAX Chimera Investors, and $77,240 was remitted to Chimera. As mentioned, the last date on which funds were transferred from the accounts to Chimera was April 13, 2017, but Staff pointed out that after that date, the Respondents still raised another $328,000 from RTAX Chimera Investors.

[167] In the Staff Submissions, deposits from RTAX Chimera Investors were identified, and, where possible from the bank evidence, Staff tracked how each deposit was used. Although our approach differed somewhat from Staff's, we undertook a similar exercise based on our review of the evidence. For example, concerning the use of LB's funds:

- LB's $97,500 was deposited to RTAX T.D. 6613 account on October 25, 2016, bringing the account balance from $618.52 to $98,118.52. Between October 25 and the next deposit of funds to the account on November 2, 2016:
    - $27,000 was transferred to a personal account at T.D. held by Cawaling and his spouse (**Cawaling T.D. 5767**; once funds were transferred to this account, they were generally spent on personal expenses, including utility payments, credit card payments, retail purchases, mortgage payments, and property taxes);

- $22,999.15 was transferred to unknown recipients via First Global, a money transfer service Cawaling said he used to send money to the Philippines (but did not use for purposes related to Chimera);
- $12,000 was transferred to an M. Phipps, whom we assumed was associated with Tyrone Phipps;
- $7528.09 was transferred to unknown recipients via National Money (a payday loan service provider), or by e-transfer;
- $4470 was transferred to an individual who had no apparent connection to Chimera;
- $3000 was withdrawn in cash (one withdrawal);
- $500 was transferred to a member of Cawaling's family; and
- $300 was transferred to one of Cawaling's personal lenders.

- Following the above transactions and a small amount paid in bank fees and interest, the RTAX T.D. 6613 account had a balance of $20,297.28. $3865 in cash from an unknown source was deposited on November 2, 2016, bringing the account balance to $24,162.28. Between November 2 and the end of November 4, 2016:
  - $10,300 was paid to one of Cawaling's personal lenders;
  - $9530 was transferred to unknown recipients via First Global ($8000) and via Cash Money, another payday loan service provider ($1530); and
  - $144.36 was spent on retail purchases.
- After these expenditures, the RTAX T.D. 6613 account had a balance of $4187.92.

[168] A shorter example is the use of NB's funds:

- on February 3, 2017, NB's $15,000 was deposited to RTAX T.D. 6613, bringing the account balance to $18,429.98. Between February 3 and the end of February 6, 2017:
  - $5000 was transferred to LB;
  - $5000 was transferred to Cawaling T.D. 5767;
  - $2200 was withdrawn in cash;

- $2000 was send to an unknown recipient by e-transfer; and
- $776.97 was spent on retail purchases.

- On February 7, 2017, the opening balance in the account was $3444.01.

[169] Applying the same analysis of each RTAX Chimera Investor deposit to the Corporate Accounts between October 25, 2016 and December 27, 2017, we found:

- a total of $191,930.29 was transferred to Cawaling, primarily transfers to the Cawaling T.D. 5767 account and a T.D. line of credit held by Cawaling and his spouse (the **Cawaling T.D. LOC**; certain transfers paid the total debt outstanding at the time);
- $82,572.63 was transferred to unknown recipients, including via National Money or Cash Money, or via e-transfer; at the Hearing, Cawaling suggested that some of the unknown e-transfers may have been transfers to or on behalf of Chimera, but adduced no further evidence to corroborate his testimony;
- $66,315.04 was transferred to parties who had no apparent connection to Chimera;
- $36,400 was withdrawn in cash;
- $32,499.15 was transferred to Cawaling's family (including the funds transferred via First Global);
- $24,000 was transferred to Phipps, M. Phipps, or Phipps' ex-spouse;
- $23,900 was paid for unspecified "online banking payments";
- $22,600 was transferred to Cawaling's personal lenders;
- $21,000 was paid to RT Capital Inc. (corporate searches in evidence indicated that Cawaling and Phipps were the sole directors and voting shareholders of RT Capital Inc.); and
- $9158.42 was spent on retail purchases, insurance, and car payments to BMW Group Financial.

[170] We agreed with Staff's calculation that only $77,240 was sent directly to Bridge or Chimera from the Corporate Accounts, including $70,740 we were able to trace from RTAX Chimera Investor funds.

[171] We arrived at a different conclusion than Staff about the amount that was repaid to RTAX Chimera Investors, whether from other RTAX Chimera Investors' funds or from other sources.

Staff's $221,345 did not include $5000 paid to LB's spouse from the 9800 Canada 310-11 account, nor $4250 paid to KO's company, RA, and NB from the RTAX T.D. 6613 account.

[172] In addition, Staff's calculation included $45 in bank fees that would have been paid by the account holder to the bank rather than to the investors, so we excluded it from our calculation.

[173] We disagreed with Staff that an additional $37,000 in payments to JA and DN should be included in the total based on evidence that the Respondents paid them each a total of approximately $18,500. We accepted JA's and DN's testimony in that regard, but JA only testified that he received $18,000, while DN testified (and there was other evidence to corroborate) that he received $18,500. More significantly, Staff's totals resulted in double-counting because they had already included $12,000 paid to JA and his company and $1500 paid to DN's company.

[174] Our calculation compared to Staff's was:

Item	**Panel**	**Staff**
Total paid to RTAX Chimera Investors from RTAX T.D. 6613	$90,300 (includes additional $3000 paid to KO's company, $500 paid to RA, and $750 paid to NB)	$86,050
Total paid to RTAX Chimera Investors from RTAX RBC 8982	98,250	$98,250
Total paid to RTAX Chimera Investors from 9800 Canada BNS 310-11	$5000 (to LB's spouse)	nil
Bank fees on transfers	nil	$45
Additional payment(s) to JA	$6000	$18,500
Additional payment(s) to DN	$17,000	$18,500
TOTAL:	**$216,550**	**$221,345**

2. Joint Venture

(a) Sources

[175] Staff asserted that the Respondents received $174,084.61 USD and $61,000 from the four JV Investors. Cawaling stated during his Interview that he opened a USD account at T.D. specifically for transactions relating to the Joint Venture (the **RTAX T.D. USD** account).

[176] The bank records and the S&U Analysis showed that the first deposits to the RTAX T.D. USD account were $125,000 USD from KP and $49,084.61 USD from AP (totalling

$174,084.61 USD), both on July 18, 2019. These were the only significant deposits to the account between its opening and the end of 2021.

[177] DP and RP paid $61,000 in October 2019. DP's $30,500 was deposited to RTAX T.D. 6613 on October 24, and RP's $30,500 was deposited to RTAX RBC 8982 on October 28.

(b) Uses

[178] Based on the bank records and the S&U Analysis, Staff asserted that of the funds paid by the JV Investors, only $150,141.81 USD was remitted to the Joint Venture: after KP's and AP's funds were deposited, two transfers were made to parties associated with Definitely Green on July 22, 2019: $100,063.56 USD to a Dr. Jorge Manuel Soares Ribeiro (**Ribeiro**), and $15,039.17 USD to Destiny Global. On July 29, 2019, a third transfer of $35,039.08 USD was sent to Destiny Global.

[179] According to Staff, the balance was used to pay other investors or was transferred to one of Cawaling's accounts for personal expenses.

[180] After the transfers to Ribeiro and Destiny Global, most of the funds in the RTAX T.D. USD account ($23,930 USD) were transferred to RTAX T.D. 6613 and converted into Canadian currency ($30,711.27). We applied the same approach to tracing the use of those funds as we did to the use of the RTAX Chimera Investors' funds, and found that between July 22 and August 19, 2019:

- $11,300 was transferred to the Respondents' personal lenders;
- $4845.65 (including fees) was withdrawn in cash, $2519.75 of that from casino ATMs;
- $4050 was transferred to individuals who had no apparent connection to the Joint Venture;
- $4000 was paid on credit cards;
- $3088.45 was transferred to Cawaling or Cawaling T.D. 5767;
- $1830 was spent on the "Poker Room"; and
- $1500 was transferred to ER's company.

[181] As mentioned, DP's and RP's funds were deposited to the RTAX T.D. 6613 and RTAX RBC 8982 accounts, respectively. None of their funds were transferred to Definitely Green, or anyone else evidently associated with the Joint Venture. Instead, we found that between October 24 and November 22, 2019:

- $15,507.50 was paid to two individuals who had no apparent connection to the Joint Venture;

- $15,000 was transferred to the Cawaling T.D. LOC;
- $11,851.45 (including fees) was withdrawn in cash, including $503.95 from a casino ATM;
- $7250 was paid to Cawaling's personal lenders;
- $5000 was transferred to Cawaling 5767;
- $1840 was spent on the "Poker Room";
- $1500 was transferred to ER's company;
- $1000 was used to make a credit card payment;
- $940.18 was spent on retail purchases and insurance; and
- $750 was transferred to an unknown recipient.

[182] Combining these numbers, from the $91,711.27 that was not transferred to the parties involved with the Joint Venture:

- $23,088.45 was transferred to Cawaling or one of his accounts;
- $20,307.50 was paid to unknown parties or parties with no apparent connection to the Joint Venture;
- $18,550 was transferred to the Respondents' personal lenders;
- $16,697.10 was withdrawn in cash (including $3023.70 from casino ATMs);
- $5000 was paid on credit cards;
- $3670 was spent on the "Poker Room";
- $3000 was paid to ER's company; and
- $940.18 was spent on retail purchases and insurance.

[183] When asked during his Interview about the many withdrawals from casino ATMs, Cawaling said that sometimes he would arrange to meet cryptocurrency sellers at casinos or other public places and paid them in cash, or paid certain RTAX Investors in cash at their request. However, he also acknowledged that some of the cash withdrawals were for personal use, and that some withdrawals made at casino ATMs were for his own gambling.

IV. ILLEGAL DISTRIBUTIONS

A. Law

[184] The NOH alleged that:

> [t]he Respondents breached section 110(1) of the *Act* by distributing [securities] without having filed and received a receipt for a preliminary prospectus or a prospectus, and without an exemption from that requirement for some or all of the relevant distributions of the [s]ecurities . . .

[185] Section 110(1) provides:

> [n]o person or company shall trade in a security on the person's or company's own account or on behalf of any other person or company if the trade would be a distribution of the security unless
>
> (a) a preliminary prospectus has been filed and the Executive Director [of the ASC] has issued a receipt for it, and
>
> (b) a prospectus has been filed and the Executive Director has issued a receipt for it.

[186] As set out in previous ASC decisions (see, e.g., *Re Global 8 Environmental Technologies, Inc.*, 2015 ABASC 734 at para. 496; *Aitkens* at para. 148), to establish a breach of s. 110(1), Staff must prove that:

- the respondent traded in securities;
- the securities were those of an issuer that had not been previously issued and the trades were therefore distributions as defined in the Act;
- in respect of the distributions, the respondent did not file a preliminary prospectus or a prospectus with the **Executive Director** of the ASC, and did not receive receipts for the same (often described as the **Prospectus Requirement**);
- the respondent did not qualify the investors for an exemption from the Prospectus Requirement in accordance with National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**); and
- prospectus exemptions were not available for the distributions.

[187] Under s. 1(jjj) of the Act, a "trade" includes "any sale or disposition of a security for valuable consideration" and "any act, advertisement, solicitation, conduct or negotiation made directly or indirectly" in furtherance of a trade.

[188] Under s. 1(p), a trade is a "distribution" if it is "a trade in securities of an issuer that have not been previously issued".

[189] As legislation intended to protect investors and the Alberta capital market, s. 1(ggg) of the Act purposely defines "security" very broadly. The definition includes, *inter alia*:

- "any bond, debenture, note or other evidence of indebtedness . . . " (s. 1(ggg)(v));
- "any profit-sharing agreement or certificate" (s. 1(ggg)(ix)); and
- "any investment contract" (s. 1(ggg)(xiv)).

[190] In *Pacific Coast Coin Exchange of Canada Limited v. Ontario (Securities Commission)*, [1978] 2 S.C.R. 112 (at para. 43), the Supreme Court of Canada (**SCC**) stated that when determining whether an instrument is a security, "[s]ubstance, not form, is the governing factor."

[191] "Investment contract" is not defined in the Act. ASC hearing panels have applied the definition articulated in *Pacific Coast* (at paras. 46-48): a contract for an investment of money in a common enterprise with the expectation of profits arising significantly from the effort of others.

[192] Staff have the initial onus to prove on a balance of probabilities that a respondent distributed securities without filing and receiving receipts for a preliminary prospectus or a prospectus. The onus then shifts to the respondent "to demonstrate the availability of, applicability of, and strict compliance with the conditions of, a claimed exemption" (*Re Cloutier*, 2014 ABASC 2 at para. 309, citing *Re Arbour Energy Inc.*, 2012 ABASC 131 at para. 737).

[193] In *Re Chmelyk*, 2017 ABASC 13, an ASC hearing panel further explained (at para. 69):

> The onus of demonstrating the availability, and adherence to the conditions and requirements, of a registration or prospectus exemption rests with the respondent claiming the benefit of the exemption, who must show that it made a reasonable, serious effort – by taking whatever steps were reasonably necessary – to satisfy itself that the exemption was available for the trade or distribution at the pertinent time (*Re Homerun International Inc.*, 2015 ABASC 990 at para. 83).

[194] And as noted in *Cloutier* (at para. 308):

> It is insufficient to assume or hope that an exemption was available at the time of the trade or distribution of the security. Nor is it sufficient that some, but not others, of the trades within a distribution qualify for a claimed exemption.

[195] A number of exemptions to the Prospectus Requirement are set out in NI 45-106, with the conditions for their application. Additional guidance is provided in Companion Policy 45-106CP *Prospectus Exemptions* (**45-106CP**).

[196] Two exemptions that were of potential relevance to this matter were the accredited investor exemption (**A.I. Exemption**) and the family, friends, and business associates exemption (**FFBA Exemption**).

[197] Section 1.1 of NI 45-106 defines "accredited investor" to include:

> . . .
>
> (j) an individual who, either alone or with a spouse, beneficially owns financial assets having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds $1 000 000,

> . . .
>
> (k) an individual whose net income before taxes exceeded $200 000 in each of the 2 most recent calendar years or whose net income before taxes combined with that of a spouse exceeded $300 000 in each of the 2 most recent calendar years and who, in either case, reasonably expects to exceed that net income level in the current calendar year, [and]
>
> (l) an individual who, either alone or with a spouse, has net assets of at least $5 000 000 . . .

[198] NI 45-106 s. 2.3 provides an exemption from the Prospectus Requirement for accredited investors, but only if the issuer of the security has obtained from the investor "a signed risk acknowledgement in the required form" either before or at the same time as the investor signs the agreement to purchase the security (see ss. 2.3(6)).

[199] The FFBA Exemption is available if the purchaser of the security falls within one of the relationship categories set out in NI 45-106. The categories include "a close personal friend of a director, executive officer or control person of the issuer, or of an affiliate of the issuer", and "a close business associate of a director, executive officer or control person of the issuer, or of an affiliate of the issuer" (ss. 2.5(d) and (e)).

[200] 45-106CP (ss. 2.7 and 2.8) provides guidance on construing "close personal friend" and "close business associate". The determination is fact-specific, but the terms generally mean "an individual who knows [or who has had sufficient prior business dealings with to know] the director, executive officer, founder or control person well enough and has known them for a sufficient period of time to be in a position to assess their capabilities and trustworthiness and to obtain information from them with respect to the investment". Other relevant factors include:

- the length of time the parties have known each other,
- the nature of their relationship (including the frequency of contact between them, and the level of trust and reliance the friend or business associate places on the director, executive officer, or control person in other circumstances), and
- the number of close friends or business associates that have received the securities in reliance on the exemption.

[201] 45-106CP ss. 2.7 and 2.8 note that a person is not a close friend or business associate "solely because the individual is . . . a client, customer, former client or former customer".

B. Staff's Argument

[202] In Staff's submission, there were two securities at issue in this matter: the RTAX Chimera Agreements, which were either or both evidence of indebtedness and investment contracts, and the RTAX JV Agreements, which were either or both profit-sharing agreements and investment contracts.

[203] Staff argued that both forms of agreement were investment contracts, meeting the test in *Pacific Coast* (at para. 46-48) and *Gimbel v. Alberta (Public Works, Supply & Services)*, 2013 ABCA 290, leave denied [2013] S.C.C.A. No. 440 (at para. 38):

(a) the RTAX Chimera Agreements and the RTAX JV Agreements involved "an investment of money" – RTAX Investors advanced funds to the Respondents;

(b) there was in each case a "common enterprise", being an enterprise "'in which the fortunes of the investor are interwoven with and dependent upon the efforts and success of those seeking the investment'" (per *Pacific Coast* at para. 48, citing *S.E.C. v. Glen W. Turner Enterprises Inc.* (1973), 474 F.2d. 476 at p. 482) – the Respondents solicited funds to be pooled and advanced to Chimera or Definitely Green pursuant to their agreements with Chimera and Definitely Green, for the purpose of generating returns that would benefit both the Respondents and the RTAX Investors;

(c) the RTAX Investors had "an expectation of profit" – generally, either 5 percent monthly for four months under the RTAX Chimera Agreements, or a return of four to 10 times their capital in 45 to 90 days under the RTAX JV Agreements; and

(d) the profits were to arise "significantly from the effort of others" – the RTAX Investors had no role in generating the returns and had no control over how their funds were used; rather, they relied on the efforts of others – the Respondents.

[204] Staff argued in the alternative that the RTAX Chimera Agreements were evidence of indebtedness, as was apparent from their title and use of terms like, "Lender" and "Borrower". Further, the RTAX JV Agreements were profit-sharing agreements, evident from the terms in the agreements that provided how the "Profits" from the Joint Venture would be shared and distributed.

[205] Staff also addressed the other elements to establish a breach of s. 110(1) of the Act. They submitted that the Respondents engaged in "trades" and "distributions" by soliciting funds from and issuing securities to the RTAX Investors for money, and the securities had not been previously issued. They relied on Cawaling's evidence and the evidence certifying that no prospectuses were filed by the Respondents or receipted by the Executive Director. They also relied on Cawaling's admission that he did not make any effort to determine whether the investors qualified for an exemption from the Prospectus Requirement, and the evidence that the majority of investors did not qualify.

[206] Staff acknowledged that three individuals likely would have qualified as accredited investors based on their income: AP, KP, and JB. Staff argued that because the Respondents made no effort to ascertain the availability of an exemption, they were not entitled to rely on the exemption. Following final argument, they refined their position and submitted that the funds provided by AP, KP, and JB should not be included in calculating the total amount of money the Respondents raised in breach of s. 110(1).

[207] In the result, while Staff initially alleged that between October 2016 and October 2019, the Respondents illegally distributed securities valued at $736,500 and $175,000 USD, after deducting the funds provided by AP, KP, and JB, they argued that the total amount raised illegally was $706,500.

C. The Respondents' Argument

[208] As mentioned, the Respondents did not provide written argument, but Cawaling appeared for oral argument and reiterated the position he had taken in his Interview and at the Hearing: he did not have an offering memorandum or a subscription agreement prepared and he did not determine the availability of any exemptions because he considered the impugned transactions to be individual loans, not investments or purchases of securities.

D. Analysis

The RTAX Investments Were Securities

[209] In our view, both the RTAX Chimera Agreements and the RTAX JV Agreements were securities within the meaning of the Act.

[210] The RTAX Chimera Agreements were titled "Loan Agreement", and the parties were described as "Borrower" and "Lender", indicating that the instruments constituted "evidence of indebtedness" and therefore "securities" in accordance with s. 1(ggg)(v) of the Act.

[211] The same is true of the agreements LB and ML entered into directly with Chimera. LB's agreement was not in evidence, but we inferred that it was the same or substantially similar to ML's, which was in turn substantially similar to the RTAX Chimera Agreements that Cawaling drafted from Chimera's template. It was also titled "Loan Agreement", and provided for a loan from ML, the "Lender", to Chimera, the "Borrower".

[212] The issue of whether a loan is a security has been considered relatively recently by both the Alberta Court of Appeal (**ABCA**) and the Ontario Court of Appeal (**ONCA**).

[213] In *R. v. Stevenson*, 2017 ABCA 420, leave denied [2018] S.C.C.A. No. 54, members of the public entered into contracts described on their face as "Loan Agreements" for the purpose of loaning money to the appellant's corporation, which he was then to use to probate a large overseas estate. When the estate was ready for distribution, he was to receive a significant amount that he was then to share with the "Lenders". The appellant's primary argument was that each agreement memorialized a private transaction or a private contract to be "'enforced in accordance with the intention of the parties and the normal rules of contract law'", and was not a security (at para. 7).

[214] The ABCA observed that, "[t]he raising of funds from the public is one of the most highly regulated activities in Canada" (at para. 6), and that (at para. 9):

> [t]he *Securities Act* is very broadly worded legislation, designed to cover virtually every method by which money could be raised from the public. It is contradictory to argue that money 'raised from the general public' is nevertheless merely a series of 'private transactions'; that is exactly what the *Securities Act* is designed to regulate. That characterization could be placed on any method of raising

> money from the public. Every sale of shares by a corporation to a member of the public is, at one level, a 'private transaction'. The entire process of raising money from the general public is, however, regulated under the *Act*.

[215] The ABCA held that the test for determining whether something is a security is "functional: Is the issuer raising funds from the public for investment purposes?" (at para. 20). They found that the instruments at issue were securities because the answer to that question was affirmative – "funds were raised from members of the public on the expectation that they would participate in the gains to be made from the venture" (*ibid.*). We considered that an apt description of the objective of the loans in this matter: they were the means by which the RTAX Chimera Investors would participate in the gains from the overseas venture that would repay their principal and pay interest.

[216] The facts in *Ontario (Securities Commission) v. Tiffin*, 2020 ONCA 217, were similar to those in *Stevenson*, and to those in this case. The appellant and his company borrowed money from several clients and friends and issued promissory notes; the dispute was whether the promissory notes were securities.

[217] The ONCA agreed with the ABCA decision in *Stevenson*, and found that the promissory notes fell within the "bond, debenture, note or other evidence of indebtedness" category in the *Securities Act* (Ontario), even though it was understood that the purpose of the loans was to provide funds for the appellant's personal use and to keep his business operating (at paras. 4, 10, 48, and 50). Like the ABCA, the ONCA noted the intentionally expansive definition of "security", which was consistent with the object of the legislation and the intention of the legislator (at paras. 29 and 49). They concluded that in Ontario, "there is no indication that the legislator intended short-term debt instruments to be understood as anything other than securities" (at para. 44). In our view, the same is true in Alberta.

[218] Given our conclusion regarding "evidence of indebtedness", it was not necessary for us to find that the RTAX Chimera Agreements – and the loan agreements LB and ML had with Chimera – also fell within the "investment contract" category. Nonetheless, we were satisfied that they did, and that the RTAX JV Agreements were also investment contracts. They all involved:

- an investment of money (either loan funds or Joint Venture funds),
- in a common enterprise (either investment overseas or investment in monetizing a precious stone),
- with the expectation of profits (all of the agreements contemplated a sizeable return),
- arising significantly – if not solely – from the efforts of others (whether the Respondents, Chimera, Definitely Green, or Destiny Global).

[219] None of the agreements contemplated the RTAX Investors having any role in generating the expected returns, and a number of the Hearing witnesses – including Cawaling, under cross-examination – confirmed that once RTAX Investors provided their money, they had no other involvement and no control over how the money was used. Even though the RTAX JV Agreements indicated that the parties were to "work together to grow the funds", it was clear from all of the evidence that the investors played no role other than to provide capital.

[220] As mentioned, Staff argued that the RTAX JV Agreements also fell within the "profit-sharing agreement" category of security. However, we found that the terms of the RTAX JV Agreements were too unclear and contradictory to make that determination.

The Respondents Traded in and Distributed Securities

[221] Having determined that the agreements at issue were securities, we turned to whether the Respondents "traded" and "distributed" them.

[222] We found that the Respondents traded the RTAX Chimera Agreements and the RTAX JV Agreements because they were exchanged for valuable consideration. All of the agreements except LB's and ML's were with RTAX, and Cawaling was the guiding mind of RTAX and the only person who communicated with the RTAX Investors. He spoke to each one, described and promoted the transactions, accepted funds, and signed the agreements.

[223] The Respondents were not named parties to the agreement ML (and presumably, LB) had directly with Chimera, but the definition of "trade" in the Act includes acts in furtherance of a trade. Soliciting the lenders, accepting their funds, and acting as the conduit for the transactions between these lenders and Chimera were all acts in furtherance of a trade, and both of the Respondents were involved.

[224] The instruments were previously unissued, and thus the Respondents also distributed securities within the meaning of the Act. As Cawaling acknowledged and other evidence confirmed, no preliminary prospectus or prospectus was filed in accordance with the Act, and therefore no receipts were issued by the Executive Director.

No Exemptions from the Prospectus Requirement Were Available

[225] Finally, we were satisfied that no exemptions from the Prospectus Requirement were available in respect of the vast majority of the RTAX Investors. Cawaling admitted that he made no efforts to ascertain the availability of exemptions because he did not think it was necessary.

[226] Cawaling's inattention to the qualification of the RTAX Investors for prospectus exemptions was corroborated by almost all of the investors – no questions were asked and they did not qualify for any exemption.

[227] As mentioned, there was evidence that AP, KP, and JB qualified for the A.I. Exemption based on their income or financial assets. The A.I. Exemption requires that the investor also sign a risk acknowledgement form, and there was no evidence that this was done. Accordingly, we found that the conditions of the A.I. Exemption were not met.

[228] Cawaling testified that JB and his family were friends with the Cawaling family, and spoke about his friendships with RM and his family, NB, and ER. Other RTAX Investors were his clients before he became involved with Chimera, but some he acknowledged he had only met in connection with Chimera or the Joint Venture, often through other people. In his closing

submissions, Cawaling confirmed that while some of the RTAX Investors were his past clients, he did not know most of them.

[229] Staff asked all of the RTAX Investors who testified at the Hearing if Cawaling was a family member or if they considered Cawaling a close friend or business associate. With the exception of ML, all denied any such relationship. ML testified that after he met Cawaling in 2014, they became good friends and Cawaling became his son's godfather.

[230] There was therefore some evidence that some of the RTAX Investors may have qualified for the FFBA Exemption. However, we were satisfied on a balance of probabilities that the overwhelming majority of them did not qualify.

Conclusion on Illegal Distribution Allegations

[231] The Respondents traded and distributed securities to members of the public – the RTAX Chimera Agreements, the loan agreements LB and ML had with Chimera, and the RTAX JV Agreements. They did not file a preliminary prospectus or a prospectus, and with the exception of one or a few RTAX Investors who qualified for the FFBA Exemption, the Respondents did not establish that the investors qualified for any exemptions from the Prospectus Requirement. Accordingly, the Respondents contravened s. 110(1) of the Act.

V. FRAUD

A. Law

[232] In the NOH, Staff alleged that:

> [t]he Respondents breached section 93(1)(b) of the *Act* by directly or indirectly engaging or participating in an act, practice or course of conduct relating to securities that they knew or ought to have known may perpetrate a fraud on investors.

[233] Section 93(1)(b) of the Act provides in part:

> [n]o person or company shall, directly or indirectly, engage or participate or attempt 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 may
>
> . . .
>
> (b) perpetrate a fraud on any person or company.

[234] Fraud is not defined in the Act, but the test for fraud in the securities context has long been that articulated by the SCC in *R. v. Théroux*, [1993] 2 S.C.R. 5 (at para. 27). Staff must prove:

a. the *actus reus* of fraud, which is established by proof of:

   i. a "prohibited act, be it an act of deceit, a falsehood or some other fraudulent means"; and

ii. "deprivation caused by the prohibited act, which may consist in actual loss or the placing of the victim's pecuniary interests at risk"; and

b. the *mens rea* of fraud, which is established by proof of:

i. "subjective knowledge of the prohibited act"; and

ii. "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)".

[235] The SCC in *Théroux* explained further:

- it is an act of deceit or a falsehood if someone has "represented that a situation was of a certain character, when, in reality, it was not" (at para. 18);

- other fraudulent means are dishonest acts that are not necessarily deceit or falsehood; they include "the use of corporate funds for personal purposes, non-disclosure of important facts, . . . unauthorized diversion of funds, and unauthorized arrogation of funds or property" (*ibid.*);

- the *mens rea* of fraud may be established by proving that the accused had "subjective awareness that one was undertaking a prohibited act (the deceit, falsehood or other dishonest act) [that] could cause deprivation" – i.e., actual economic loss or the risk of loss (*ibid.* at para. 24);

- it does not matter if the accused did not know the acts were wrong, or did not intend to cause anyone economic loss; rather, "the proper focus in determining the *mens rea* of fraud" is whether the accused "intentionally committed the prohibited acts (deceit, falsehood, or other dishonest act)" and was aware of the actual or potential consequences (deprivation, or the risk of deprivation) (*ibid.*; see also para. 28). This is because (*ibid.* at para. 36):

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

- Staff are not required to prove that the accused personally profited or otherwise benefited from the fraud (*ibid.* at para. 19); and

- "subjective knowledge" of the potential consequences "can be inferred from the act itself, barring some explanation casting doubt on such inference" (*ibid.* at para. 23).

[236] We were guided by these principles in determining whether the Respondents breached s. 93(1)(b) of the Act as alleged.

B. Staff's Argument

[237] Staff argued that the Respondents engaged in prohibited acts of deceit by:

- providing false and misleading information to RTAX Investors about Chimera and Definitely Green and how their funds would be used, including false representations made to certain RTAX Investors that their funds would be provided to Chimera or Definitely Green; and

- failing to invest or use RTAX Investor funds for business purposes as represented, instead misappropriating them for Cawaling's personal use or other uses that were undisclosed to and unauthorized by the RTAX Investors, including:

    - transferring RTAX Investor funds to Cawaling's personal bank accounts;

    - paying debts unrelated to Chimera or Definitely Green; or

    - paying interest and returns of capital to other RTAX Investors.

[238] According to Staff, the evidence showed that the Respondents deceived RTAX Chimera Investors by telling them that through RTAX, they could lend money on a risk-free basis for business or investment purposes related to Chimera, mining, or another overseas business, which would quickly generate the high rates of return set out in the RTAX Chimera Agreements. Staff relied on Cawaling's admissions that he did not tell RTAX Chimera Investors that Chimera had not paid the returns owed on funds already provided, that he was paying returns to some RTAX Investors from other investment funds, and that he was using their funds as compensation for his personal expenses and other purposes.

[239] Staff further argued that Cawaling used the funds from the JV Investors in a similar manner, again without telling them that their funds would be used for anything other than business or investment purposes. In Staff's submission, the Respondents' prohibited acts of deceit about the use of funds caused the RTAX Investors actual or potential deprivation – i.e., financial loss. By not telling the RTAX Chimera Investors that Chimera had not paid him, he also exposed them to the undisclosed risk that Chimera was not a legitimate business and would not pay the returns promised.

[240] Staff submitted that the evidence also established the *mens rea* of fraud, because Cawaling knew what he told and did not tell the RTAX Investors, controlled the relevant bank accounts, and knew how the money was actually spent. He therefore had the requisite subjective knowledge of his prohibited acts and the risk of deprivation.

[241] Staff emphasized that Cawaling admitted he knew as early as October 2016 that Chimera was not paying him and that he suspected a Ponzi scheme. He stopped sending any money raised

to Chimera in April 2017, and was told in August 2017 that the SBLC had been cancelled. Regardless, the Respondents continued to raise capital on the same basis as before, and disbursed funds for their own purposes.

[242] Staff therefore maintained that Cawaling – and through him, RTAX – engaged in acts, practices, or a course of conduct that they knew or ought to have known may perpetrate a fraud on the RTAX Investors within the meaning of the Act, contrary to s. 93(1)(b). The Respondents' actions caused "significant deprivation", as most RTAX Investors did not get their money back, and some were left with the debt they incurred to fund their investment.

[243] Staff quantified the amount the Respondents misappropriated from RTAX Chimera Investors by first subtracting what Cawaling remitted to Chimera ($77,240) from the amount the Respondents raised ($675,500), for a preliminary total of $598,260. They then subtracted the $221,345 they calculated the Respondents paid to certain RTAX Chimera Investors as interest or a return of capital, and argued that the remaining $376,915 was misappropriated.

[244] In addition, Staff noted that the Respondents had collected $174,084.61 USD from JV Investors KP and AP, of which only $150,141.81 USD was remitted to Definitely Green. The Respondents paid $9018.75 USD ($11,562.50) to KP and AP, but misappropriated the remaining $14,924 USD. Of the $61,000 provided by RP and DP, none was remitted to Definitely Green, and neither RP nor DP received repayment. Accordingly, Staff concluded that a further $61,000 was misappropriated from the remaining JV Investors.

[245] In the aggregate, Staff submitted that the Respondents misappropriated $437,915 and $14,924 USD.

[246] Staff then addressed arguments that the Respondents did or might raise in reply to the NOH allegations.

[247] First, if the Respondents argued that they did not intend to defraud anyone because Cawaling believed that Chimera and Definitely Green were legitimate businesses and their failure to pay RTAX – which in turn led to the Respondents' inability to pay the RTAX Investors – was beyond his control, Staff relied on *Théroux*: an accused's intentions and belief that no harm would result from the conduct at issue are irrelevant.

[248] Second, Cawaling argued at the Hearing that he believed he could spend the money raised under the RTAX Chimera Agreements at his discretion, because he believed RTAX was entering into loan agreements that were not related to Chimera, and the Respondents were not trading in securities. Staff submitted that this was contrary to the evidence, including Cawaling's: RTAX Chimera Investors were given marketing documents and other information about Chimera, and testified that they understood their money would be used for business and investment purposes. In addition, Staff again relied on *Théroux*, and argued that Cawaling's belief that he did nothing wrong was irrelevant.

[249] Third, Staff submitted that it was irrelevant if the Respondents were defrauded by Chimera and Definitely Green. In Staff's view, this did not justify the Respondents' dishonest dealings with

the RTAX Investors. Staff pointed out that only a small percentage of the funds raised were actually sent to either Chimera or Definitely Green, while the diversion of most of the money raised was "deliberate, intentional, and repeated".

[250] Finally, Staff pointed out that Cawaling admitted what he told RTAX Investors, his use of funds, and that only certain amounts had been sent to Chimera and Definitely Green. He attempted to justify his actions by claiming that Bridge told him to keep certain sums for himself, or gave him instructions to disburse funds to third parties, and he asserted that he was entitled to take compensation from the funds because Chimera was not paying him. In Staff's submission, both were irrelevant and not a defence because the Respondents did not disclose those arrangements to the RTAX Investors.

[251] Moreover, Staff argued, Cawaling did not earn compensation "in good faith" because "[h]is use of investor funds was haphazard and bore no relation to any work he may have done"; he spent money as soon as he received it and kept no records. Further, in their view, "this was an investment scam", and the Respondents were not entitled to compensation for carrying out a fraud.

C. The Respondents' Argument

[252] In oral argument, the Respondents' principal contention was that the impugned transactions were loans, and that if people read the agreements they signed and understood that they were extending loans, the Respondents did not have to tell them how their money would be used.

[253] Cawaling further maintained that people loaned money because they trusted him, and not because of what they thought their money was going to be used for, or anything involving Chimera. In his view, the RTAX Chimera Investors did not expect him to send their funds to Chimera, so he could not understand how this could be considered a fraud.

[254] In addition, Cawaling asserted that Chimera sometimes instructed him to keep some of the funds from RTAX Chimera Investors as the Respondents' compensation, or to use some of it to make payments to third parties. He drew our attention to several email and text messages from Bridge or others at Chimera giving instructions of that nature.

[255] Cawaling did not specifically address the Joint Venture.

D. Analysis

[256] All of the RTAX Chimera Investors who testified at the Hearing said that Cawaling told them that RTAX was either going to transfer their funds to Chimera, or otherwise use them for investment purposes – not that they were making personal loans for the Respondents' discretionary use. Most also indicated that when they met or spoke with Cawaling, Chimera or overseas mining were discussed, and Cawaling gave or showed them the Chimera Brochure, the Chimera Profile, or similar marketing materials. Many saw a copy of the SBLC and believed that their loans or investments were risk-free because of the ostensible security it provided.

[257] According to Pickering, the RTAX Chimera Investors she spoke to who did not testify told her that they also believed their funds would only be used for investment purposes, corroborating the Hearing witnesses' testimony.

[258] Cawaling's evidence concerning the use of the funds was inconsistent; there were significant differences between his Interview evidence and his Hearing testimony.

[259] In the Interview, Cawaling repeatedly deposed that he told RTAX Chimera Investors their funds were for Chimera, and he had either transferred them to Chimera in full, or to other parties on Chimera's instructions. He described them as "the one[s] who [are] trying to lend money to Chimera" and distinguished them from his personal lenders; when Staff asked if PS had loaned him money, for example, Cawaling said, "[n]o, he was . . . involved with Chimera". Similarly, he answered as follows when asked about the $1,000,000 SBLC:

> Q So were you borrowing money with that in mind, that you had that million dollars?
>
> A Not borrowing. I'm giving them the opportunity, if they want to make some money, because they're the lender. If they're willing to, you know, understand about this money. Like they're the one who -- lending money to Chimera, not me. I'm just using my company because I have the instrument that -- issued to me as a backup.

[260] At the Hearing, Cawaling initially maintained that "most of the money went to Chimera based on their [i.e., Chimera's] instruction" either directly or indirectly, but he also testified that "most of the funds" only went to Chimera between December 2016 and April 2017. By that time, he had become so concerned about Chimera's and Bridge's legitimacy that he stopped sending them money. However, he disagreed that only $77,240 was ever provided to Chimera from RTAX Chimera Investor funds, regardless of what the bank records in evidence showed.

[261] Contrary to what he said in the Interview, at the Hearing Cawaling maintained that not all of the money raised was for Chimera, and that it was up to him to determine whether to transfer the funds to Chimera or keep them for the Respondents' use. He denied that he ever told the RTAX Chimera Investors how their money would be used, and testified that because the loans were to RTAX, he could use the proceeds at his discretion. Moreover, because Chimera was not paying him in accordance with their agreements, he believed that he was entitled to retain investor funds in lieu of his compensation. Cawaling acknowledged in cross-examination that he spent RTAX Chimera Investor funds on his personal expenses and to repay other people, and did not believe he had to disclose those uses to the RTAX Chimera Investors.

[262] As mentioned, Staff confronted Cawaling with these discrepancies between his Interview evidence and his Hearing testimony. Cawaling acknowledged that he told Pickering during the Interview that he informed RTAX Chimera Investors their money would be provided to Chimera, and that he had in fact remitted all of the money to Chimera. While he again made reference to some funds having been remitted "indirectly", he acknowledged that he deliberately did not explain that to Staff during the Interview:

> Q So when Ms. Pickering asked you, you admit you did understand the question, but you chose not to tell her that the money, in fact, did not go to Chimera?
>
> A Yes.

[263] Apparently, Cawaling had some justification for not being truthful at the Interview, but he did not explain it at the Hearing. We were left with significant concerns about his credibility.

[264] In view of all of the evidence, we concluded that the truth was likely somewhere between what Cawaling said in his Interview and what he said at the Hearing. He told RTAX Chimera Investors who did not have sufficient funds to contract directly with Chimera that they could still participate in the opportunity by transacting through RTAX, which would pool smaller amounts of money on their behalf and send them to Chimera for business or investment purposes to generate the promised high rates of return. We were also satisfied that he told them that their funds were secured by the SBLC. This was established from the RTAX Chimera Investor evidence, and corroborated by documentary evidence and Cawaling's admissions. The Hearing witnesses testified and Cawaling admitted that he showed prospective lenders Chimera promotional material and explained the mining project and Chimera's involvement. There would have been no reason for him to do so if the intention from the outset was to borrow money for the Respondents' discretionary use.

[265] That the Respondents associated the loans with Chimera was further confirmed by the RTAX Loan Details Spreadsheet that Cawaling prepared and maintained as his only record of the loan transactions. It listed a number of lenders – not all of whom were RTAX Chimera Investors – along with the dates and amounts of their loans and other information, including columns indicating to whom the loan had been made and whether it was categorized as an "RFC [i.e., RTAX]/Chimera" loan, an "RFC" loan , or a "Personal (Family/Friends)" loan.

[266] As Cawaling acknowledged, all of the RTAX Chimera Investors included on the spreadsheet were listed as having made their loans to "RFC/Chimera", including lenders Cawaling identified in his testimony as his personal friends and those who advanced funds after Cawaling stopped sending money to Chimera. The others were categorized as "RFC" or personal. Thus Cawaling clearly distinguished between transactions that related to Chimera and those that did not, even if they involved the same lender: ER's company advanced $20,000 that Cawaling categorized as a loan to "RFC/Chimera" in September 2017 (despite having been advised in August 2017 that the SBLC had been withdrawn), but it later advanced another $10,000 that Cawaling categorized as a loan to "RFC".

[267] We concluded that Cawaling likely did not want to disclose at his Interview that not all of the amounts raised for Chimera were sent to Chimera. However, when he was confronted with evidence to the contrary, he said that he had had discretion over their use because they were loans to RTAX. We did not accept his evidence that despite telling the RTAX Chimera Investors about Chimera and providing them with documents about Chimera, he did not lead them to believe that their money would be going to Chimera.

[268] Applying the *Théroux* test, we found that the evidence proved that the Respondents engaged in prohibited acts of deceit and falsehood. Cawaling did not change what he told RTAX Chimera Investors despite the changing circumstances, and therefore represented that the situation was of a certain character, when in reality it was not. He continued to introduce Chimera as a low-risk, high-return investment opportunity, and told RTAX Chimera Investors that their funds would be transferred to Chimera for business purposes. He did not tell them that Chimera instructed him to use some of the money to pay himself or third parties, or that he intended to use funds for those purposes or to pay other investors. As he acknowledged, he did not tell them that Chimera had not

paid returns or compensation pursuant to its agreements with 9800 Canada and RTAX. He did not disclose that he had ceased sending Chimera loan proceeds, but instead kept them for his or RTAX's use. He did not disclose Mavridis's August 2017 communication that the SBLC had been withdrawn.

[269] The Respondents engaged in other fraudulent means by using RTAX Chimera Investors' loans for personal purposes, and by otherwise diverting funds to unauthorized and undisclosed uses – including making payments to other investors in the manner of a Ponzi scheme.

[270] While Cawaling asserted his entitlement to compensation and Chimera's purported instructions that he should keep certain funds, we found that even if true – and the Respondents provided very little evidence of any such instructions – that did not justify the Respondents' conduct because the instructions were undisclosed. As stated in *Magneson* (at para. 227; see also para. 228):

> Magneson's purported entitlement to the funds is not dispositive of the allegations in this case, either. Even if we were to accept it as true, it does not justify his deception: by his own admission, Magneson did not inform the investors about these purported entitlements when they invested. Instead, he led them to believe that the 'situation was of a certain character, when, in reality, it was not' (*Théroux* at para. 18), failed to disclose important facts, and diverted funds the investors intended for corporate use to his personal use.

[271] Similarly, although the evidence suggested that the Respondents were also defrauded by Chimera, Bridge, and others involved in the scheme, that did not justify the Respondents' conduct. Cawaling did not disclose his difficulties with or his suspicions about Chimera to the RTAX Chimera Investors until it was too late, thereby exposing them to significant undisclosed risk.

[272] We drew similar conclusions concerning the Joint Venture. Three of the four JV Investors testified at the Hearing, and they all said that they understood from Cawaling that their money would be used for investment in the Joint Venture. During cross-examination, Cawaling attempted to get RP to agree that he knew his money would be "used for different things", but RP maintained that he understood his money would be invested. Only AP said that he thought Cawaling would take certain funds as his compensation, but he expected that would come from a share in the eventual return on the investment, not from the investment capital itself.

[273] Pickering testified that the fourth JV Investor, KP, told her the same thing – he expected that his money was going to go to a Portuguese company for the purpose of monetizing a ruby. We considered this corroborative of and consistent with the Hearing testimony given by the other JV Investors. It was also consistent with Cawaling's Interview evidence, where he acknowledged that in soliciting investments in the Joint Venture, he showed the JV Investors information about the Portuguese company and the ruby, and specifically acknowledged that RP's funds were to be used to monetize the ruby.

[274] As discussed, the Respondents' representations about the use of the Joint Venture investment funds were false, at least in part. None of RP and DP's $61,000 was forwarded for investment, nor was $23,942.80 USD ($30,711.27) of AP and KP's $174,084.61 USD. The Respondents retained those sums for their own use, and engaged in further acts of deceit and

falsehood by not disclosing that to the JV Investors. They also engaged in other fraudulent acts by again using corporate funds for personal purposes and diverting them to unauthorized and undisclosed uses: for example, paying personal lenders and credit card debt, and making multiple cash withdrawals for unknown purposes – including from ATMs located in casinos.

[275] In the Interview, Cawaling acknowledged that he may have used some of RP's Joint Venture investment personally or to pay back other lenders, but also contended that it was "up to [him]" how to use those funds because the Respondents had already sent the necessary investment amount to Definitely Green and Destiny Global. Again, however, that justification is not a defence, since the evidence proved that the Respondents did not provide that information to the JV Investors.

[276] We were also satisfied that the evidence proved that the RTAX Investors suffered deprivation as a result of the Respondents' prohibited acts of deceit and unauthorized use of funds. Most of them lost their capital and received little or no return. All of them were exposed to undisclosed risks of loss by the Respondents' failure to give them accurate, comprehensive information about the impugned transactions and the Respondents' use of proceeds. As has been observed in numerous ASC hearing panel decisions, "accurate disclosure of an issuer's intended use of investment funds is among the most important information an investor can and should be given", which is why it is mandated disclosure in securities offering documents (*Aitkens* at para. 140; see also *Magneson* at para. 228 and *Arbour* at para. 776).

[277] Applying the second part of the *Théroux* test, we concluded that the evidence proved both that Cawaling – and through him, RTAX – had subjective knowledge of their prohibited acts. Cawaling was RTAX's sole guiding mind, signatory on its bank accounts, and the only person who communicated with the RTAX Investors, Chimera, and the parties involved with Definitely Green and Destiny Global. He knew what he told the RTAX Investors about Chimera and the Joint Venture, and he knew the truth about the circumstances as they evolved. He knew what he told the RTAX Investors about the intended use of their funds, and he knew the truth about the actual use of those funds.

[278] In addition, we were satisfied that Cawaling – and through him, RTAX – was aware of the possibility that the prohibited acts could result in potential or actual financial loss to the RTAX Investors. We considered it obvious that not using most of the investor funds raised for business and investment purposes would create the risk that the promised returns would not be generated and losses would result.

[279] Further, in the case of Chimera, Cawaling was given several indications that the purported business was fraudulent, including the promise of ludicrously high returns and no risk. He acknowledged his financial training, experience, and his skepticism about the promised returns, as well as his early suspicion that it was a Ponzi scheme. Instead of stopping raising capital and warning the RTAX Chimera Investors, Cawaling continued to accept their money and present the same story. He did so after he stopped sending funds to Chimera because of its failure to pay amounts owed, and after Mavridis had told him the SBLC had been withdrawn.

[280] Cawaling may have hoped that Chimera would eventually start to pay and he may have believed that Mavridis did not have the authority to declare that the SBLC was no longer in effect. According to *Théroux*, the Respondents' hopes and intentions were irrelevant (at paras. 24, 28, and 36; see also *Arbour* at para. 976). In our view, the circumstances were such that Cawaling must have understood that there was significant risk, especially in light of his training and background.

[281] With the benefit of his Chimera experience, Cawaling should have been alert to the risk posed by another implausible business venture offered by Destiny Global. Instead, even after Definitely Green did not pay returns on AP's and KP's Joint Venture funds within the promised 45 days, he accepted more money several months later from RP and DP.

[282] Concerning the amount of the fraud, we explained earlier in these reasons why we arrived at a slightly different amount than Staff for the amount that was repaid to RTAX Chimera Investors: $216,550 rather than Staff's $221,345. We also arrived at a slightly different figure than Staff for the amount that was repaid to JV Investors: $11,000 rather than Staff's $11,562.50. We would not include the $562.50 paid to AP because it was paid many months before he made his Joint Venture investment and therefore could not have represented an amount owing on that transaction. It was not clear whether the $11,000 paid to KP related to the Joint Venture or not, but because the payments were made after KP's Joint Venture investment, we were prepared to give the Respondents credit for that amount.

[283] Otherwise, we agreed with Staff's calculations, including the amount the bank evidence showed was sent to Chimera, $77,240. The Respondents did not present a different analysis, and they were given every opportunity to adduce other bank records (if such records existed) to refute Staff's analysis of the bank records in evidence.

[284] $675,500 was raised from RTAX Chimera Investors. Subtracting the $77,240 sent to Chimera and the $216,550 repaid to RTAX Chimera Investors leaves $381,710.

[285] $174,084.61 USD and $61,000 was raised from JV Investors. Subtracting the $150,141.81 USD paid to Ribeiro and Destiny Global leaves $23,942.80 USD, or $30,711.27, which added to $61,000 is $91,711.27. Subtracting the $11,000 paid to KP leaves $80,711.27 that was neither invested in the Joint Venture nor paid to JV Investors.

[286] The sum of $381,710 and $80,711.27 is $462,421.27. We were satisfied on a balance of probabilities that this was the total amount the Respondents misappropriated from the RTAX Investors' funds. This included over $220,000 transferred to Cawaling or one of his accounts (including credit accounts); nearly $74,000 transferred to Cawaling's family and personal lenders; $45,000 transferred to Phipps and RT Capital Inc.; and other amounts spent on retail purchases, "online banking payments", insurance, BMW Group Financial payments, and the "Poker Room".

[287] Amounts paid to unknown parties or parties with no apparent connection to Chimera or the Joint Venture were included in the total misappropriated. As mentioned, there was evidence in addition to Cawaling's testimony – including the terms of the December Chimera Agreement – that Chimera could and did instruct the Respondents to make payments to third parties on its behalf. Some of the payments to unknown parties and to named parties whose connection to

Chimera – if any – was unclear may have represented such payments, and in our view, those uses would have been consistent with RTAX Chimera Investors' expectations. However, the evidence also established that the Respondents stopped remitting funds to Chimera or advising Chimera about new funds raised after April 2017. Therefore, payments to such parties after April 2017 could not have been made on Chimera's instructions and were misappropriated.

[288] Certain cash withdrawals were also part of the total misappropriated. Although we did not know what happened to the cash after it was withdrawn, Cawaling acknowledged that some withdrawals were for personal use (including cryptocurrency investments and gambling at casinos). He maintained that others were used to make cash interest payments on RM's $200,000 line of credit for 9800 Canada, but that use was not disclosed or relevant to RTAX Investors. Those payments related to RM's agreement with Cawaling and 9800 Canada's agreements with Chimera, not the agreements between the RTAX Investors and RTAX.

VI. LIMITATIONS DEFENCE

[289] Although the Respondents did not argue limitations, Staff anticipated and argued against a possible limitations defence in respect of some of the allegations in the NOH.

[290] Section 201(1) of the Act states:

> [n]o proceedings under this Part [i.e., Part 16 of the Act, Enforcement] shall be commenced in a court or before the [ASC] more than 6 years from the day of the occurrence of the last event on which the proceeding is based.

[291] As the NOH was issued on December 19, 2022, it was arguable that allegations concerning conduct that occurred prior to December 19, 2016 were statute-barred.

[292] Since all of the Joint Venture activity started in 2019, those allegations were unaffected by the limitation period. By contrast, LB, FB, and KO, his spouse, or their company all made loans to Chimera or RTAX between October 2016 and December 16, 2016, raising a potential limitations issue relating to those three loans.

[293] However, we agreed with Staff that the evidence established that the illegal distributions and fraud involving the RTAX Chimera Investors were continuing courses of conduct that began with LB's $97,500 deposit of funds in October 2016 and concluded with RA's final deposit of funds and their misuse by the Respondents to January 4, 2018.

[294] In *Ward* (at para. 321), an ASC hearing panel cited with approval the Ontario Securities Commission's explanation of the meaning of the phrase "course of conduct" in *Re Boyle*, 2006 LNONOSC 359 (at para. 48):

> . . . "course of conduct" is used as a legal expression in other jurisdictions and has been defined to include three elements: (i) a pattern of conduct composed of a series of acts, (ii) over a period of time, (iii) evidencing a continuity of purpose. A continuity of purpose requires that the subsequent acts be similar to the original act and in line with a person's original intent (See *People v. Payton*, 612 N.Y.S. 2d 815 (1994)).

[295] The panel in *Ward* also cited with approval (at para. 320) the British Columbia Securities Commission's explanation in *Re Dennis*, 2005 BCSECCOM 65 (at paras. 40-41):

> . . . if some breaches in a series of breaches or some part of the conduct occurred before the limitation period, it is appropriate to proceed with respect to those breaches or that conduct which occurred both before and during the limitation period.
>
> In our view, this construction and interpretation is the one which best ensures the attainment of the objects of the securities legislation. The purpose of the limitation period is to provide some certainty and finality to respondents while nevertheless allowing the regulator to pursue a course of conduct which may extend over a considerable period of time. That purpose is not achieved (and certainty and finality [are] not prejudiced) by cutting a continuing course of conduct in two so that events falling before the six year period are not caught.

[296] From October 2016 to January 2018, RTAX Chimera Investors were given similar information about the use of their funds, entered into similar loan agreements and renewal agreements, paid their funds to RTAX, and were offered similar rates of return on a similar schedule. Most also received or saw similar documents about Chimera. The Respondents took no steps at any time to determine the availability of exemptions from the Prospectus Requirement, and virtually all investor funds were treated the same way and diverted for the same unauthorized purposes.

[297] We therefore found this was a series of acts comprising a pattern of conduct over an approximately 14-month period with a common purpose: raising funds for the benefit of Chimera and the Respondents. Since the limitation period did not begin to run until the last event in the continuing course on January 4, 2018, all of Staff's allegations were within the limitation period.

VII. CONCLUSION

[298] The Respondents contravened s. 110(1) of the Act by trading and distributing RTAX and Chimera securities without complying with the Prospectus Requirement and without an available exemption.

[299] The Respondents also contravened s. 93(1)(b) by perpetrating a fraud on RTAX Investors. In the course of their fraudulent conduct, the Respondents misappropriated $462,421.

[300] This proceeding now moves into a second phase to determine what, if any, orders for sanctions and cost-recovery ought to be made against the Respondents.

[301] By noon on Friday, January 17, 2025, Staff and the Respondents are directed to inform each other and the Registrar in writing:

(a) whether they intend to adduce new evidence on the sole issue of appropriate sanction and costs orders; and

(b) if so, their expected timing for the same and their suggested dates.

[302] After we have received and considered the parties' responses to this direction (or after the date and time specified for such responses has passed), the Registrar will inform them of the timing for the next steps in this proceeding.

December 13, 2024

For the Commission:

"original signed by"
Tom Cotter

"original signed by"
Gail Harding, K.C.

"original signed by"
Kari Horn, K.C.