



Ontario  
Securities  
Commission

Commission des  
valeurs mobilières  
de l'Ontario

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

**- AND -**

**IN THE MATTER OF REZWEALTH FINANCIAL SERVICES INC.,  
PAMELA RAMOUTAR, JUSTIN RAMOUTAR,  
TIFFIN FINANCIAL CORPORATION, DANIEL TIFFIN,  
2150129 ONTARIO INC., SYLVAN BLACKETT,  
1778445 ONTARIO INC. and WILLOUGHBY SMITH**

**REASONS AND DECISION  
(Section 127 of the *Securities Act*)**

- Hearing:** October 31, November 1, 2, 5, 7-9,  
December 3, 5, 6, 10-13, 17, 2012 and March 1, 2013
- Decision:** July 17, 2013
- Panel:** Edward P. Kerwin - Commissioner and Chair of the Panel
- Appearances:** Amanda Heydon - For Staff of the Ontario Securities  
Yvonne Chisolm Commission
- Michael Donsky - For Daniel Tiffin and Tiffin Financial  
Corporation
- Pamela Ramoutar - For herself and Rezwealth Financial  
Services Inc.
- Willoughby Smith - For himself and 1778445 Ontario Inc.
- Justin Ramoutar - For himself
- No one appeared for - Sylvan Blackett  
- 2150129 Ontario Inc.

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## REASONS AND DECISION

### I. BACKGROUND

#### A. Overview

[1] This was a hearing before the Ontario Securities Commission (the “**Commission**”), pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “**Act**”), to consider whether Rezwealth Financial Services Inc. (“**Rezwealth**”), Pamela Ramoutar (“**Ms. Ramoutar**”), Justin Ramoutar (“**Mr. Ramoutar**”), Tiffin Financial Corporation (“**Tiffin Financial**”), Daniel Tiffin (“**Tiffin**”), 2150129 Ontario Inc. (“**215 Inc.**”), Sylvan Blackett (“**Blackett**”), 1778445 Ontario Inc. (“**177 Inc.**”) and Willoughby Smith (“**Smith**”) (collectively, the “**Respondents**”) breached the Act and acted contrary to the public interest.

[2] The merits proceeding was commenced by a Statement of Allegations and Notice of Hearing dated January 24, 2011. Subsequently, on January 24, 2012, an Amended Statement of Allegations was filed by Staff and an Amended Notice of Hearing was issued by the Commission. Enforcement Staff of the Commission (“**Staff**”) alleges that between August 22, 2006 and December 31, 2009 (the “**Material Time**”), the Respondents solicited investments from Ontario residents, purportedly to engage in foreign currency (“**forex**”) trading and other ventures. Staff alleges that Blackett and 215 Inc. raised at least \$3 million from approximately 56 investors, Smith’s conduct resulted in at least 48 investors investing approximately \$1.2 million with Blackett, Rezwealth raised at least \$2.9 million from approximately 44 investors and Tiffin’s conduct resulted in at least 19 investors investing at least \$2 million with Rezwealth.

[3] In addition, Staff alleges that a large portion of investor funds provided to Blackett and 215 Inc. was used by Blackett for personal expenditures and to make monthly return and redemption payments to other investors. Staff also alleges that monthly return payments to investors were facilitated by Smith through 177 Inc.’s bank account. Furthermore, it is alleged that between July 1, 2009 and December 31, 2009 Rezwealth used at least part of the new investor funds it received to pay other investors their monthly interest returns and principal redemptions and Rezwealth continued to accept new investor funds in order to meet its obligations to investors, which was misleading and/or fraudulent in the circumstances.

#### B. History of the Proceeding

[4] The hearing on the merits began on October 31, 2012 (the “**Merits Hearing**”). On that day Ms. Ramoutar requested an adjournment of the Merits Hearing by way of a motion to amend the Commission’s order of April 5, 2012 (the “**April 5 Order**”). The April 5 Order was peremptory to the Respondents, set the dates for the Merits Hearing to commence on October 31, 2012 and vacated merits hearing dates previously set to commence on April 30, 2012. Ms. Ramoutar, her representative and Staff made submissions on the matter of adjournment and counsel for Tiffin and Tiffin Financial (the “**Tiffin Respondents**”) took no position. The Panel considered the submissions of the parties and the applicability of section 144 of the Act and the relevant factors listed in Rule 9.2 of the Commission’s *Rules of Procedure* (2012), 35 O.S.C.B. 10071 (the “*OSC Rules of Procedure*”). The Panel was not satisfied that an adjournment was in the public interest

or necessary to provide an opportunity for a fair hearing of this matter and provided oral reasons for its decision before proceeding with the Merits Hearing.

[5] On October 31, 2012, Staff and counsel for the Tiffin Respondents tendered into evidence an Agreed Statement of Facts (the “**Agreed Facts**”) in which the Tiffin Respondents admitted to engaging in conduct that was in breach of subsection 25(1)(a), as that section was in effect at the commencement of the conduct, subsection 25(1) as amended on September 28, 2009, and subsection 53(1) of the Act and that the conduct was contrary to the public interest. The Agreed Facts also contained an admission that Tiffin authorized, permitted or acquiesced in Tiffin Financial’s non-compliance with Ontario securities law, and accordingly failed to comply with Ontario securities law, pursuant to section 129.2 of the Act and contrary to the public interest. I accept Staff and the Tiffin Respondents’ joint submission of the evidence with respect to the allegations against the Tiffin Respondents.

[6] Over the course of fifteen hearing days, I heard evidence from 10 investor witnesses, seven called by Staff and three by Ms. Ramoutar. I also heard the testimony of Staff’s forensic accountant, Michael Ho, of Ms. Ramoutar on her own behalf and of witness J.K. on behalf of Ms. Ramoutar. I considered written submissions of Staff, dated February 4, 2013, of Smith, filed February 11, 2013 and March 12, 2013, and of Ms. Ramoutar, Mr. Ramoutar and Rezwealth (the “**Rezwealth Respondents**”), filed February 12, 2013. Closing oral submissions were heard on March 1, 2013, at which time Smith indicated he had not received the Rezwealth Respondents’ submissions prior to the hearing date. The Panel, in fairness to Smith, permitted that he file a written reply to new matters raised in the Rezwealth Respondents’ submissions by March 8, 2012. Staff did not object to such additional filing by Smith, provided that Smith’s reply was confined to new issues that have arisen out of his review of the Rezwealth Respondents’ submissions. None of the parties objected to his late filing of the reply.

[7] For the reasons set out below, I conclude that the Respondents breached subsection 25(1)(a), as that section was in effect until September 28, 2009, subsection 25(1), as amended on September 28, 2009, and subsection 53(1) of the Act, and that such conduct is contrary to the public interest. I also conclude that 215 Inc., Blackett, Rezwealth, Ms. Ramoutar and Mr. Ramoutar engaged or participated in acts, practices or courses of conduct relating to securities that they knew or reasonably ought to have known perpetrated a fraud on persons or companies contrary to subsection 126.1(b) of the Act and contrary to the public interest. Lastly, I find that Blackett, as the officer and director of 215 Inc., Ms. Ramoutar and Mr. Ramoutar, as officers and directors of Rezwealth, Smith, as an officer and director of 177 Inc., and Tiffin, as the officer and director of Tiffin Financial, authorized, permitted or acquiesced in non-compliance with the Act by 215 Inc., Rezwealth, 177 Inc. and Tiffin Financial (the “**Corporate Respondents**”), respectively, and are deemed to also have not complied with Ontario securities law, pursuant to section 129.2 of the Act and that such conduct is contrary to the public interest.

## **C. The Respondents**

### **1. Corporate Respondents**

[8] 215 Inc. was incorporated in Ontario on October 3, 2007 and had its registered office in Brampton, Ontario. 215 Inc. purported to engage in forex trading. Blackett was the sole director of 215 Inc. from the date of incorporation.

[9] 177 Inc. was incorporated in Ontario on September 4, 2008 and had its registered office in Brampton, Ontario. 177 Inc. made payments to investors on behalf of Blackett and 215 Inc.. Smith is one of three directors of 177 Inc.

[10] Rezwealth was incorporated in Ontario on May 11, 2007 and had its registered address in Markham, Ontario. Rezwealth purported to be in the business of credit restoration. Rezwealth pooled investor funds for investment in forex trading by Blackett and 215 Inc. and other ventures. Corporate records show that Ms. Ramoutar is a director and Mr. Ramoutar is a director and treasurer of Rezwealth.

[11] Tiffin Financial was incorporated in Ontario on December 24, 1999. Tiffin Financial referred clients to Rezwealth for investment in forex trading by Blackett and 215 Inc. Tiffin is the sole director and officer of Tiffin Financial.

[12] There is no record of any of the Corporate Respondents having been registered under the Act.

### **2. Individual Respondents**

[13] Blackett was the sole director of 215 Inc. from the date of incorporation and is listed on the company's Certificate of Incorporation as President. Blackett purported to be a forex trader.

[14] Smith, one of three directors of 177 Inc., was registered with the Commission as a mutual fund dealer and limited market dealer from May 3, 2002 to September 30, 2005. Smith referred clients to Blackett and his company for the purpose of Blackett's forex trading. Smith admitted that he was the only director of 177 Inc. involved in the corporation's activities with Blackett.

[15] Ms. Ramoutar testified that she was the founder, a director and the directing mind of Rezwealth. Ms. Ramoutar and Mr. Ramoutar are directors of Rezwealth. Mr. Ramoutar is Ms. Ramoutar's son. Ms. Ramoutar was registered with the Commission as a mutual fund dealer from March 11, 2002 to December 31, 2004.

[16] Tiffin is the sole director and officer of Tiffin Financial. Tiffin was previously registered with the Commission, but has not been registered since August 10, 1999.

[17] There is no record of Blackett, Smith, Ms. Ramoutar, Mr. Ramoutar or Tiffin (the "**Individual Respondents**") having been registered under the Act during the Material Time.

## **D. The Allegations**

[18] Staff alleges that the Respondents engaged in unregistered trading and an illegal distribution of securities, contrary to subsection 25(1)(a), as that section was in effect until September 28, 2009, subsection 25(1) as amended on September 28, 2009, and subsection 53(1) of the Act and contrary to the public interest.

[19] In addition, Staff alleges that 215 Inc., Blackett, Rezwealth, Ms. Ramoutar and Mr. Ramoutar engaged or participated in acts, practices or courses of conduct relating to securities of 215 Inc. and/or Rezwealth that they knew or reasonably ought to have known perpetrated a fraud on persons or companies contrary to subsection 126.1(b) of the Act and contrary to the public interest. Staff also alleges that each of the Individual Respondents, as officers and directors of certain Corporate Respondents, authorized, permitted or acquiesced in the Corporate Respondents' respective non-compliance with Ontario securities law, and accordingly failed to comply with Ontario securities law, pursuant to section 129.2 of the Act and contrary to the public interest.

## **II. PRELIMINARY ISSUES**

### **A. Failure of Some Respondents to Attend**

#### **1. Respondent Participation**

[20] Blackett and 215 Inc. did not appear or make submissions. Counsel for the Tiffin Respondents appeared on the first day of the Merits Hearing for the purpose of tendering into evidence the Agreed Facts, but did not otherwise appear or make submissions.

[21] Ms. Ramoutar, on behalf of herself, Mr. Ramoutar and Rezwealth, attended the hearing in person and was represented in a limited capacity by O.H., a friend and investor, from time to time during the Merits Hearing. Mr. Ramoutar appeared sporadically throughout the Merits Hearing. Ms. Ramoutar and Mr. Ramoutar made closing submissions.

[22] Smith appeared in person as of December 3, 2012, on the eighth day of the Merits Hearing, and was present on the hearing days thereafter, except for December 10 and 17, 2012, and made closing submissions.

#### **2. The Law**

[23] Subsection 6(1) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended (the "SPPA") requires that the tribunal provide "reasonable notice of the hearing" to the parties to a proceeding.

[24] Subsection 7(1) of the SPPA, authorizes a tribunal to proceed in the absence of a party when that party has been given notice of the hearing. The provision states:

##### **Effect of non-attendance at hearing after due notice**

7.(1)Where notice of an oral hearing has been given to a party to a proceeding in accordance with this Act and the party does not attend at the hearing, the tribunal

may proceed in the absence of the party and the party is not entitled to any further notice in the proceeding.

[25] Further, Rule 7.1 of the *OSC Rules of Procedure* provides:

**7.1 Failure to Participate** – If a Notice of Hearing has been served on any party and the party does not attend the hearing, the Panel may proceed in the party’s absence and that party is not entitled to any further notice in the proceeding.

### **3. Authority to Proceed in Absence of Respondents**

[26] I am satisfied that Staff served all Respondents with notice of the hearing as evidenced by the Affidavit of Service of Lee Crann sworn January 31, 2012 and the Affidavits of Service Brief tendered by Staff. I also note that the Notice of Hearing, the Statement of Allegations, the Amended Notice of Hearing and the Amended Statement of Allegations were posted on the Commission’s website, as was the April 5 Order which set out the dates on which the Merits Hearing was scheduled to take place. I am therefore authorized to proceed in the absence of some of the Respondents in accordance with subsection 7(1) of the SPPA.

#### **B. The Standard of Proof**

[27] The standard of proof in this hearing is the civil standard of proof on a balance of probabilities and evidence must be sufficiently clear, convincing and cogent (*F.H. v. McDougall*, [2008] 3 S.C.R. 41 at paras. 46 and 49).

#### **C. Hearsay Evidence**

[28] This Panel has the discretion to admit relevant evidence that might not otherwise be admissible as evidence in a court, including hearsay evidence, under subsection 15(1) of the SPPA, subject to the weight given to such evidence.

### **III. ISSUES**

[29] The following issues were raised in the hearing:

- (a) Did the Respondents engage in unregistered trading, contrary to subsection 25(1)(a) of the Act, for conduct predating September 28, 2009, and subsection 25(1) of the Act, for conduct on and after September 28, 2009, and contrary to the public interest?;
- (b) Did the Respondents distribute securities without having filed a prospectus, contrary to subsection 53(1) of the Act and contrary to the public interest?;
- (c) Did 215 Inc., Blackett, Rezwealth, Ms. Ramoutar and Mr. Ramoutar engage or participate in acts, practices or courses of conduct relating to securities that they knew or reasonably ought to have known perpetrated a fraud on persons or companies contrary to subsection 126.1(b) of the Act and contrary to the public interest?; and
- (d) Did Blackett, Smith, Ms. Ramoutar, Mr. Ramoutar and/or Tiffin authorize, permit or acquiesce in non-compliance with Ontario securities law by certain of the Corporate Respondents, such that they are deemed, pursuant to section 129.2 of the Act, to also

have not complied with Ontario securities law and to have acted contrary to the public interest?

#### **IV. EVIDENCE**

##### **A. Overview**

[30] Over the course of fifteen hearing days, I heard evidence from 10 investor witnesses, seven called by Staff and three by Ms. Ramoutar. I also heard the testimony of Staff's forensic accountant, Michael Ho ("Ho"), of Ms. Ramoutar on her own behalf and of witness J.K. on behalf of Ms. Ramoutar.

[31] To protect the privacy of investors and witnesses, I have referred to them anonymously by initials rather than using their respective names. In addition, I required that Staff provide a redacted version of the record to serve the same purpose.

[32] Staff tendered 28 exhibits at the hearing through their own witnesses and cross-examination. Ms. Ramoutar testified on her own behalf and tendered 39 exhibits through herself, her witnesses and cross-examination. Tiffin's compelled examination was also tendered through Ho at the request of Ms. Ramoutar. None of the other Respondents tendered any evidence at the hearing.

##### **B. Credibility**

[33] In cross-examination, Ms. Ramoutar challenged the credibility of two of Staff's witnesses. She challenged investor M.L.T.'s testimony about M.L.T.'s purported lack of knowledge about Blackett's business and M.L.T.'s denial of having received money from Blackett in excess of her investment as calculated by Ho. In addition, Ms. Ramoutar challenged Ho's testimony in respect of the origins of a blacked-out document containing Rezwealth letterhead.

[34] When weighing the conflicting testimony of the witnesses in this case, I have considered whether the evidence is in harmony with the preponderance of probabilities disclosed by the facts and circumstances in this case.

##### **C. Respondents Not Registered Under the Act and Did Not File a Prospectus**

[35] Ho obtained corporate profile reports of each of the Corporate Respondents, which confirm the positions of various individual respondents within 215 Inc., 177 Inc. and Rezwealth's corporate structures. Ho also obtained certificates of registration under section 139 of the Act, which confirm that the Respondents were not registered under the Act and that neither 215 Inc. nor Rezwealth filed a prospectus with the Commission during the Material Time. The Agreed Facts confirm that the Tiffin Respondents were not registered during the Material Time.

##### **D. Conduct of Blackett, 215 Inc., Smith and 177 Inc.**

[36] Ho testified that he interviewed a number of investors who had provided funds to Blackett. It was Ho's evidence that Blackett offered investors two types of investment products: (i) agreements with investment returns payable on a monthly basis (the "**Monthly Investment**");

and (ii) compound annual agreements, through which interest would be compounded and paid at the end of the term along with the principal (the “**Compound Investment**”) (together, the “**Blackett Investment(s)**”). Ho testified that investors were told by Blackett that their funds would be used to trade in forex. Ho also testified that the rate of return offered by Blackett was at least 5 percent to 10 percent per month at a fixed rate.

[37] The earliest Blackett Investment for which evidence was tendered is dated September 19, 2006 and the latest is dated September 18, 2009. Staff, through Ho, tendered 75 documents, each entitled “Loan Agreement” and signed by Blackett, on behalf of himself and/or 215 Inc., as evidence of the Blackett Investments.

## **1. Investor Testimonies**

### **(a) Investor M.L.T.**

[38] Investor M.L.T. met Blackett in January 2006 at a nightclub where Blackett was working. M.L.T. testified to having both a personal and business relationship with Blackett. The latter was formed when Blackett asked M.L.T. to invest money with him for Blackett to trade in currency using a forex trading account. M.L.T. testified that Blackett was from Barbados, had lived in Montreal and moved to live with M.L.T. and her four children in Brampton in July 2006. It was M.L.T.’s evidence that Blackett worked some evenings as a bouncer, but was supposed to be trading during the day.

[39] M.L.T. testified that in October 2007 she and Blackett moved to a larger residence across the street from M.L.T.’s home. The second residence had a home office on the main level, which M.L.T. described as having a computer with six to eight different computer screens of approximately 15 to 17 inch monitor size that Blackett watched. She assumed he was trading because she saw different charts and graphs. M.L.T. also testified that Blackett had a number of different loan agreements in his home office.

[40] It is M.L.T.’s evidence that she invested a total of approximately \$91,000 with Blackett. Blackett told M.L.T. that he could make a certain amount of money based on what she invested with him and that he had had success in the past. M.L.T. also testified that her parents, J.K. and R.K., her brother and his wife, M.K. and C.K., and her neighbours, D.D. and F.D., also invested with Blackett. M.L.T. recalled that Blackett had told her he had taken a course in trading, but she did not see any certificate.

[41] With respect to her own investments, M.L.T. testified that Blackett told her that she would make 5 per cent per month. Blackett also told M.L.T. that “as long as he had 30 days notice, that I could get my full investment back at the end of the 30 days” ( M.L.T. - Transcript of November 5, 2012 at p.25). M.L.T. identified six signed agreements she made with Blackett from August 16, 2007 to March 10, 2008 for a total of \$91,150 invested. She understood there were two types of investments, the Monthly Investment and the Compound Investment. One of M.L.T.’s investments for \$1,150 was a Compound Investment and the remaining five were Monthly Investments. M.L.T. confirmed the address used by Blackett in the agreements was a private mailbox for the earlier investments and the address of their second residence in the later investments. M.L.T. also confirmed that the email listed in the agreements was Blackett’s.

M.L.T. testified that Blackett attached to each agreement a document described as a compound interest calculator, which specified, based on the principal invested at a rate of five percent interest, the monthly compounded return an investor could expect to receive (the “**Compound Interest Calculator**”).

[42] M.L.T.’s first Blackett Investment of August 16, 2007 was a Monthly Investment of \$10,000 for which she expected to receive \$500 per month at an interest rate of 5 percent per month over two years. M.L.T. testified that she expected to receive, and did receive, monthly interest payments via direct deposit at a Toronto Dominion Bank (“**TD**”) account, but did not keep track of the payments because she trusted that the money would be there. Her second Blackett Investment, signed November 8, 2007, was a Monthly Investment of \$10,000 on the same terms.

[43] Two subsequent Blackett Investments of M.L.T., signed in December 2007, were Monthly Investments of \$30,000 each for a total of an additional \$60,000, which was invested following the sale of her first home. The terms of these agreements were similar to the previous Monthly Investments, except that M.L.T. expected to receive \$1,500 per month. The last Monthly Investment made by M.L.T. on March 10, 2008 was \$10,000 that she had cashed out of her pension.

[44] M.L.T. testified that she paid Blackett in cash, bank drafts or cheques and that she received payments from Blackett via direct deposit, bank drafts or cash. However, M.L.T. stated that she never received any account statements from Blackett and payments stopped in March 2009 when Blackett claimed he was unable to make payments because investors were calling their loans early. It is M.L.T.’s evidence that Blackett did banking everywhere, including the Canadian Imperial Bank of Commerce (“**CIBC**”), Bank of Nova Scotia (“**BNS**”), Bank of Montreal (“**BMO**”) and TD because he said that the banks were “getting on his back about money...too much money being moved around” (M.L.T. - Transcript of November 5, 2012 at p. 47). When Staff showed M.L.T. a list of payments traced from accounts held by Blackett and/or 215 Inc. to M.L.T., she was able to recall some of the payments, but testified that she did not receive the total reflected as \$172,400. M.L.T. explained that she was asked by Blackett to make payments on his behalf to other people from money that she received from him because he was having difficulty paying his clients. M.L.T.’s evidence is that she made payments to her parents for Blackett and that she more than likely gave him her password for electronic banking.

[45] In respect of her financial situation between 2007 and 2009, M.L.T. testified that she did not have \$1 million or more in financial assets and did not make more than \$200,000 per year. M.L.T. stated that Blackett did not ask her these questions, but he knew that she was a single mother trying to make ends meet.

[46] M.L.T. asked Blackett to leave the residence in October 2009 and testified that payments in respect of her Blackett Investments had stopped in March 2009. M.L.T.’s evidence is that she had to sell the second residence in February 2010 because she could not afford the mortgage payments and sold her car in the same year to avoid foreclosure on the home. M.L.T. testified that she had quit her job because Blackett had told her that the money she invested would be substantial enough. M.L.T. claimed personal bankruptcy in early 2011.

[47] Ms. Ramoutar challenged M.L.T.'s testimony concerning M.L.T.'s purported lack of knowledge about Blackett's business. Under cross-examination, M.L.T. confirmed that she knew Smith as a friend of Blackett. M.L.T. testified that Blackett told her Smith was an investor who knew people that wanted to invest with Blackett. Otherwise, M.L.T. testified that Blackett did not discuss his business with her and that when she did ask him questions she was told she didn't need to know.

[48] Ms. Ramoutar asked M.L.T. about her Blackett Investments. M.L.T. clarified that the funds she invested with Blackett were her own, derived from the sale of her home, her company pension and from working full-time. M.L.T. also testified that the only explanation she received with respect to interest rates was that the Monthly Investment would provide a five percent per month interest while the Compound Investment would provide a ten percent per month compounded interest.

[49] Ms. Ramoutar also challenged M.L.T.'s denial of having received money from Blackett as calculated by Ho. M.L.T. again stated she did not receive a total of \$172,400 as calculated by Ho and reiterated that she could have given Blackett a password to her account and he may have been transferring money through it.

[50] Ms. Ramoutar also had M.L.T. identify an auto dealership for which the Panel had seen payments made from accounts held by Blackett and/or 215 Inc. M.L.T. testified that Blackett had bought a BMW for himself and an Audi for her at the auto dealership in question.

[51] The Panel finds that M.L.T.'s testimony in respect of knowing very little about Blackett's business is not reasonably believable. The Panel also finds that M.L.T.'s explanation for not being aware that \$172,400 had been deposited into her account from Blackett, while uncorroborated, is plausible, but difficult to accept. The Panel accepts Ho's analysis as an accurate reflection of the flow of funds from Blackett to M.L.T.'s account. The remainder of M.L.T.'s testimony was both credible and relevant.

#### **(b) Investor D.D.**

[52] Investor D.D. testified that she met Blackett after he moved in with her neighbour, investor M.L.T., in late 2007. D.D. and her husband, F.D., became friends with Blackett, who told them that he was a currency trader and made good money at it. D.D. testified that she and her husband invested with Blackett after her husband became very interested in Blackett's currency trading. Blackett told D.D. that people were always buying and selling currency, while other commodities were more high risk. Risk was an important concern to D.D. because she did not have the money to invest, but Blackett encouraged D.D. and her husband to invest with him by introducing them to a person who could provide a loan to them to support an investment by them and stated that the interest Blackett paid would offset the cost of the loan. D.D. testified that Blackett told her currency trading had less risk, and showed her statistics and graphs of where currency was moving. D.D. confirmed that Blackett had nine computer screen monitors set up in M.L.T.'s house.

[53] D.D. testified that she and her husband invested with Blackett on four separate occasions between May 10, 2008 and October 4, 2008 for a total of \$119,500. D.D. recalled that Blackett

provided her with four separate documents entitled “Loan Agreement” and to each there was attached the Compound Interest Calculator. Blackett told D.D. that he had partnered to have the Blackett Investment agreements drawn up and had them reviewed by a lawyer. D.D. corroborated M.L.T.’s testimony identifying: 215 Inc. as Blackett’s corporation, the address Blackett used and Blackett’s email.

[54] D.D. and F.D.’s first Blackett Investment was made on May 10, 2008, in the amount of \$13,500. D.D. testified that in accordance with the terms of that contract she expected to receive \$252,169.01 at the end of the five year Compound Investment. Blackett signed this agreement as the “borrower”. D.D. cashed stock options, which she had through work, to make their first investment. D.D. testified that she and her husband did not bank with TD, but that Blackett specifically asked them to open an account there because it was easier for him to transfer funds through that account and they did. It was D.D.’s evidence that she and her husband understood that their money was to be traded on the foreign currency market by Blackett and that they would receive interest payments monthly either directly or on a compounding basis.

[55] The second investment that D.D. and F.D. made with Blackett was on August 1, 2008, in the amount of \$10,000, as a Monthly Investment for a return of \$500 per month for a two year term. Blackett signed this agreement on behalf of 215 Inc., which was the “borrower”. The Compound Interest Calculator provided with this investment had handwritten notes, which D.D. confirmed were made by her in tracking dates and method of payments received from Blackett. D.D. and F.D. funded this investment through a line of credit.

[56] The last two Blackett Investments made by D.D. and F.D. were funded through a \$100,000 loan arranged by Blackett through an individual named Patrick Demetris (“**Demetris**”), who worked for AGF. Demetris attended D.D.’s home and arranged a \$50,000 loan under D.D.’s name and a \$50,000 loan for F.D., but co-signed by D.D., as non-registered RSPs to avoid tax consequences. The intent, D.D. and F.D. were told, was to get the loan to purchase mutual funds and cash them out to provide the funds to Blackett. D.D. testified that they were told by Blackett to cash out mutual funds, purchased with the loan, through two different banks to avoid suspicion as to the reason for acquiring the loan in that fashion. The Panel was provided with the documentation prepared by Demetris to apply for D.D. and F.D.’s RSP loan and the statements showing that D.D. and F.D. had repaid the loan. D.D. testified that she had to consolidate the loan with their mortgage by November 30, 2010, to repay the outstanding loan from AGF Trust.

[57] D.D. and F.D.’s third Blackett Investment was made on August 28, 2008, in the amount of \$54,000, as a Monthly Investment with a promised return of \$2,700 per month for a two year term. D.D. testified that in March 2009 they approached Blackett to ask that he convert this Monthly Investment into a Compound Investment because the monthly payments were being spent rather than saved and Blackett agreed to alter the agreement. D.D. also testified that the third investment was made shortly after the second as a result of Blackett’s conversations with F.D. about good debt versus bad debt. The fourth and last investment that D.D. and F.D. made with Blackett was on October 4, 2008, in the amount of \$42,000, as a Monthly Investment with a promised return of \$2,100 per month for a two year term. The total of the third and fourth investments is \$96,000. D.D. testified that the difference between the \$100,000 loan from AGF

and the \$96,000 invested with Blackett was caused by commissions paid to Demetris from the sales of the mutual funds that D.D. and F.D. had purchased with the original loan.

[58] The Panel was provided with copies of bank drafts from D.D. and F.D. that were made out to 215 Inc. D.D. did not have a specific recollection of the draft in the amount of \$13,500, but did unequivocally recall providing that amount to Blackett. D.D. testified that the payments, which Blackett made to her and F.D., were in different forms including cheques, cash, and transfers, with some coming from Blackett and others from 215 Inc. It is D.D.'s evidence that she generally had to request interest payments from Blackett and on occasions when he was late, Blackett always had a reason. For instance, Blackett told D.D. that Royal Bank of Canada ("RBC") would no longer do business with him because it thought he was laundering money and it wasn't making any money off of him.

[59] Upon being shown Ho's Blackett Funds Analysis, D.D. confirmed that the payments she received from the Blackett Accounts totalled approximately \$24,857.50, she received approximately \$14,000 in cash and an additional approximately \$5,000 in cash that she disbursed to others at Blackett's request. Further, D.D. testified that some months after the payments stopped, Blackett brought her a cheque dated August 31, 2009 for \$3,500 from Rezwealth. D.D. identified the copy of that cheque for the record and, although she did not know Rezwealth, D.D. was told by Blackett that Rezwealth was one of his business partners. According to D.D., this was Blackett's way of showing that he was still working on providing the outstanding funds.

[60] D.D. testified that Blackett's explanation for why the payments stopped was that his accounts had been frozen and he was no longer able to gain access. Blackett also told D.D. that he was meeting with his broker in New York and spoke of opening up accounts in his brother's name to trade and get the money circulating. D.D. stated she became most concerned when Blackett provided funds and requested that D.D. and F.D. distribute them to her parents, friends and family. D.D. testified that approximately ten people in her circle invested with Blackett, either because of her husband sharing what he knew or through Blackett directly networking when he was invited to a family event. D.D. also testified that she partnered up with other investors to create documents requesting that Blackett return their funds and providing him with the 30 days notice. D.D. stated that Blackett was served with these documents at the night club where he worked. D.D. and F.D. did not receive the remainder of their principal or their monthly returns back and Blackett did not respond to their request.

[61] With respect to other respondents, D.D. testified that she met Ms. Ramoutar at Blackett's business barbeque in the summer of 2008, but did not otherwise know Ms. Ramoutar. D.D. also recalled meeting Smith and being told by Blackett that he was training Smith to trade currency. D.D. also corroborated M.L.T.'s evidence that Blackett bought a BMW for himself and an Audi for M.L.T.

[62] The Panel was provided with email documentation from December 2009 through January 2010 evidencing F.D.'s account with a forex entity and communications with Blackett in furtherance of allowing Blackett to trade through that account. D.D. testified that Blackett told F.D. that he could teach F.D. how to trade currency. D.D. stated that Blackett brought F.D. a three inch volume and showed F.D. how to open a practice account on a forex platform. D.D. testified that F.D. opened a live trading account and funded it, but was not successful. Eventually

F.D. gave Blackett his account login and password to trade. D.D. testified that they lost approximately \$30,000 through this trading. D.D. provided the Panel with monthly statements, which reflected F.D.'s trading based on recommendations of Blackett.

[63] D.D. testified that at the time she invested, she did not have \$1 million in net financial assets, did not own more than \$5 million in net assets and had not made more than \$200,000 per year in the two years prior.

**(c) Investor P.P.**

[64] Investor P.P. testified that in 2007, Smith attended at P.P.'s house and presented an investment proposal with two options, the Monthly Investment and the Compound Investment, between P.P. and Blackett and/or 215 Inc. P.P. was told by Smith that Blackett would be trading in currency to generate returns and that Blackett was good at it. On March 8, 2008, Smith provided P.P. and his wife with the Compound Interest Calculator. Smith told P.P. "it's a guaranteed thing" (P.P. - Transcript of October 31, 2012 at pp. 46).

[65] On March 22, 2008, Smith brought P.P. two documents that had been signed by Blackett, each entitled "Loan Agreement" and Smith witnessed P.P.'s signature on the Blackett Investments. P.P.'s Blackett Investments appended the Compound Interest Calculator, named P.P. as lender and included both 215 Inc. and Blackett as borrowers. The first was a Compound Investment for \$40,000 and entitled P.P. to receive \$737,167.44 representing a five percent monthly compounded interest for a term of five years. The second was a Monthly Investment for \$20,000 and it entitled P.P. to \$1,000 per month representing a five percent interest per month for a term of two years. P.P. provided his bank account information in the Blackett Investment documents with the expectation that at the end of the term his funds would be deposited to that account. P.P. made two cheques payable to both 215 Inc. and Blackett in the amounts of \$40,000 and \$20,000, which he obtained from his line of credit. P.P. testified that he never received any principal or returns with respect to the first Blackett Investment and only received approximately seven payments for the monthly returns on the second Blackett Investment.

[66] On October 7, 2008, Smith brought P.P. another Monthly Investment for \$20,000, in which only 215 Inc. was listed as the borrower. P.P. testified that he entered into this third agreement with \$20,000 that he took from his investment with Investors Group and he may have received two interest payments in cash for this third investment, but no principal. P.P.'s daughters both invested with 215 Inc. and/or Blackett through a series of six Blackett Investment documents entitled "Loan Agreement" which were dated between March 25, 2008 and May 30, 2009 and were provided by Smith, totalling \$11,000 invested by N.P. and \$36,000 invested by T.P.

[67] Once payments had stopped, P.P. testified that Blackett went to P.P.'s house and told P.P. that if P.P. created an account with FX Solutions, Blackett would trade and make back his money. On November 6, 2009, P.P. wired \$10,000 to FX Solutions. FX Solutions gave P.P. a password, which he proceeded to give to Blackett. P.P. testified that he called Blackett within two weeks to inquire about the account and Blackett told him that it was too early, but that things looked good. P.P. called back within the month and Blackett told him things were okay. P.P. testified that at that time he went online to check his account, but the password had been changed. P.P. proceeded to call the company, provided them with identification and was granted

a new password to access the account. P.P. testified that when he logged on the account was at zero and the \$10,000 was gone.

[68] P.P. testified that neither he nor his wife owned a million dollars in net financial assets at the time he invested. He also testified that neither he nor his wife made more than \$200,000 per year at that time and that neither Smith nor Blackett asked any similar questions before he invested.

#### **(d) Investor O.H.**

[69] On the first day of the Merits Hearing, investor O.H. appeared as a representative for Ms. Ramoutar for the purpose of assisting her in requesting a further adjournment of the Merits Hearing. At that time, O.H. admitted that he had reviewed Ms. Ramoutar's disclosure materials. He was later called on the eighth day of the Merits Hearing as Ms. Ramoutar's first witness. Ms. Ramoutar also requested that, after he gave evidence, O.H. be allowed to assist her in presenting the remainder of her case. Staff did not object to the procedure of allowing O.H. to sit as a witness and subsequently assist Ms. Ramoutar. In the course of his examination in chief, O.H. noted that he had reviewed Ms. Ramoutar's files. Some of O.H.'s evidence dealt with meetings he had with Ms. Ramoutar and Smith after the Material Time and with discussions that were not related to the conduct alleged. In the circumstances, the Panel gives no weight to O.H.'s observations and testimony which relate to documents and experiences which were not his own and are not relevant to the determination of this matter. O.H. did not provide evidence which assisted the Panel with respect to its analysis of Ms. Ramoutar and Rezwealth or Smith and 177 Inc. However, the Panel did find O.H.'s testimony relating to his personal Blackett Investment to be credible and relevant.

[70] O.H. met Blackett at a nightclub, where Blackett was working as a security guard. Subsequently, Blackett told O.H. that he traded in forex, made a lot of money at it and had a program where he took money from others and provided them with guaranteed returns. After some time, O.H. approached Blackett to invest and made a cheque for \$5,000 payable to 215 Inc., which O.H. understood to be Blackett's corporation. O.H. testified that he signed a loan agreement and Blackett told him his money would be used for forex trading, but that O.H. would get his principal and five percent interest compounded monthly at the end of a one year term. O.H. never received any payment from Blackett, and when O.H. asked for repayment in early 2010, he was told that Blackett was working on it.

## **2. Compelled Testimony of Smith**

[71] Ho testified that he conducted compelled interviews of Smith on August 3 and 12, 2010. Hereafter, the Panel shall refer to the admissions made by Smith in his compelled testimony of August 12, 2010. It is Smith's evidence that he personally invested \$15,000 with Blackett in September 2006 and a further \$40,000 in 2008.

[72] Smith admitted to having referred 48 clients to Blackett and 215 Inc. beginning in late 2006 or early 2007. Smith agreed that he explained to some of the clients he referred: how Blackett's program worked, that Blackett structured the investment program as a loan agreement so that he was obligated to pay back the funds, that Blackett did foreign currency trading and that Blackett

managed risk by using leverage and never exposing more than five percent of the money at a time. Smith also admitted to having facilitated the signing of Blackett Investment agreements, delivering cheques and signed agreements to Blackett and, from the end of 2008 until June 2009, transferring monthly payments to investors through the bank account of 177 Inc. In addition, Smith admitted that he received a “finder’s fee” of ten percent of each investment for investors he referred to Blackett and that 177 Inc. received a service fee for facilitating monthly payments through its account.

[73] Staff, through Ho, tendered into evidence a client list that Smith provided to Ho, pursuant to an undertaking from Smith’s compelled examination, containing the names and contact information of 48 investors whom Smith had referred to Blackett and who had invested a total of approximately \$1.2 million.

### **3. Documentary Evidence of the Blackett Investments**

[74] Staff, through Ho, tendered 75 documents, each entitled “Loan Agreement” and signed by Blackett, on behalf of himself and/or 215 Inc., as evidence of the Blackett Investments. The Compound Interest Calculator was attached to the majority of the Blackett Investment documents. Ho produced communications between Blackett and certain investors, account statements relating to forex trading accounts and copies of bank drafts or wire transfers to Blackett or 215 Inc. drawn by the investors in payment for the Blackett Investments. In the case of investor E.F., each of the four Blackett Investment agreements she entered into had a handwritten notation expressly stating “Note: Monies obtained are used for the sole purpose of currency trading in Forex” (Exhibit 7, Tabs 41-44). Ho testified that he obtained the documents from various investors, Smith and Ms. Ramoutar, over the course of his investigation and used them to identify investors who provided funds to Blackett for the purpose of his Source and Application of Funds Analysis. As stated above, M.L.T. confirmed the address used by Blackett in the earlier investments was a private mailbox and the address in later investments was that of their second residence. M.L.T. also confirmed that the email listed was Blackett’s.

[75] Investor agreements provided to Ho by Smith match Smith’s client list, which confirms the names of investors that Smith had referred to Blackett. Documentary evidence also supported the fact that investor A.L. and the principals of New Found Freedom Financial (“NFF”) pooled investor funds to invest with Blackett.

[76] Ho testified that one account statement with Interbank FX, LLC, which showed a series of trades made on March 18, 2008 but with other account information blacked-out, was provided by Blackett to each of Ms. Ramoutar, investor O.H. and the principals of NFF prior to their investment with Blackett in an effort to demonstrate that Blackett was a very good forex trader who could turn \$2,000 into \$100,000 in a short period of time. There was no indication on that statement of who held or traded in the account. Ho testified that he was told by Ms. Ramoutar that Blackett also provided her with a second account statement titled “Combined Account Statement” from Forex Capital Markets, LLC (“FXCM”) after Blackett had stopped making payments to Rezwealth to provide some assurance that he had funds to repay the money. The FXCM Combined Account Statement listed Blackett as the User and contained an ending balance of approximately \$2 million on July 15, 2009, but did not have a trade account number. Ho also provided a similar FXCM Combined Account Statement for September 15-16, 2009,

which Ho testified had been provided by Blackett to investor A.L. and the principals of NFF as assurance that Blackett had the ability to repay them after payments stopped in 2009. Ho testified that the principals of NFF provided him with a nearly identical FXCM Combined Account Statement under the name of a different user, with an identical balance as that provided by Blackett and which had been created by the different user using a practice account on the FXCM website.

[77] Ho identified a separate trading account document in the name of Mr. Ramoutar. Ho's evidence was that Ms. Ramoutar told him she set up a forex trading account in July 2009 at the suggestion of Blackett, deposited funds into that account in Mr. Ramoutar's name, gave Blackett the password to trade and subsequently lost the funds. Ho testified that Blackett had similar arrangements with investors P.P. and A.L. in which funds were deposited into accounts and were lost by Blackett through trading.

[78] An agreement between Blackett and Rezwealth dated December 16, 2009 was also tendered into evidence by Ho, which provides that Blackett would repay Rezwealth \$3 million calculated as principal plus interest and is signed by Blackett, on his own behalf, and Ms. Ramoutar, as president of Rezwealth. An agreement with similar intent was entered into in December 2009 between Blackett and investor S. B. in which Blackett undertook to pay loan monies outstanding with interest in the amount of \$36,000.

#### **E. Conduct of the Rezwealth Respondents**

[79] Ho testified, and the evidence supports, that Rezwealth offered investors: (a) in its earliest agreement, monthly and annual investment return options; (b) in later agreements, investment products identified as three types of accounts, including (i) guaranteed monthly or yearly returns, (ii) floating interest monthly or yearly returns, and (iii) risky investment with possibility of high returns but all funds put at risk; and (c) in the latter agreements, the options of "Plan A Guaranteed" and "Plan B Not Guaranteed" (collectively, the "**Rezwealth Investments(s)**"). Ho testified that he interviewed and obtained documentation from Ms. Ramoutar with respect to the Rezwealth Investments. Ho also testified that there were six different forms used for the Rezwealth Investments, including three versions of a "Participation Agreement", one form entitled "Subscription Form for Participating Debenture", another entitled "Promissory Note" and finally an "Unsecured Debenture" form. The earliest Rezwealth Investment for which evidence was tendered is dated October 29, 2007 and the latest is dated December 21, 2009. Staff, through Ho, tendered 56 agreements as evidence of the Rezwealth Investments.

[80] The earliest Rezwealth Investment expressly states "This Agreement is for the purpose of participating collectively in the pooling of funds into Managed Foreign Currency Trading Account and sharing the profits and loss of this initiative" (Exhibit 8, Tab 49). Later agreements also specify that while Rezwealth is not a currency trader, it is managing the pooling of members funds to participate in the "income-generating service" through "highly-experienced traders" (Exhibit 8, Tabs 45-47; Exhibit 9, Tab 1). As Ho testified, later agreements entitled "Promissory Note" do not contain terms about the use of investor funds, do not describe the role of Rezwealth in the arrangement and do not specify terms of referral of investors.

## 1. Investor Testimonies

### (a) Investor J.R.

[81] Investor J.R. testified that she was introduced to Rezwealth by Mr. Ramoutar, a friend, in the summer of 2008. She recalled asking Mr. Ramoutar where he worked and that he told J.R. about Rezwealth, indicating that it did mortgages and investments. J.R. testified that Mr. Ramoutar met with her to discuss the investments offered and described three types: guaranteed, floating and risky. Mr. Ramoutar explained the types of investments to her, including that guaranteed meant that principal invested and interest was guaranteed, the floating interest could vary and that the risky option could result in losing some money. J.R. testified that Mr. Ramoutar told her the guaranteed investment had interest between six and 36 percent and risky investment could have interest up to 60 percent. Mr. Ramoutar also told J.R. that the risky investment was linked to forex investing, which he explained to be currency trading.

[82] J.R. recalled Mr. Ramoutar explaining how one could leverage credit. J.R. testified that Mr. Ramoutar stated a person could utilize the limit on his or her credit card to invest and the interest made on the investment would cover monthly payment of interest from the credit card. J.R. identified a Rezwealth pamphlet and confirmed that under the heading “Investments” a reference to “the power of leveraging” would correspond to what Mr. Ramoutar explained to her about the use of credit cards or personal lines of credit for the purpose of investing (Exhibit 29, Tab 6). The pamphlet also described what J.R. identified as the guaranteed or “secured” investment and the risky or “aggressive” investment.

[83] J.R. attended Rezwealth’s offices for information sessions sporadically throughout the summer of 2008. She testified that on average 15 people attended these weekly sessions and that Mr. Ramoutar, Ms. Ramoutar and Christopher Ramoutar, Ms. Ramoutar’s other son (“**Chris Ramoutar**”), among others, gave presentations using charts and graphs. J.R. also testified that in the latter part of 2008 and early 2009, Rezwealth held information sessions on forex, which she also attended. J.R. stated that the forex presentations explained forex and what it did for an investment.

[84] In the fall of 2008, J.R. made her first Rezwealth Investment with Rezwealth placing \$5,000 in a guaranteed account and \$5,000 in a floating account. The source of those funds was J.R.’s savings. In early 2009, J.R. recalled investing another \$15,000 and in October 2009 a further \$10,000. J.R. was referred to Ho’s accounting record which corroborated her testimony. J.R. testified that she made the latter two investments because she felt comfortable after obtaining the interest return on her first investments. J.R. also testified that each time she went to Rezwealth’s offices to invest she met with Mr. Ramoutar and that he signed the investment documents on behalf of Rezwealth. J.R. identified documents which recorded her investments but confirmed that they were not the original agreements she had signed. J.R. testified that Mr. Ramoutar contacted her to request that J.R. sign new forms because Rezwealth had recently become registered or received a certification which required updated paperwork to be completed, resulting in the original documents being shredded. J.R. posited that the new forms entitled “Subscription Form for Participating Debenture” and dated September 11, 2008, recorded aggregate consideration of \$20,000 likely because at the time she signed the updated documents she had already invested more.

[85] J.R. testified that the second written agreement, which was entered into evidence through her, was a guaranteed plan. When directed to language in that agreement which stated that all her money could be lost, J.R. testified that it was inconsistent with her understanding that her principal and interest was guaranteed. J.R. also identified copies of cheques, which she had made payable to Rezwealth and which were described in the memo line as investments. Further, Rezwealth Investment documents contained discrepancies, which J.R. testified could be explained by the fact that she had reallocated funds between various types of accounts at certain points in time. J.R. stated she began with guaranteed and floating plans and by the time she had invested a total amount of \$35,000 it was allocated as \$25,000 in the risky plan and \$10,000 in the guaranteed plan. J.R. testified that Chris Ramoutar signed her investment forms as a witness.

[86] Rezwealth made monthly payments to J.R. She testified to receiving the payments in the form of cheques sent by mail or received in person at Rezwealth's office. J.R. also identified letters received from Rezwealth, which accompanied the payments and recorded the interest in the account for each month. When monthly payments stopped, J.R. called Mr. Ramoutar and he told her everything was frozen, but prior to that, no one at Rezwealth had communicated to her any problems with the investment or the trader. J.R. testified that earlier disclosure of such problems would have affected her decision to invest. J.R. also recalled receiving a letter from Rezwealth dated January 10, 2010, which she considered to be an update informing her that a legal matter had begun. J.R. called Mr. Ramoutar, who told her that it would get resolved and then everyone would get their money back. J.R. has not received her principal back.

[87] At the time she invested, J.R. testified, she did not have \$1 million in net financial assets, did not own more than \$5 million in net assets and had not made more than \$200,000 per year in the two years prior.

[88] Under cross-examination by Ms. Ramoutar, J.R. recalled that Rezwealth's information session covered various topics including taxes, credit restoration and insurance planning. J.R. also testified that Mr. Ramoutar did not aggressively solicit her to put money into Rezwealth. J.R. confirmed that her understanding in early 2010 was that the individual handling forex either did not allocate money properly, or information did not pass properly and the Commission became involved to resolve it and make the person accountable. J.R. also acknowledged that she was on a committee of Rezwealth, which was intended to work on how to inform people about the Rezwealth sessions and the company as a whole.

**(b) Investor C.G.**

[89] Investor C.G. was a childhood friend of Mr. Ramoutar's and knew Ms. Ramoutar as his baseball coach. His understanding was that either Mr. Ramoutar or Ms. Ramoutar owned Rezwealth and that Ms. Ramoutar was president, Mr. Ramoutar was also high in the chain of command and Chris Ramoutar was the treasurer. C.G. identified two other friends who worked for Rezwealth trying to gather investors for the company. One of those two friends, R.H., asked if C.G. was interested in investing. C.G. knew at least three friends who had invested as well. Rezwealth's employee, R.H., discussed the investment in terms of forex trading, guaranteed 3 percent and assured C.G. that there was no chance of C.G. losing his money. C.G. was persuaded by R.H.'s observation that many other friends had invested and gotten their cheques. C.G. spoke to those friends who were investors and they confirmed that they had received payments.

[90] On July 10, 2009, C.G. invested \$3,000 with Rezwealth. C.G. understood his money would be used for something to do with forex trading and that he would receive 3 percent interest per month guaranteed. C.G. testified that he was told he would get his principal back whenever he pulled his money out. C.G. also testified that he was never told about any problems with the investment and, if he had been aware of any, it would have affected his decision to invest. C.G. went to Rezwealth's office to fill out the paperwork and sign a form. He was told by R.H. to read the form. When C.G. inquired about the text which stated he could lose all his money, R.H. explained that it was still a guaranteed investment, but legally C.G. had to sign the form to purchase the investment.

[91] C.G. received monthly cheques, in the mail or directly from R.H., as payment from Rezwealth. Like other investors, C.G. also received letters from Rezwealth, which accompanied the cheques. C.G. understood Rezwealth had invested his money and he was receiving the return. The Panel was provided with copies of cheque stubs which indicate that the cheques were for "investment income" (Exhibit 30, Tab 4). C.G. also identified a letter, dated November 13, 2009, which he received at some later date, describing challenges Rezwealth was having with the Commission and a forex trader. C.G. testified that he discussed the issues described in the letter with Mr. Ramoutar and R.H. and was told that it was just a delay, but that C.G. would get his money eventually.

[92] C.G. never received his principal back. At the time that he invested, C.G. testified, he did not have \$1 million in net financial assets, did not own more than \$5 million in net assets and had not made more than \$200,000 per year in the two years prior. No one at Rezwealth asked him these questions.

### **(c) Investor S.L.**

[93] Investor S.L. testified that she became familiar with Rezwealth through a friend who had recommended it for tax consulting. S.L. called Ms. Ramoutar, whom she believed to be the owner of Rezwealth, around July 2009. S.L. testified that she discussed investments offered by Ms. Ramoutar and specifically recalled telling Ms. Ramoutar about her situation, including that she felt she was getting up in age, had previously lost money and did not want the exposure of losing more. S.L. testified that she was offered a return of two percent per month and that Ms. Ramoutar told S.L. the money invested would be placed into several baskets so that if one failed, S.L. would not lose all her money.

[94] In their discussions, Ms. Ramoutar suggested to S.L. that S.L. had equity in her condo, which was doing nothing for her, but S.L. could use it to make income. S.L. told Ms. Ramoutar she was concerned with losing her condo and Ms. Ramoutar assured S.L. she would not lose it. As a result of their discussion, S.L. contacted BMO, who conducted an assessment and approved a line of credit for S.L. A couple of weeks later, in July 2009, S.L. arranged to meet Ms. Ramoutar at a mall and, after discussing her situation, S.L. provided Ms. Ramoutar with a cheque for \$50,000 from her line of credit. S.L. testified that she had written "investment" in the memo line to her cheque because she understood that she was purchasing an investment from Rezwealth. A document described as a "participation agreement" and dated July 17, 2009 was tendered into evidence through S.L., which was signed by Ms. Ramoutar and corroborated S.L.'s evidence of the amount invested and rate of return. S.L. testified that she told Ms. Ramoutar that

she had a low risk tolerance and if anything were to happen she would want Ms. Ramoutar to pull her out of the investment immediately.

[95] After her initial investment, S.L. was contacted by a Rezwealth representative and asked to sign new documents. S.L. was told that Ms. Ramoutar had encountered some problems she wished to rectify and, as an investor, doing the right thing would mean signing new papers. S.L. attended Rezwealth's office to execute the new paperwork. S.L. identified a document entitled "Promissory Note" with Rezwealth letterhead which was backdated and signed by her and Chris Ramoutar at some time subsequent to the initial investment. S.L. testified that although no one explained the document terms, or what an accredited investor was, S.L. nevertheless signed the document indicating she was an accredited investor. When S.L. was directed to a part of the document which indicated she could lose all her money, she testified that that was not what she understood at the time she invested.

[96] S.L. invested with Rezwealth on two further occasions because she felt comfortable with the first investment after having received monthly interest payments. Each time she called Ms. Ramoutar, went to Rezwealth's office, executed the necessary documentation and provided a cheque which she understood to be an investment. S.L.'s second Rezwealth Investment was made on September 10, 2009, in the amount of \$10,000, from her line of credit. S.L.'s third and final Rezwealth Investment was made on October 6, 2009, in the amount of \$7,000, from her savings.

[97] S.L. testified that she received monthly payments by cheque in the mail until the end of 2009. When payments stopped, S.L. went to Rezwealth's office and met with Ms. Ramoutar who explained the problem Rezwealth had with a trader and stated that she would continue to give S.L. payments indefinitely. S.L. received two cash payments from Ms. Ramoutar totalling approximately \$1,350. S.L. stated that when she attended Rezwealth's office to receive her third payment, Mr. Ramoutar told her they were not making any more payouts. S.L. has not received any of her investment back since the second cash payment. S.L. testified that after she invested, Ms. Ramoutar mentioned she was having problems with one of the traders. S.L. stated that had she known about the problems before, she would not have invested.

[98] At the time she invested, S.L. testified, she did not have \$1 million in net financial assets, did not own more than \$5 million in net assets including property and had not made more than \$200,000 per year in the two years prior. S.L. confirmed that no one at Rezwealth asked her those questions.

[99] Under cross-examination by Ms. Ramoutar, S.L. admitted she and Ms. Ramoutar discussed forex and trading generally and that S.L. knew forex was a risky product. S.L. reiterated in her cross-examination that she had told Ms. Ramoutar about her risk aversion, age, previous loss of money and that Ms. Ramoutar had reassured her that her funds would be placed in to several baskets so that if one failed they would not all fail. S.L. also testified that Ms. Ramoutar told her at a Christmas party that S.L. would be one of the first five to get her money back. S.L. believed that if Ms. Ramoutar had the money, she would get her money back.

**(d) Investor M.L.**

[100] Investor M.L. testified that she was introduced to Rezwealth by Tiffin, her financial advisor, who presented Rezwealth as an option for investment. In October 2008, prior to investing, M.L. met with Ms. Ramoutar, whom she understood was the owner of Rezwealth. It is M.L.'s evidence that Tiffin drove her to Rezwealth's office, where Ms. Ramoutar told M.L. that 10 percent of her investment would go into forex trading, which was very volatile and risky, while the remaining 90 percent would stay with Rezwealth for short-term loans that normally generated a very high return. Further, M.L. recalled being told by Tiffin, and subsequently Ms. Ramoutar, that the forex investment would have a stop loss feature which would limit risk.

[101] Ms. Ramoutar also told M.L. that she would receive a guaranteed 2 percent per month on her investment and that she could pull her money out at any time with 30 days notice. M.L. testified that Ms. Ramoutar told her the overall investment was very safe. Subsequent to their discussion, M.L. decided to take \$100,000, which she had invested elsewhere, and wrote a cheque to Rezwealth for that amount. A copy of the cheque, dated November 3, 2008, was tendered into evidence.

[102] M.L. recalled that at the time she made her Rezwealth Investment, she signed a two-page, very basic contract in Ms. Ramoutar's office and was assured by Ms. Ramoutar at that time that it was very safe. M.L. testified that sometime prior to August 10, 2009 she was contacted by Mr. Ramoutar, who told her that she needed to execute a new contract because regulation was tightening up and upon their lawyer's review of the old contract, it was felt that a new form was more appropriate and more in compliance with the regulation. As a result, M.L. stated she tore up her shorter agreement because she thought that the new one superseded it.

[103] On August 10, 2009, M.L. testified, she signed a new agreement with Rezwealth at a meeting with Mr. Ramoutar in Rezwealth's office. The new agreement was tendered into evidence and reviewed closely with M.L. M.L. explained that perhaps the agreement had been signed by Chris Ramoutar after she signed it because he was not present when Mr. Ramoutar met with her to explain it. M.L.'s recollection was that Mr. Ramoutar took her through the agreement page by page to explain all the clauses, but believed that Mr. Ramoutar ticked off the "accredited investor" box on one form. When Staff asked M.L. various questions about her financial position, which could have placed her within the criteria for an accredited investor, M.L. testified that she did not meet any of the mentioned requirements. M.L. could not recall if she was asked those questions by a representative of Rezwealth. M.L.'s responses to questions about whether Mr. Ramoutar explained certain features of the forms attached to the Rezwealth investment contract frequently conveyed a degree of uncertainty. For instance, at one point M.L. stated she assumed Mr. Ramoutar had explained a risk acknowledgement form.

[104] M.L. provided the Panel with copies of cover letters from Rezwealth which had accompanied the monthly payments for her Rezwealth Investment. M.L. testified that her first payment was dated December 15, 2008 and her last was dated December 10, 2009. The cover letters were on Rezwealth letterhead and all had similar content, stating that enclosed was M.L.'s 2 percent interest earned on her investment for the immediately preceding month. One letter also included a statement that in addition to the monthly payment on her investment M.L. was receiving a commission cheque. M.L. testified that she referred her sister and a friend, through

Tiffin, to invest in Rezwealth. As a result, she received 0.5 percent of the investment made by the persons she referred.

[105] After payments stopped, M.L. called Rezwealth and was told that its account had been frozen due to the Commission's investigation. M.L. testified that no one at Rezwealth alerted her to any problems with the investment before then. M.L. later received a letter from Rezwealth, dated October 27, 2010, which indicated that Rezwealth had been asked to cease trading by the Commission and that an attempt to reimburse clients was going to be made by restarting "regular sessions to try and infuse some capital into the business" (Exhibit 27, Tab 4).

**(e) Investor E.B.**

[106] Investor E.B. was introduced to Tiffin in 2006 when he was invited to Tiffin's seminar. E.B. testified that he met with Tiffin, who became his financial advisor, and invested with him in early 2007. E.B. described his initial \$100,000 investment as an insurance policy from which he borrowed \$80,000 to invest in stocks, mainly mutual funds. It was E.B.'s understanding that Tiffin bought the mutual funds, controlled when they were traded and would move the money to protect it, if it was not performing. E.B. testified that he lost over \$60,000 of that investment and when the investment failed to perform, Tiffin mentioned Rezwealth. E.B. recalled that Tiffin described the Rezwealth Investment as one that would pay two percent per month.

[107] E.B. testified that, after having discussed the Rezwealth Investment with Tiffin, he decided to invest in Rezwealth and Tiffin took E.B. to Ms. Ramoutar's home. E.B. testified that Tiffin gave him a document entitled "Rezwealth Participation Agreement" about a week before going to see Ms. Ramoutar. E.B. recalled that once at Ms. Ramoutar's home, Tiffin dominated the conversation and explained the forex investment in detail, guaranteeing 100 percent of the principal and two percent per month, plus an additional two percent per month out of Tiffin's commission because he felt badly for having lost E.B.'s money. E.B. testified that the decision to offer a total of four percent per month was Tiffin's and Ms. Ramoutar did not partake in that conversation. E.B. also testified that Ms. Ramoutar asked if he understood the investment or had any further questions, but E.B. stated Tiffin had explained it all and he was comfortable going ahead. Under cross-examination, E.B. was directed to a copy of his cheque to Rezwealth dated June 29, 2009 in the amount of \$88,000 and confirmed that it was the amount he initially invested with Rezwealth. E.B. understood that the money he invested would be used for credit counselling, re-mortgaging and some forex trading. Further, E.B. recalled receiving monthly payments from Rezwealth until the funds were frozen by the Commission.

[108] E.B.'s wife also invested in Rezwealth. E.B. testified that he was encouraged to refer people to Tiffin and was offered remuneration in the amount of one percent. E.B. then introduced his wife to Tiffin, cashed out a CI investment of approximately \$20,000 and met with Mr. Ramoutar to invest it in Rezwealth. E.B. recalled that his wife invested approximately \$25,000 with Rezwealth for a rate of return of three percent, as determined by Tiffin. Under cross-examination, E.B. was directed to two Rezwealth subscription forms, dated December 4, 2009, in the amount of \$12,000 and \$13,000 respectively and confirmed that the dates were consistent with his recollection of his wife's investments. E.B. testified that Mr. Ramoutar did the paperwork and later recalled that Mr. Ramoutar did explain the Rezwealth Investment forms to E.B., including the variable rate of interest in one document. However, E.B. testified that Mr.

Ramoutar did not tell E.B. about any problems with the Rezwealth Investment or the trader prior to when E.B.'s wife made her investment.

[109] E.B. testified that he had also invested approximately \$80,000 of his mother's money with Tiffin and by February 2009 the value of the investment was approximately \$40,000. On February 2, 2009, Tiffin emailed E.B. to offer the potential of investing what was left of his mother's funds in Rezwealth. E.B. recalled that as a result of that email, he invested his mother's money in Rezwealth for a return of four percent per month, as determined by Tiffin. E.B. recalled that Tiffin never mentioned having to consult with Ms. Ramoutar before accepting E.B.'s monies or making promises or guarantees.

[110] It was E.B.'s evidence that he recalled from an email that the trader's name was Blackett and that Tiffin described Blackett as a very good trader. E.B. also recalled that in one email Tiffin stated he had spent the day watching the trading. E.B. further testified that Tiffin took credit for tweaking the forex program by taking out a large insurance policy on Ms. Ramoutar and putting into place stop-gap measures, limiting trading to 10 percent of the available funds. On the basis of that tweaking, it appeared to E.B. that Tiffin was in control of the Rezwealth Investments. E.B.'s evidence with respect to Tiffin having watched trading and the limitation of trading only up to 10 percent of funds was corroborated by an email tendered into evidence, which had been distributed by Tiffin to investor B.H. and subsequently forwarded to E.B.

[111] At the time he invested, E.B. testified, he did not have \$1 million in net financial assets, did not own more than \$5 million in net assets, had not made more than \$200,000 per year in the two years prior and together with his wife had not made more than \$300,000 per year in the two years prior.

[112] E.B. recalled that Tiffin admitted to receiving a five percent commission on E.B.'s Rezwealth Investment. It is E.B.'s testimony that he was led to believe, by Tiffin, that Tiffin was a major player in Rezwealth, a partner, and that Tiffin seemed to be one of the people making the decisions and running the company.

#### **(f) Investor B.H.**

[113] Investor B.H. testified that he met Tiffin around 2007 after investor E.B. recommended that B.H. attend one of Tiffin's seminars. B.H. recalled that the idea of Tiffin's seminars was to have an insurance policy and take monies from that policy to invest in the market. Shortly after the first seminar, B.H. introduced his wife to Tiffin and she took out an insurance policy through Tiffin. B.H. testified that his wife then withdrew approximately \$35,000 from the policy and invested it with Tiffin. B.H. also testified that the invested funds performed terribly and resulted in a loss of approximately 60 percent in eight months.

[114] B.H. worked as an independent life insurance agent through Tiffin's office. He testified that he rescinded his licence to sell because of Tiffin and because the two did not share ethics in the sense that B.H. believed Tiffin oversold to people who could not afford it. B.H. was introduced to Rezwealth through Tiffin. He was told by Tiffin that the program offered by Rezwealth was "a guaranteed, 100-percent ironclad, money-in-the-bank investment portfolio" (B.H. – Transcript of December 5, 2012 at p. 146). B.H. understood that Rezwealth was running

a program and that Tiffin got together with Rezwealth to tweak or modify the program and acted as a commissioned salesperson for Rezwealth to offer the investment.

[115] B.H. met Ms. Ramoutar on several occasions before he and his wife made investments with Rezwealth. B.H. recalled that he met Ms. Ramoutar at E.B.'s house when she was there to discuss a tax shelter, then at Tiffin's office a year later and subsequently at a seminar. B.H. testified that this was part of the reason he and his wife thought they should invest, since Ms. Ramoutar was an arm's length party to Tiffin. B.H. also testified that he was reassured the investment was secure through Tiffin's insistence that he would have a \$5 million insurance policy placed on Ms. Ramoutar, naming investors as beneficiaries if anything were to go wrong.

[116] B.H. recalled that his wife had taken an approximately \$300,000 buyout from her pension and Tiffin, being their financial advisor, recommended that they place \$120,000 with Rezwealth and that the remaining "locked funds" be invested into an annuity for B.H.'s wife. Tiffin took B.H. and his wife to Ms. Ramoutar's home and they provided Ms. Ramoutar with a cheque for \$120,000, dated May 25, 2009. B.H. testified that by the time he and his wife provided Ms. Ramoutar with a cheque they were already sold on the idea because of Tiffin. B.H. recalled filling in the forms for his wife's investment, entitled "Participation Agreement", in Ms. Ramoutar's home, but stated that Tiffin provided the forms and Tiffin determined the monthly return.

[117] B.H. also invested with Rezwealth through his company on two occasions. Under cross-examination, B.H. was directed to two agreements, which were consistent with his recollection that his company invested \$5,000 with Rezwealth on May 25, 2009 and another \$5,000 on August 31, 2009. B.H. testified that he made the additional investment in August because the payments were coming in as specified and there didn't seem to be any issues.

[118] B.H. testified that he was repeatedly assured by Tiffin that the Rezwealth Investment was 100 percent secure, but that Ms. Ramoutar was not part of those conversations. However, B.H. also understood that Ms. Ramoutar was the directing mind of Rezwealth.

[119] B.H. was contacted via email by Mr. Ramoutar at some time after his wife and his company had invested with Rezwealth to complete and sign new paperwork. B.H. was told that the documents needed to be filled out in order for Rezwealth to be in compliance with requirements and to secure his funds. B.H. recalled meeting with Mr. Ramoutar at Rezwealth's office for the purpose of filling out the new paperwork, which was backdated to the date of the original investment, and providing Mr. Ramoutar with a cheque for his last investment. B.H. testified that his wife checked a paragraph indicating she was an accredited investor because he understood they qualified since Tiffin was a registered financial advisor.

[120] B.H. testified that at the time he invested, he did not have \$1 million in net financial assets, did not own more than \$5 million in net assets, had not made more than \$200,000 per year in the two years prior and together with his wife had not made more than \$300,000 per year in the two years prior. B.H. also testified that no one at Rezwealth asked him these questions prior to the investments being made. B.H. also testified that payments stopped in early 2010 and the only explanation that he received was from Tiffin who indicated that the accounts had been frozen. B.H. has not received any further payment since and has not received his principal back.

## **2. Additional Witnesses Called and Evidence Tendered by Ms. Ramoutar**

### **(a) Blackett Investor O.H.**

[121] Investor O.H. invested \$5,000 with Blackett. O.H. testified that in February or March 2010, when he was attempting to track Blackett, he came across a listing on Google related to the Commission and Rezwealth. O.H. proceeded to contact Rezwealth to determine what was happening and where Blackett might be. According to O.H., this is how he came to meet Ms. Ramoutar, who requested that O.H. assist her in locating Blackett and later that O.H. assist with Ms. Ramoutar's defence. O.H. testified that he met Smith through Ms. Ramoutar in the summer of 2010 and Tiffin through Ms. Ramoutar in the summer of 2011.

[122] As noted above, O.H. reviewed Ms. Ramoutar's disclosure documents before testifying, some of O.H.'s evidence dealt with meetings he had with Smith and Tiffin after the Material Time and with discussions that were not related to the conduct alleged. In the circumstances, the Panel gives no weight to O.H.'s observations and testimony which relate to documents and experiences which were not his own and are not relevant to the determination of this matter.

[123]. O.H. testified that he knew nothing of the business of Ms. Ramoutar or Rezwealth prior to 2010. Much of O.H.'s testimony provided observations of Tiffin's character and Tiffin's aggressive nature as a person with a military background, who was capable of physical intimidation. The Panel finds that O.H. did not provide evidence which assisted the Panel with its analysis of the Rezwealth Respondents' conduct during the Material Time

### **(b) Witness J.K.**

[124] Witness J.K. met Ms. Ramoutar at a networking function in 2006. J.K. testified that he told Ms. Ramoutar about Tiffin's presentations and was present the first time she attended a session. J.K. confirmed that he wanted Ms. Ramoutar's opinion on Tiffin's presentations and understood she worked in the financial business and had a company that offered tax services, credit consolidation and mortgages. J.K. testified that he had also met Tiffin in 2006 and attended his seminars, which dealt with demographics and how an aging population should make people re-evaluate how they use their money. J.K. testified that Tiffin was a demographic expert and financial advisor who was guaranteeing higher rates of return in various investment portfolios that Tiffin referred to as "suitcases".

[125] J.K. recalled that at his seminars, Tiffin would distribute a portfolio to build his credentials, which contained information on what Tiffin did, photocopies of newspaper articles he wrote and charts. J.K. testified that, in 2006-2007, at the end of his presentations, Tiffin would tell people that if they gave him \$100,000, within five years he could turn it into one million. J.K. stated that Tiffin would then want people to fill out a form so that he could follow up on an individual basis and encouraged people to refer others to him.

[126] J.K. understood that Tiffin had been in the insurance industry for at least a decade prior and testified that Tiffin did hold himself out to be a financial advisor. J.K. testified that he had invited a number of friends to Tiffin's seminar and lost friends who invested with Tiffin, were misled and lost a lot of money. J.K. recalled that Tiffin identified day trading as one of his "suitcases".

J.K. also testified that Tiffin's seminars changed around middle to fall of 2008 when Tiffin started to discuss forex as one of his "suitcases" and coined the phrase "forex with a twist". J.K. stated that Tiffin was always bragging about giving people a 24 percent return on their money and introduced Rezwealth as a strategic alliance partner. It is J.K.'s evidence that Tiffin always maintained that he had control over investing people's money, that he would move it around and that he would always invest clients' money in what he invested in.

[127] J.K. recalled that Tiffin encouraged people to cash out their RSPs to invest in his portfolios, including forex, and that Tiffin told people to get rid of their trophy homes to invest with him. J.K. stopped attending Tiffin's presentations at the end of 2008.

[128] J.K. testified that he also attended Ms. Ramoutar's seminars, and recalled the topics to include: tax services, referrals, credit consolidation and mortgages. J.K. confirmed that he met Mr. Ramoutar as well. J.K. also testified that Ms. Ramoutar never solicited him, nor did he see her solicit anyone else, to the forex program from 2006 through to 2009.

[129] Under cross-examination by Staff, J.K. testified that forex was one of Tiffin's "suitcases" and that it was offered through Tiffin, as opposed to Rezwealth. J.K. also stated that he was never told who did the actual trading and confirmed that he never invested with Rezwealth, Blackett or Tiffin.

### **(c) Ms. Ramoutar's Testimony at the Hearing**

[130] Ms. Ramoutar testified on her own behalf and as a representative of Rezwealth. Ms. Ramoutar identified her children and a former friend as directors and/or officers in Rezwealth's corporate records. Ms. Ramoutar testified that Rezwealth was primarily a triage service for licenced professionals, which referred prospective clients to the best-suited professional and in return the professional would pay a fee to Rezwealth for that referral. Her evidence was that Rezwealth supported insurance agents, mutual funds agents, mortgage brokers and credit counsellors.

[131] It is Ms. Ramoutar's testimony that Smith introduced her to Blackett and around March 2008 she placed \$50,000 of her own funds with Blackett in return for five percent per month or payments of approximately \$2,500 per month. Ms. Ramoutar testified that someone asked her to oversee for family and friends who put money in with Blackett as well and let them know if anything went wrong so that they could all "bail" together (Ms. Ramoutar – Transcript of December 11, 2012 at p. 34-35).

[132] Ms. Ramoutar provided the Panel with a spreadsheet listing Rezwealth investor fund deposits in chronological order and organized by the person who referred the investor, including Ms. Ramoutar, Mr. Ramoutar and Tiffin, among others. The source of the information in her spreadsheet was Ho's accounting. Ms. Ramoutar testified that from April 2008 to September 2008 the eight individuals who loaned money to Rezwealth were all family and friends. Ms. Ramoutar specifically indicated that that was the period before Tiffin became involved with Rezwealth. Ms. Ramoutar's evidence was that before Tiffin's involvement, Rezwealth had approximately \$200,000 or less that had been loaned to it by family and friends. Ms. Ramoutar testified that the money received from investors was loaned from Rezwealth to Blackett.

[133] Tiffin was introduced to Ms. Ramoutar in 2006 when she went to some of his seminars. Ms. Ramoutar testified that in August 2008, Tiffin approached her to ask what she did and Ms. Ramoutar explained to him that Rezwealth worked with licenced individuals to help people restore their credit and deal with taxes. Ms. Ramoutar stated that Tiffin inquired further, so she mentioned that she had placed \$50,000 with Blackett for forex trading and Tiffin immediately wanted to meet Blackett. Ms. Ramoutar recalled going with Tiffin to Blackett's home in August 2008 where Blackett showed them his licence and provided Tiffin and Ms. Ramoutar with a photocopy of trading records purporting to demonstrate how Blackett turned \$2,000 into \$105,000 in one day. Ms. Ramoutar testified that, within a few days of meeting Blackett, Tiffin was at Ms. Ramoutar's door with his own binder of day trading activities to discuss Blackett's percentage of wins versus percentage of losses and to proclaim how brilliant Blackett was. Ms. Ramoutar stated that it was at this meeting in her house when Tiffin stated he wanted to use Blackett as a vehicle to put his clients' funds and went on to discuss how he could structure it.

[134] As noted above, Ms. Ramoutar testified that Rezwealth was a referral company to direct people to licenced individuals. By September 2008, Ms. Ramoutar testified she met Mr. M., who, she was told, was Tiffin's lawyer and by October 1, 2008 Tiffin arrived with the first cheque from investor M.A. in the amount of \$200,000. Ms. Ramoutar also testified that with respect to Tiffin's clients, Tiffin was their financial advisor, he did all the questioning and he advised them of where to put their money. An email was identified by Ms. Ramoutar as having been sent from Tiffin to his clients, including herself, in November 2008, and which states "earn 24% guaranteed and 100% guarantee on your principle" (Exhibit 47). Ms. Ramoutar testified that upon receipt of the email she had an argument with Tiffin and told him that he could not guarantee people anything.

[135] It was Ms. Ramoutar's evidence that Tiffin had Rezwealth's paperwork at his office and usually handled the client himself and submitted the paperwork to Rezwealth, especially if it was a smaller amount. Ms. Ramoutar admitted that she had probably given him a blank form. For instance, for investor C.K.'s agreement of March 2, 2009, Ms. Ramoutar identified Tiffin's handwriting and testified that he created the Guaranteed 100 product written on the documentation, which Rezwealth did not have at that time. However, if it was an individual like M.A. who put in \$200,000, Ms. Ramoutar testified Tiffin would want Ms. Ramoutar to meet them, otherwise Tiffin would handle the documentation. Ms. Ramoutar recalled that she did not meet the majority of Tiffin's potential clients, aside from perhaps at a Christmas party, but they did not discuss business then. Ms. Ramoutar also testified that some of Tiffin's clients became very involved calling her frequently and she would explain that Tiffin was in control, he spoke to Blackett and he knows about forex. Ms. Ramoutar acknowledged that she would have communication with Tiffin's clients after the receipt of funds because Rezwealth would send out correspondence along with their cheque.

[136] A chart indicating amounts paid by Rezwealth to Tiffin was tendered into evidence. Ms. Ramoutar testified that Tiffin negotiated with Blackett to offer five percent returns to Tiffin and another five percent to Rezwealth. It was Ms. Ramoutar's evidence that from the five percent Tiffin received he decided how much to give to clients. Ms. Ramoutar recalled that in some cases Tiffin would request advances of his commission as soon as the client's cheque cleared. Ms. Ramoutar testified that the structure was for Rezwealth to take the funds, place them with

Blackett, do the bookkeeping to keep track of the money and then Blackett would pay Rezwealth, which in turn paid Tiffin. However, Ms. Ramoutar also noted that at one time money went from Blackett back to Mr. Ramoutar's TD account.

[137] When Blackett started to have issues paying in 2009, Ms. Ramtouar testified she offered to help as an attempt to get closer to Blackett to get access to see Blackett's \$2 million account. She stated that Rezwealth began to pay Blackett's clients, whom she had never met before. In July 2009, Ms. Ramoutar testified, she placed \$25,000 of her own funds into a managed forex account in the name of Mr. Ramoutar, which Blackett had access to. Ms. Ramoutar recalled that she requested Blackett to trade in the account until he made back all the money that was owed to people. Ms. Ramoutar testified that within three weeks the \$25,000 grew to approximately \$47,000 and she put in an additional \$25,000 to make the account grow faster. By August 2009, Ms. Ramoutar recalled, Blackett had lost all the money that had gone into the account.

[138] Ms. Ramoutar has not been able to contact Blackett since early 2010. She recalled Blackett telling her in early 2009 that, as a result of Tiffin's involvement, Blackett's accounts were frozen and that by mid-2009, Blackett wasn't paying anyone. Ms. Ramoutar stated that sometime in 2009 Mr. M., as Tiffin's legal representative, asked Blackett to give him some indication of what was left in the account and Blackett provided a statement which appeared to represent that \$2 million was still in the account as of July 2009. Ms. Ramoutar testified that as a result of Mr. M.'s inquiries in 2009, Blackett signed a document indicating that he owed Rezwealth \$3 million. Blackett told Ms. Ramoutar throughout 2009 that he could still trade in the account even though it was frozen. Ms. Ramoutar also testified that she relied on Smith and Tiffin telling her to trust Blackett and the fact that Mr. M. was on board.

[139] An invoice dated June 22, 2009 from Mr. M. to Rezwealth, in the amount of \$35,000, was tendered into evidence. The invoice details services of Mr. M. as a representative on the Commission's investigation of Rezwealth and for preparation of documentation, including promissory notes and debentures. Ms. Ramoutar testified that her previous legal counsel told her Rezwealth did not need a licence so long as she had contracts in place with the licenced individuals for her marketing fees. Ms. Ramoutar testified that Mr. M. told her that the new documentation, the promissory notes and debentures, would ensure certification with the Commission. Ms. Ramoutar put forth documentation which supported her testimony that Tiffin referred to Mr. M. as his lawyer. It was not until December 2009 that Ms. Ramoutar came to discover from Ho that Mr. M. was not registered with the bar, and could not represent her as legal counsel. Ms. Ramoutar testified that she acted on the direction of Tiffin and Mr. M. in the latter half of 2009. However, she also testified that Mr. Ramoutar provided Mr. M. with everything Mr. M. needed to represent Rezwealth as their lawyer.

[140] Ms. Ramoutar also provided the Panel with a number of text messages between Tiffin and herself. On August 13, 2009, Ms. Ramoutar received a text message from Tiffin that stated Tiffin had found a new client with \$350,000. It was Ms. Ramoutar's evidence that by that time Tiffin knew Blackett had lost money and he was speeding things up instead of slowing them down. Ms. Ramoutar also testified that Tiffin wanted to borrow back money from the funds he brought to the forex program through Rezwealth, to do other deals with other individuals. Ms. Ramoutar's evidence was that Tiffin and his associate were the ones trying to get the forex program rolling in

the fall of 2008 and early 2009. She also recalled that Tiffin was always telling her what to do with her business. She tendered evidence of another investment idea that Tiffin had forwarded to her by email of January 7, 2009, which involved an oil business that would receive money through Rezwealth.

[141] Upon being asked why Tiffin did not invest his client's money directly, rather than through Rezwealth, Ms. Ramoutar admitted she was aware that licenced individuals should not be taking investor money and putting it directly into the forex program. Specifically, Ms. Ramoutar testified "you are not supposed to be doing outside - - taking clients' money and doing stuff like that. So I was only licensed for a couple of years so I know a couple of the rules, but I don't know it in its entirety" (Ms. Ramoutar – Transcript of December 12, 2012 at pp. 113-114).

[142] Ms. Ramoutar challenged Ho's testimony in respect of the origins of a blacked-out document with Rezwealth letterhead. Ms. Ramoutar produced an email dated June 24, 2010, forwarded to her from Mr. Ramoutar, who had obtained it from B.H., with respect to a blacked out Rezwealth Participation Agreement form. In the relevant email of that chain, Tiffin stated that the Commission showed him investor E.B.'s application. During the Merits Hearing, Ho had previously identified a blacked-out Rezwealth Participation Agreement form attached as an exhibit to Tiffin's compelled examination as that of investor C.K., which Ho himself had blacked-out. In the Merits Hearing, in discussing procedural matters before testifying, Ms. Ramoutar alleged that the blacked-out form was not of C.K., but rather a copy of E.B.'s form which had been illegitimately obtained in some way. When Ms. Ramoutar returned to this document during her testimony, she stated that based on conversations with others, she believed that this document was E.B.'s application. This Panel indicated to Ms. Ramoutar during her testimony that this was third and fourth hand information, which the Panel would receive with a great deal of reservation. The original form of the blacked-out document is not necessary for the determination of this matter, especially since the blacked-out form was used for the purpose of demonstrating a typical format of the Rezwealth Participation Agreement. However, upon comparison of the blacked-out form to the copy of investor C.K.'s agreement, I find Ho's testimony in respect of the blacked-out Participation Agreement more credible.

#### **Staff's Cross-Examination of Ms. Ramoutar**

[143] Under cross-examination, Ms. Ramoutar made a number of relevant admissions. Ms. Ramoutar testified that she was the founder, directing mind and president of Rezwealth and as such was responsible for making all major business decisions. Ms. Ramoutar admitted that she and her son Chris Ramoutar were the only persons with signing authority over Rezwealth's RBC bank account and that she had overall responsibility for Rezwealth's finances. Ms. Ramoutar also acknowledged that Rezwealth offered clients fixed rate, variable rate and risky account programs and that she decided the rate of return and what Rezwealth did with the funds received from investors in each of those programs.

[144] Ms. Ramoutar testified that, in the latter part of 2009, Mr. Ramoutar was in charge of the office work and responsibilities at Rezwealth, but that Mr. M. handled anything to do with Blackett and structuring Rezwealth. Ms. Ramoutar stated that, with respect to forex, Mr. Ramoutar took his lead from Mr. M., but acknowledged it was her decision to hire and pay Mr. M.

[145] When directed to her compelled testimony of January 26, 2010 (the “**2010 Compelled Testimony**”), Ms. Ramoutar admitted that she had told some investors that their funds would be with Blackett for trading and some would be loaned to other clients. Ms. Ramoutar initially denied telling individuals that the returns would be guaranteed, but then acknowledged that some investors were told that the returns were secured and that some might have been told that the money was guaranteed. Ms. Ramoutar explained that Rezwealth did second mortgages on real estate and that is why the funds were “secured” or “guaranteed”.

[146] From time to time, Ms. Ramoutar referred to investors as “lenders” and admitted that those individuals came from referral sources who were paid a referral fee, including Tiffin and Mr. Ramoutar. Ms. Ramoutar explicitly stated that Tiffin referred clients to her for forex through Rezwealth. Ms. Ramoutar admitted that the arrangement whereby Tiffin referred clients to Rezwealth was the result of a discussion between Ms. Ramoutar and Tiffin and at least some of the funds accepted from Tiffin’s clients were provided to Blackett.

[147] At the Merits Hearing, Ms. Ramoutar denied that it was her idea to structure the forex program in a way that would result in Rezwealth being the middle man, accepting funds from Tiffin’s clients and investing with Blackett. However, in the 2010 Compelled Testimony Ms. Ramoutar had previously testified that it was her idea to structure the program in that way. At the Merits Hearing, Ms. Ramoutar also denied that she decided the rate of return for Tiffin’s clients. In the 2010 Compelled Testimony, Ms. Ramoutar stated that Tiffin could suggest the rate of return for Tiffin’s clients, but in the end it was her decision.

[148] Ms. Ramoutar admitted that she and Mr. Ramoutar discussed the investment program with some of Tiffin’s clients and she agreed that it was her decision to accept those clients into the Rezwealth program. Ms. Ramoutar also acknowledged that she had the power to refuse an investment with Rezwealth and that Tiffin did not have any ownership interest in Rezwealth. In fact, one of the text messages tendered into evidence through Ms. Ramoutar that was directed to Tiffin expressed that Tiffin did not control anyone at Rezwealth.

[149] Specific admissions made by Ms. Ramoutar, in the course of Staff’s cross-examination, with respect to Rezwealth’s involvement include:

- Investors funds were deposited into Rezwealth’s bank account;
- Rezwealth pooled investor funds and provided some to Blackett, which Blackett used to engage in forex trading;
- Rezwealth initially received five percent per month returns from Blackett, but in late 2008 or early 2009 Rezwealth received ten percent, of which five percent went to Tiffin and Tiffin’s clients;
- Rezwealth received its last payments from Blackett on March 9, 2009;
- Investors who invested before April 2009 were asked to sign new agreements, which were backdated;

- Investors who invested after April 2009 filled in new forms of agreement;
- By September 2009 Ms. Ramoutar realized Blackett was lying and the funds were not there;
- Rezwealth continued to take new investments until December 21, 2009;
- Rezwealth continued to make monthly payments to investors after it stopped receiving payments from Blackett in March 2009;
- From March 2009 to December 2009 Rezwealth's investors were not told that Rezwealth had stopped receiving payments from Blackett; and
- Rezwealth used new investor funds to make payments to other investors.

(Ms. Ramoutar – Transcript of December 13, 2012 at pp. 40-41, 47-51 and 54).

**(d) Tiffin's Compelled Testimony**

[150] Tiffin's compelled testimony of December 3, 2009 ("**Tiffin's Compelled Testimony**") was tendered into evidence through Ho on the request of Ms. Ramoutar for the purpose of her defence. At the end of the Merits Hearing, Ms. Ramoutar submitted a summary of excerpts from Tiffin's Compelled Testimony, which she wished to bring to the Panel's attention for the same purpose.

[151] In Tiffin's Compelled Testimony, Tiffin states that he met Ms. Ramoutar in 2006, when she started to attend seminars that he conducted and then she referred clients to him for life insurance, annuities and other such financial products. Tiffin explained that Ms. Ramoutar met with people for credit restoration and did triage because after interviewing people she would send them to professionals.

[152] Tiffin recalled that Ms. Ramoutar told him about the Rezwealth investment program in September 2008. Tiffin stated that he began to refer his clients to Rezwealth after the September 2008 crash. Tiffin explained that the program offered his clients a fixed two percent per month rate of return, so he would introduce them to Rezwealth. Tiffin also stated that Rezwealth was supposed to be investing 10 percent of funds in forex with stop losses and 90 percent elsewhere, including condos, mortgages and bridge loans. It was Tiffin's recollection that all but one or two of his clients went to meet with Rezwealth, and despite him telling them the rate of return and that it was guaranteed he'd still tell clients to speak to Rezwealth. Tiffin stated that he had no involvement in filling out the forms, but did act as a liaison by picking up paperwork and delivering it to Ms. Ramoutar. In Tiffin's Compelled Testimony, Tiffin states that all he did was refer people to Rezwealth, but never signed documentation. Tiffin acknowledged that he gave people who brought him clients a finder's fee or marketing fee. Tiffin further acknowledged that he received three percent per month of what his clients put in as compensation. Tiffin also admitted to borrowing funds from Rezwealth after he brought them business.

[153] In Tiffin's Compelled Testimony, Tiffin states that he was aware Rezwealth dealt with Blackett, that Blackett did the forex trading for Rezwealth and acknowledged that he met Blackett. Tiffin recalled that Ms. Ramoutar took him to see Blackett in September or October 2008. Tiffin also referred to Mr. M. as his tax lawyer on several occasions.

### **3. Compelled Testimonies of Mr. Ramoutar, Ms. Ramoutar and Chris Ramoutar**

[154] Ho conducted compelled interviews of Ms. Ramoutar on December 23, 2009 and January 26, 2010. The Panel finds that Ms. Ramoutar's oral evidence at the Merits hearing is the best evidence except where her oral evidence was in contradiction of her compelled testimony. I have considered her oral testimony and certain excerpts of her compelled testimony as described above and do not find it necessary to repeat her compelled evidence here.

[155] Ho testified that he conducted a compelled interview of Mr. Ramoutar on January 28, 2010. Mr. Ramoutar made the following admissions in his compelled interview. Mr. Ramoutar admitted that his responsibilities at Rezwealth were to handle clients, help them fill out forms and figure out what they need, and as a director to make sure the company continued to grow and to be consulted on big decisions. Mr. Ramoutar also acknowledged that Rezwealth accepted funds from its clients or investors for three types of programs: "secured" fixed-rate interest, "floating" interest and "risky" account. Mr. Ramoutar admitted that he took over dealing with clients from Ms. Ramoutar in September 2009, but stated that he did not make any decisions about who gets money, where the money is going, who gets paid or who is referring people. Mr. Ramoutar stated that he explained features of the Rezwealth Investments to investors, including telling them that their principal and the rate of return were guaranteed in the "secured" program. It was Mr. Ramoutar's evidence that cheques for all the Rezwealth Investments went to the same Rezwealth account and that Rezwealth made monthly payments to investors and clients from whom they borrowed money.

[156] Mr. Ramoutar admitted that he helped to develop Rezwealth's promotional brochures for prospective investors and the forms of documents for the Rezwealth Investment. He also admitted that he helped investors fill out and complete documents for the Rezwealth Investments and he signed documents on behalf of Rezwealth.

[157] Mr. Ramoutar also admitted to referring five investors to Rezwealth. Mr. Ramoutar stated that Rezwealth used the money it took from investors to loan out to other clients and that some of the money was forwarded to Blackett for forex trading. Mr. Ramoutar explained that the arrangement between Rezwealth and Blackett was for Rezwealth to provide Blackett with money for trading in forex among other things and for Blackett to provide a 10 percent monthly return.

[158] Mr. Ramoutar admitted that Blackett stopped making payments to Rezwealth in March 2009. It was Mr. Ramoutar's evidence that in August 2009, Rezwealth asked clients who had already invested with Rezwealth to come into the office and fill out new forms and admitted that he himself met with a number of people for that purpose. Furthermore, Mr. Ramoutar admitted that clients were told that the new forms were replacing the old and for record keeping it was easier if they were backdated.

[159] On November 7, 2012, Staff, through Ho, tendered into evidence the compelled testimony of Chris Ramoutar, dated February 5, 2010. Staff provided the Affidavit of Rita Pascuzzi, sworn November 6, 2012, which detailed the repeated efforts of Staff to serve Chris Ramoutar with a summons to attend as a witness. The Panel notes that Ms. Ramoutar had initially indicated that she herself would be calling Chris Ramoutar as a witness, Ms. Ramoutar did not oppose the tendering of the compelled testimony and she advised the Panel that she herself would have no luck serving him with a summons to appear.

[160] The compelled examination of Chris Ramoutar, corroborated a number of details that were already in evidence. For instance, he admitted that he and Ms. Ramoutar had signing authority over the one bank account Rezwealth held with RBC. Chris Ramoutar admitted that he signed cheques on behalf of Rezwealth, dealt with deposits for Rezwealth and was responsible for issuing monthly payments to investors. Chris Ramoutar also stated that Rezwealth paid referral cheques to people who referred investors. He acknowledged that Rezwealth required existing investors to complete new forms in or around August 2009. After Chris Ramoutar deposited investors' funds into the Rezwealth Account, Chris Ramoutar admitted that they would try to get them into Blackett's hands for forex. Chris Ramoutar also admitted that Blackett provided monthly payments to Rezwealth until around January 2009 and Rezwealth used funds from Blackett to make monthly payments to investors.

[161] Chris Ramoutar stated that after Blackett stopped making payments to Rezwealth, Rezwealth used the funds that Rezwealth received from investors to make monthly payments to other investors throughout 2009.

#### **4. Documentary Evidence of the Rezwealth Investments**

##### **(a) Investment Agreements**

[162] Staff, through Ho, tendered 48 documents with Rezwealth letterhead, entitled either "Subscription Form for Participating Debenture" or "Promissory Note" and signed in all but one case on behalf of Rezwealth by its representatives, including Ms. Ramoutar and Mr. Ramoutar, as evidence of the Rezwealth Investments. In addition, seven other documents on Rezwealth letterhead with the titles "Unsecured Debenture" or "Participation Agreement" were provided as evidence of the Rezwealth Investments. One further agreement was tendered with no title or letterhead, but had a similar format to the participation agreement and was clearly for the purpose of Rezwealth's pooling of funds for forex trading. Ho testified that he obtained most of the documents from Ms. Ramoutar and the remainder from various investors and used them to identify investors who deposited funds to the Rezwealth account for the purpose of his Source and Application of Funds Analysis which he had created based on banking documents (the "**Rezwealth Funds Analysis**").

[163] According to Ho, Rezwealth documented investments by using forms entitled "Participation Agreement" until the summer of 2009 when the company hired a consultant, Mr. M., to review Rezwealth's practices and activities. In his compelled testimony of January 28, 2010, Mr. Ramoutar testified that Mr. M. designed the new forms, entitled "Subscription Form for Participating Debenture" for those investing less than \$50,000 and "Promissory Note" for those investing more than \$50,000. In Mr. Ramoutar's compelled testimony, he also admits that

in August 2009 Rezwealth was replacing old forms, so existing Rezwealth investors were asked to fill out the new forms and stated that backdating them to the original date of the investment was easier for bookkeeping. In one of the Rezwealth Investment agreements, investor H.G. dated the documents twice. The new form was dated with what is presumably the original date of investment, November 20, 2008, and a second date on which the new form was signed, September 21, 2009 (Exhibit 8, Tab 48). Ho's review of Rezwealth's banking information confirmed that H.G.'s investment was made in either November or December of 2008.

### **(b) Accredited Investor Forms**

[164] The new forms evidencing Rezwealth Investments which were titled "Promissory Note" also attached an accredited investor form. A number of these forms were signed, but not completed with an indication of how the investor qualified as an accredited investor. In one instance, "Appendix A" to the investment contract of K.D. contained the definition of accredited investor as defined in National Instrument 45-106 with boxes for the investor to check the applicable section, but the investor signed without checking a box. The same agreement contained a "Form 2" in which the investor appears to have checked a box and initialled beside it to signify that the investor was representing that she was an accredited investor. Finally, "Form 3" of K.D.'s agreement is an accredited investor certificate, which much like "Appendix A" contained various definitions of accredited investor, for the investor to circle the appropriate definition. None of the definitions of accredited investor was circled, but investor K.D. did sign the document.

[165] Rezwealth's consultant, Mr. M., responded on behalf of Rezwealth to several inquiries made by Staff in 2009. The correspondence of Mr. M. suggested that Rezwealth was using the accredited investor exemption to fund expansion of its business into the real estate market and that a report of exempt distribution would be filed no later than October 2009. Ho testified that during his compelled examination, Mr. Ramoutar approved Mr. M.'s letters to the Commission, but that the certificate obtained by Ho pursuant to section 139 of the Act indicates that no such report of exempt distribution was filed by Rezwealth.

### **(c) Promotional Materials and Website**

[166] A Rezwealth promotional pamphlet was also tendered into evidence. In his compelled testimony of January 28, 2010, Mr. Ramoutar testified that he helped design Rezwealth brochures and was responsible for their approval. The tendered Rezwealth pamphlet lists a number of products and services including credit restoration, debt restructuring, tax planning and investment planning. A section of Rezwealth's pamphlet entitled "Investments" made the following representations:

- With *Rezwealth's* secured investments, we can offer you a return of up to 20% (1.67% per mth) on your investments. Why pay off 5% on your mortgage if you can earn 20%?
- With our aggressive investments we can guarantee a minimum return of 6% per year (or 0.5% per mth) up to a return of 36% (or 3% per mth).

(Exhibit 8, Tab 58)

[167] Mr. Ramoutar stated in his compelled examination that the secured account referred to in the pamphlet corresponded to the secured account offered by Rezwealth and that the aggressive investments corresponded to the floating account. A second promotional pamphlet of Rezwealth's was also entered into evidence. The second pamphlet discussed investment planning and strategies and expressly stated "[t]he developed wealth creation tools can guarantee a minimum annual return of 6% to 36% depending on your particular risk tolerance" (Exhibit 11, Tab 37).

[168] Tendered into evidence were two image captures of Rezwealth's website. The first was taken on March 26, 2009 and shows a number of services offered by Rezwealth, including investment planning. The second is a Frequently Asked Questions ("FAQs") section, captured on December 7, 2011, which explains that "Rezwealth is partnered with several experienced specialists" and claims to find "guaranteed investments up to 20%" by investing in the foreign exchange market, mutual funds and mortgages (Exhibit 11, Tab 32). The FAQs also confirm that one of the products offered by Rezwealth is investment counselling.

#### **(d) Communications with Investors**

[169] The Panel was also provided with letters addressed to investor C.K. from April 2009 to November 2009. The subject line of each letter reads "Investment Interest Earned" and the document describes that Rezwealth was enclosing a cheque representing interest of 2% earned on the previous month on C.K.'s investment [Ex. 9, Tab 9]. Ho testified that he interviewed C.K.'s husband, K.K., who had jointly invested with her, and that K.K. confirmed that each letter was accompanied by a cheque during the months that he received payments from Rezwealth.

[170] A further letter was sent from Rezwealth to investor C.K. on November 13, 2009, which states that Rezwealth encountered challenges with the Commission and its forex trader and that the Commission had randomly selected Rezwealth for an inquiry, causing unforeseen delays. The November 13, 2009 letter, signed by Ms. Ramoutar as President, directed investors to contact Mr. Ramoutar if they had any questions and invited them to advise Rezwealth if they were being contacted by the Commission. Ho testified that the investigation commenced by way of complaints to the Commission's contact centre.

#### **(e) Investment Referrals and Interest Calculations**

[171] Ho obtained from Ms. Ramoutar an excel spreadsheet, which Ms. Ramoutar admitted Rezwealth used to calculate monthly interest payments and referral payments with respect to investments. The total amount invested as it appears at the bottom of the spreadsheet is \$2,456,600. The spreadsheet also attached a schedule which was described by Ho as a representation of rates of return for each of the "floating" and "risky" accounts per month. Ho testified that he received a similar document from an investor J.R. who had explained that those were the rates of return paid out by Rezwealth in those two accounts.

[172] Mr. Ramoutar provided Ho with a different document entitled "Referral List" which appears to list names of individuals who referred investors to Rezwealth, including Tiffin and Mr. Ramoutar across the first row and the names of investors referred below each in the columns (the "**Rezwealth Referral List**"). Ho testified that Mr. Ramoutar told him under compelled

examination that he referred five investors to Rezwealth, but the Referral List only provides the names of three investors under Mr. Ramoutar's column.

### **5. Ms. Ramoutar's Cross-examination of Ho's Investigation**

[173] Under cross-examination, Ho testified that he had spoken to investors who were referred by Tiffin. Ho's evidence was that some of those investors stated that while they were referred by Tiffin, they had a direct discussion with Ms. Ramoutar, who explained their investment. Ho provided Ms. Ramoutar with the names of four separate investors, with whom he had spoken, who stated that Ms. Ramoutar met with them, explained the monthly rate of return, explained guaranteed versus floating rates and/or that investor funds would be used for forex trading.

[174] Ms. Ramoutar, through Ho, tendered into evidence an email communication that Tiffin wrote which contains the subject line "earn 24% guaranteed and 100% guarantee on your principle[sic]" (the "**Tiffin Email**"; Ex. 25). The Tiffin Email was forwarded in a mass email and in the email Tiffin stated that he had joined forces with Rezwealth to offer the product. Ho testified that there was no evidence that Rezwealth issued similar emails to solicit investors.

[175] Ms. Ramoutar sought clarification from Ho on an exhibit appended to Tiffin's compelled testimony. Ho testified that he redacted a one page participation agreement on Rezwealth's letterhead and that the original had been provided by investors K.K. and C.K. Ms. Ramoutar suggested that the document identified by Ho was somehow illegally obtained before it came into the possession of the Commission and that it in fact belonged to investor E.B. However, Ho reasserted his evidence that the document was in fact that of investors he had identified. As decided above at paragraph 142, I find Ho's evidence to be credible.

[176] Ho testified that he was aware of a forex trading account held by Mr. Ramoutar, opened on the suggestion of Blackett, but did not see any transfer of funds from Rezwealth's account to the trading account. Ho also testified that Ms. Ramoutar and Chris Ramoutar both told him that Chris Ramoutar did the accounting on behalf of Rezwealth.

### **F. Conduct of the Tiffin Respondents**

[177] The Tiffin Respondents admitted that they solicited Ontario residents to invest in "Rezwealth Investment Contracts", characterized initially as the pooling of investor funds for forex trading and later described as the purchase of promissory notes or debentures. Tiffin also admitted that he sent at least two emails to potential investors regarding the Rezwealth Investment Contracts in which he represented that he had "joined forces with Rezwealth" to offer guaranteed returns of 24% per annum and guarantees on investors' principal. Tiffin agreed that he advertised an investment strategy on Tiffin Financial's website, which featured "Guaranteed principal" and "Guaranteed returns at 24% per annum" based upon what Tiffin had been told by Ms. Ramoutar.

[178] Tiffin specifically admitted to having met with some investors, discussed the features of the investment with some investors, assisted a few investors in completing agreements related to Rezwealth Investment Contracts and facilitated payment of some investors' funds to Rezwealth by delivering their cheques to Rezwealth. As a result of Tiffin's activities, at least eight investors

were directly referred to Rezwealth by the Tiffin Respondents (the “**Direct Investors**”), who collectively invested approximately \$1 million in the Rezwealth Investment Contracts during the Material Time. Tiffin Respondents agree that they indirectly referred 11 further investors through the Direct Investors (the “**Indirect Investors**”). The Indirect Investors collectively invested approximately \$1 million in the Rezwealth Investment Contracts. The Tiffin Respondents admitted that they received a total of approximately \$517,000 in referral fees from Rezwealth.

[179] The Tiffin Respondents acknowledged that, by engaging in such conduct, they acted contrary to subsection 25(1)(a), as in force at the time the conduct at issue commenced, subsection 25(1), as subsequently amended on September 28, 2009, and subsection 53(1) of the Act. Specifically, the Tiffin Respondents agreed that they traded or engaged in or held themselves out as engaging in the business of trading in securities without being registered to do so and without an exemption from the dealer registration requirement. Further, the Tiffin Respondents agreed that their activities in respect of the Rezwealth Investment Contracts constituted trades in securities which were distributions, for which no preliminary prospectus was filed or receipted by the Director. Tiffin also agreed that he authorized, permitted or acquiesced in Tiffin Financial’s non-compliance with Ontario securities law, contrary to section 129.2 of the Act. Finally, the Tiffin Respondents acknowledged that their conduct was contrary to the public interest and harmful to the integrity of the capital markets.

#### **G. Flow of Investor Funds**

[180] Ho summonsed and obtained banking documents from RBC, TD, BNS and BMO. Ho also interviewed investors and certain respondents who provided him with documents including: investor agreements, correspondence, emails, etc. From the banking records and other investor documents and information he obtained, Ho prepared the Rezwealth Funds Analysis, which can be separated into two main focuses. The first relates to the activity in the account of the Rezwealth Respondents and receipt of funds by the Tiffin Respondents. The second focus of the analysis relates to activity in five bank accounts held by Blackett or 215 Inc. and the disbursement of funds to Smith and 177 Inc., amongst others.

[181] Ho created spread sheets for each bank account which set out transactions in chronological order and describe corresponding details of the transaction obtained from the supporting bank documents. A column entitled “DR” reflects all payments that went out of, or were debited from, the account and a column entitled “CR” reflects the inflow of funds deposited into, or credited to, the account. Ho then took each transaction and put it into a number of categories he created to pinpoint: (a) source of funds from the CR column to show how much was received from investors and other parties; and (b) application of funds from the DR column to show who received payments and disbursements out of the account. Specific charts are discussed in more detail below.

[182] Ho also prepared a summary of investor deposits for Rezwealth’s account and another for the five Blackett accounts.

## 1. The Blackett and 215 Inc. Accounts

[183] Ho provided the panel with bank statements for the following: one TD account held by 215 Inc., one TD account held by Blackett, two BMO accounts held by Blackett and one BNS account held by Blackett (the “**Blackett Accounts**”). One of the BMO Blackett Accounts was a United States Dollar (“**USD**”) account. The bank statements for each of the Blackett Accounts were provided from January 1, 2008 to the date each account was closed, between November 18, 2008 to April 14, 2009. Ho testified that the January 1, 2008 start date for this analysis was chosen for consistency with his analysis of the Rezwealth Account.

[184] Ho obtained supporting bank documents for transactions over \$5,000, and in some specific cases transactions under \$5,000, which flowed through the Blackett Accounts during the various periods, including copies of cheques or bank drafts deposited or issued out of the account and wire transfer details. All of the Blackett Accounts’ opening documents indicate that the signatory was Blackett. These documents and the transactions detailed therein formed the basis of Ho’s source and application of funds analysis of the Blackett Accounts and his consolidation of funds for those accounts (the “**Blackett Funds Analysis**”). Ho testified that his analysis of the USD account shows values in Canadian dollars, which he calculated using the average exchange rate from the Bank of Canada website for the period of time that the account was active.

[185] Ho summonsed the identification of certain payees to whom Blackett had made numerous, and often monthly, payments through on-line transfers. Payees included Mr. Ramoutar, Smith and Blackett’s mother. Ho also provided the Panel with a letter from BMO dated March 12, 2009, which was addressed to Blackett and stated “after reviewing these accounts [...] we do not have overall a sufficient degree of comfort with the transactions through the accounts or the nature of your business operations”, required that Blackett “make alternate banking arrangements” and advised that BMO would be closing the account within 30 days (Exhibit 17, Tab 7). The letter is consistent with the account closure date.

[186] The Blackett Funds Analysis records funds that were received by Blackett and/or 215 Inc. from investors, other individuals that could not be identified as investors and transfers from other Blackett accounts, among others. The Blackett Funds Analysis also shows funds paid by Blackett and/or 215 Inc. to investors, forex trading entities, Smith and 177 Inc., Blackett’s mother, mortgage payments, credit card payments and taken out as cash withdrawals, among others.

[187] The Blackett Funds Analysis provides consolidated subtotals for the source and application of funds in the Blackett Accounts from January 1, 2008 to April 14, 2009. Ho testified that the consolidated opening balance of the five accounts on January 1, 2008 was \$22,044 (Exhibit 18, Tab 6). According to the Blackett Funds Analysis, the Blackett Accounts received \$3,018,649 from investors and paid investors \$1,383,122 during the period under review.

[188] Ho also prepared a summary of investor deposits and organized values by date of investment under the name of each investor. He identified investors based on interviews conducted with investors, documents obtained from them, information on the memo line of cheques and with the assistance of the client list provided by Smith. Ho’s analysis indicates that 56 investors deposited the \$3,018,649 referred to above (the “**Blackett Investors**”). Included in

the count of investors is Rezwealth. Ho reconciled the account records of Rezwealth against the records for the Blackett Accounts to show that total payments from Rezwealth to Blackett amount to \$575,175, although approximately \$75,000 were apparently never deposited to the Blackett Accounts, but rather a \$50,000 payment from Rezwealth was deposited by Blackett to a bank account of Horizon Trading Company Inc. and other Rezwealth cheques for approximately \$25,000 were cashed out by Blackett at the National Money Mart Company.

[189] Ho provided the Panel with a summary of payments by Blackett and/or 215 Inc. to the Blackett Investors organized by investor name and date. Ho's summary indicates that the total paid to the Blackett Investors was the \$1,383,122 referred to above, including \$62,000 deposited to the Rezwealth Account in respect of their investments with Blackett and/or 215 Inc.

[190] In terms of the funds flowing out of the Blackett Accounts, the Blackett Funds Analysis indicates that five forex trading related entities received \$542,430, Smith and 177 Inc. received \$178,533 and \$705,254 was used for the benefit of Blackett and his family as cash withdrawals, loan and mortgage payments, automobile payments, retail, phone and other similar payments (Exhibit 18, Tab 6). A further \$217,897 was used to pay a TD Visa credit card and \$102,804 was used to satisfy other credit card payments. Ho testified that he was told by Smith that 177 Inc. facilitated payments to investors at the request of Blackett. As a result, the Blackett Funds Analysis indicates that Smith personally received \$137,383 and 177 Inc. received \$41,150, which together amount to the \$178,533 referred to above.

[191] The balance of the Blackett Accounts on the end date of the review period was zero.

## **2. Smith and 177 Inc.**

[192] Ho's Blackett Funds Analysis identified that 27 investors who were referred to Blackett by Smith deposited \$758,000 into the Blackett Accounts between January 1, 2008 and April 14, 2009. He identified that 27 of the 56 Blackett Investors were referred by Smith based on the client list provided to him by Smith. Ho testified that Smith's client list contained the names of 48 investors who had invested a total of \$1.2 million with Blackett, but the Blackett Funds Analysis only covered five of Blackett's accounts and only the review period referred to above.

## **3. The Rezwealth RBC Account**

[193] Ho provided the Panel with bank statements from Rezwealth's only known account with RBC (the "**Rezwealth Account**"), from the date it was opened, March 18, 2008, to January 4, 2010. Ho explained that the Commission's freeze order over the Rezwealth Account was obtained on December 22, 2009 (the "**Freeze Order**") and after that date there was essentially no transaction, aside from bank fees. Ho also obtained supporting bank documents for various transactions that flowed through the Rezwealth Account during that period, including copies of cheques or bank drafts deposited or issued out of the account and wire transfer. The Rezwealth Account opening document indicates that the signatories were Ms. Ramoutar and her son Chris Ramoutar. As stated above, these documents, the transactions detailed therein, and other investor documents formed the basis of the Rezwealth Funds Analysis.

[194] The Rezwealth Funds Analysis records funds received by Rezwealth from investors, Blackett and 215 Inc., NFF, Ms. Ramoutar and her three children, cash deposits, Smith and 177 Inc. (characterized as loan repayments), among others. The Rezwealth Funds Analysis also shows funds paid by Rezwealth to investors, Blackett and 215 Inc., NFF, Ms. Ramoutar and her three children, the Tiffin Respondents, Smith and 177 Inc. (characterized as loans) and cash withdrawals.

[195] The Rezwealth Funds Analysis provides subtotals for the source and application of funds beginning July 1, 2009 for the six months leading up to the Freeze Order of December 22, 2009, a period during which the Rezwealth Respondents were not receiving payments from Blackett or 215 Inc. The totals and subtotals were then summarised in two separate Rezwealth Account balance sheets, one covering the period of March 18, 2008 to December 22, 2009 (Exhibit 18, Tab 1) and one which reflects values in the period of July 1, 2009 to December 22, 2009 (Exhibit 18, Tab 2). The Rezwealth Funds Analysis indicates that the Rezwealth Account received \$2,910,305 from investors, \$970,940 of which was received on or after July 1, 2009.

[196] Ho also prepared a summary of investor deposits and organized values by date of investment under the name of each investor. He identified investors with the assistance of the excel spreadsheet, which was used by Rezwealth to calculate monthly interest payments, and the Referral List provided to him. Ho's analysis indicates that 45 investors provided the \$2,910,305 that was deposited to the Rezwealth Account referred to above (the "**Rezwealth Investors**"). Ho testified that where one investment was made jointly by two persons he counted them as one investor. He also provided the panel with a summary of Rezwealth payments to investors organized by investor name and date. Ho's summary indicates that the total paid to investors was \$671,194. The Rezwealth Funds Analysis also shows that Blackett and 215 Inc. deposited a total of \$62,000 to the Rezwealth Account and that their last payment to Rezwealth was on March 9, 2009. Further, Ms. Ramoutar and her children deposited a total of \$39,000 and cash deposits totalled \$65,950.

[197] With respect to payments out of the Rezwealth Account, the Rezwealth Funds Analysis indicates that \$671,194 was paid to investors, \$296,622 of which was paid on or after July 1, 2009. It also shows that the following persons or companies received funds from the Rezwealth Account:

▪ Blackett and 215 Inc.	\$575,175	(\$ 25,150)*
▪ Ms. Ramoutar and her children	\$509,747	(\$177,692)*
▪ Rezwealth cash withdrawals	\$ 56,114	(\$ 28,371)*
▪ Tiffin and Tiffin Financial	<u>\$577,000</u>	<u>(\$330,000)*</u>
Total	\$1,718,036	(\$561,213)*

\*paid on or after July 1, 2009 (Exhibit 18, Tabs 1-2)

[198] The remaining funds were disbursed in different ways, including operational expenses, payments to life insurance companies and loans to Smith and other individuals.

[199] Ho testified that the inflow of funds from all sources other than new investors for the period from July 1, 2009 to December 22, 2009 was approximately \$150,000 and that the balance of the account at the beginning of that period was approximately \$110,000 (Ho -

Transcript of November 2, 2012 at pp. 90-91; Ex. 18, Tab 2). This would amount to approximately \$260,000 potentially available from sources other than investors, to make payments out of the Rezwealth Account. However, \$296,622 was paid to investors out of the Rezwealth Account during that time frame, as well as \$177,692 to the Ramoutars and \$28,371 in cash withdrawals. Therefore, at least some of the new funds from investors must have been used to pay back other investors, the Ramoutars or taken out in cash.

[200] The balance of the Rezwealth Account on the date of the Freeze Order was \$60,528.

#### **4. The Tiffin Respondents**

[201] In the Agreed Facts, the Tiffin Respondents admitted to having received \$517,000 in referral fees from Rezwealth. The Rezwealth Funds Analysis indicates that the Tiffin Respondents received \$577,000 from the Rezwealth Account. I accept the amount in the Agreed Facts.

#### **5. Ms. Ramoutar's Cross-Examination on Ho's Financial Analysis**

[202] In cross-examination by Ms. Ramoutar, Ho testified that the scope of his funds analysis was between January 2008 and December 2009 because he began his investigation with Rezwealth's Account, which was opened in early 2008. Therefore, Ho chose to summons evidence pertaining to the Blackett Accounts for the same time frame for the sake of consistency. Ho also testified that he did not pursue further evidence concerning funds flowing out of the Blackett Accounts to forex entities because, among other things, it was unnecessary for the purpose of supporting the Commission's allegations and Ho did not believe that the document purporting to be Blackett's forex account statement, containing \$2 million, was genuine. Furthermore, Ho testified that his Blackett Funds Analysis reveals that from January 2008 to April 2009, Blackett received approximately \$3 million from investors, but only directed approximately \$542,000 to four forex trading entities. Nevertheless, Ho acknowledged that he had received documents, which supported the fact that Blackett had taken investments from clients before January 2008.

[203] Ho also testified that he did not conduct a funds analysis for Smith or 177 Inc. for a number of reasons, including that Smith is alleged to have conducted unregistered trading and to have received referral fees from Blackett. However, Smith did not accept investor funds for Blackett, no fraud was alleged against Smith or 177 Inc., Smith admitted to receiving referral fees and the Blackett Funds Analysis substantiated the amount admitted by Smith. Further, Ho testified that there was no evidence that Smith deposited investor funds into his own account. Therefore, investors referred by Smith would provide cheques written out directly to Blackett or 215 Inc., which is why the names of those investors appear in the summary of deposits within the Blackett Funds Analysis.

[204] Ho admitted that while Smith was an investor with Blackett, Ho did not include Smith in the summary of payments to Blackett Investors, but did highlight payments to Smith and 177 Inc. in the Blackett Funds Analysis summary of application of funds. Ho stated this was because Smith was also a respondent and he could be distinguished from other investors since Smith also received referral fees.

[205] Ho explained certain aspects of the Blackett Funds Analysis in detail, including the categories of funds labelled “other individuals” and “unknown”. Ho testified that the source of funds labelled “other individuals” in the amount of \$854,919 in the Blackett Funds Analysis are deposits coming from individuals that Ho was not able to confirm as investors and for which he was unable to verify the purpose of the transaction. Ho further testified that the source of funds labelled “unknown” in the amount of \$69,000 in the Blackett Funds Analysis are transactions for which the bank was not able to provide documents or Ho had not asked for further documentation on the transaction.

[206] With respect to mortgage payments made by Blackett, Ho provided documentation which supported his finding that funds out of the Blackett BNS account were used for a \$230,000 Scarborough property acquired by Blackett in August 2008.

[207] Ho testified about several investors who received payments from the Blackett Accounts before the dates of their recorded deposits into the Blackett Accounts. However, it was noted that the deposits recorded do not represent the total amount invested by each investor, but merely the deposit entries made during the time for which the analysis was conducted.

[208] Ms. Ramoutar asked Ho to identify the payments made to the Rezwealth Account prior to October 1, 2008, which is purportedly the first date that one of Tiffin’s referred clients, investor M.A. invested with Rezwealth. Ho identified seven investors who deposited a total of \$207,940 to the Rezwealth Account before October 1, 2008. Ho also noted that M.A.’s investment was \$200,000. Ho testified that the Rezwealth Referral List was consistent with Ho’s understanding of the investors that Tiffin had referred to Rezwealth based on what Tiffin had told him and what was in the Agreed Facts. Further, Ho acknowledged that approximately \$2 million of the \$2.9 million invested with Rezwealth relates to clients of Tiffin. In view of the indication that approximately \$208,000 was raised by Rezwealth before October 1, 2008, one may deduce that the remaining \$692,000 was raised by Rezwealth after that date, other than through Tiffin’s referrals. Ho testified that he had spoken to investors who were referred to Rezwealth by Tiffin, but who stated they had a direct discussion with Ms. Ramoutar, who explained the Rezwealth Investment to them.

## **V. MERITS ANALYSIS**

**A. Did the Respondents trade in securities or engage in or hold themselves out as engaging in the business of trading in securities without registration in breach of subsection 25(1)(a), for conduct predating September 28, 2009, and subsection 25(1) of the Act, for conduct on and after September 28, 2009, and contrary to the public interest?**

### **1. The Law**

[209] During the Material Time prior to September 28, 2009, subsection 25(1)(a) of the Act set out the registration requirement as follows:

**25. (1) Registration for trading** – No person or company shall,

(a) trade in a security or act as an underwriter unless the person or company is registered as a dealer, or is registered as a salesperson or as a partner or as an officer of a registered dealer and is acting on behalf of the dealer;

[...]

and the registration has been made in accordance with Ontario securities law and the person or company has received written notice of the registration from the Director and, where the registration is subject to terms and conditions, the person or company complies with such terms and conditions.

[210] During the Material Time, on and after September 28, 2009, subsection 25(1) of the Act provides:

**25. Registration—(1) Dealers**—Unless a person or company is exempt under Ontario securities law from the requirement to comply with this subsection, the person or company shall not engage in or hold himself, herself or itself out as engaging in the business of trading in securities unless the person or company,

- (a) is registered in accordance with Ontario securities law as a dealer; or
- (b) is a representative registered in accordance with Ontario securities law as a dealing representative of a registered dealer and is acting on behalf of the registered dealer.

[211] The language of subsection 25(1) of the Act has become broader as a result of the 2009 amendments and includes “engaging in the business of trading”. The phrase “engaging in the business of trading” indicates that the Commission must find that the activity of trading in securities is carried out for a business purpose in determining whether a person or company needs to be registered pursuant to subsection 25(1) of the Act, as amended. Section 1.3 of Companion Policy 31-103CP enumerates a non-exhaustive list of factors that are considered relevant in determining whether an individual or firm is trading or advising in securities for a business purpose and subject to the dealer or advisor registration requirement, including:

- (a) Engaging in activities similar to a registrant;
- (b) Intermediating trades or acting as a market maker;
- (c) Directly or indirectly carrying on the activity with repetition, regularity or continuity;
- (d) Being, or expecting to be, remunerated or compensated; and
- (e) Directly or indirectly soliciting.

[212] Both subsection 25(1)(a) and its successor provision, subsection 25(1), of the Act refer to a trade or trading in a security. The terms “trade” or “trading” are defined in subsection 1(1) of the Act as:

“**trade**” or “**trading**” includes,

- (a) any sale or disposition of a security for valuable consideration, whether the terms of payment be on margin, instalment or otherwise, but does not include a purchase of a security or, except as provided in clause (d), a transfer, pledge or

encumbrance of securities for the purpose of giving collateral for a debt made in good faith,

[...]

(e) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the foregoing;

[213] The inclusion of the word “indirectly” in the definition of “acts in furtherance”, cited above in subsection 1(1)(e) of the Act, reflects an express legislative intention to capture conduct which seeks to avoid the registration requirement by doing indirectly that which is prohibited directly. The Commission has established that trading is a broad concept which includes any sale or disposition of a security for valuable consideration, including any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of such a sale or disposition.

[214] The Commission has found that a variety of activities constitute acts in furtherance of trades. For example, the Commission has found that accepting and depositing investor cheques in a bank account for the purchase of shares constitute acts in furtherance of trades (*Re Limelight Entertainment Inc.* (2008), 31 O.S.C.B. 1727 (“*Limelight*”) at para. 133). Other examples of activities that have been considered acts in furtherance of trades by the Commission include, but are not limited to:

- a. providing potential investors with subscription agreements to execute;
- b. distributing promotional materials concerning potential investments;
- c. issuing and signing share certificates;
- d. preparing and disseminating materials describing investment programs;
- e. preparing and disseminating forms of agreements for signature by investors;
- f. conducting information sessions with groups of investors; and
- g. meeting with individual investors.

(*Re Momentas Corporation* (2006), 29 O.S.C.B. 7408 (“*Momentas*”) at para. 80)

[215] Solicitation or direct contact with investors is not required for an act to constitute an act in furtherance of trade (*Re Lett* (2004), 27 O.S.C.B. 3215 at paras. 51 and 64).

[216] The definition of “security” is also found at subsection 1(1) of the Act:

**"security"** includes,

[...]

(d) any document constituting evidence of an option, subscription or other interest in or to a security,

(e) a bond, debenture, note or other evidence of indebtedness [...]

(n) any investment contract, [...]

[217] In *Pacific Coast Coin*, the Supreme Court of Canada established what constitutes an investment contract:

- (a) an investment of money;
- (b) with an intention or expectation of profit;
- (c) in a common enterprise, in which the fortunes of the investor are interwoven with and dependent upon the efforts and success of those who solicit the investment or of third parties; and
- (d) where the efforts made by those other than the investor are undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise.

(*Pacific Coin Exchange of Canada Ltd. v. Ontario (Securities Commission)*, [1978] 2 S.C.R. 112 at pp. 128-129)

[218] The Commission has found that a participation agreement for the purpose of collectively pooling funds into managed forex trading accounts constituted an investment contract (*Re Lewis* (2011), 34 O.S.C.B. 11127 (“*Lewis*”) at para. 240). Further, agreements characterized as “debentures” have been found to constitute investment contracts and the panel in that matter decided that the use of funds for forex trading did not preclude the application of the Act (*Re MP Global Financial Ltd.* (2011), 34 O.S.C.B. 8897 at para. 70).

[219] In this case, there is some indication that certain of the Respondents may seek to rely on the “accredited investor” exemption at subsection 2.3(1) of NI 45-106 from registration requirements found in section 25 of the Act. The definition of “accredited investor” is found at section 1.1 of NI 45-106 and includes:

“accredited investor” means

[...]

(j) an individual who, either alone or with a spouse, beneficially owns, directly or indirectly, 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,

(l) an individual who, either alone or with a spouse, has net assets of at least \$5 000 000, [...]

[220] Once Staff has proven that the Respondents traded without registration, the onus shifts to the respondents to prove an exemption from registration requirements is available in the circumstances (*Limelight, supra* at para. 142, citing *Re Euston Capital Corp.* 2007 ABASC 75,

*Re Lydia Diamond Exploration of Canada Ltd.* (2003), 26 O.S.C.B. 2511, and *Re Ochnik* (2006), 29 O.S.C.B. 3929).

## **2. Analysis**

[221] I find that Blackett, 215 Inc., Smith, 177 Inc., the Rezwealth Respondents and the Tiffin Respondents traded in securities and/or engaged in acts in furtherance of trading securities without being registered to do so under the Act and without an exemption from registration being available to them, contrary to subsection 25(1)(a) of the Act, for conduct predating September 28, 2009, and contrary to subsection 25(1) of the Act, for conduct on and after September 28, 2009, and contrary to the public interest, for the reasons that follow.

### **(a) Blackett and 215 Inc.**

[222] I find that the Blackett Investments, as described at paragraph 36 above, are investment contracts and constitute securities as defined under subsection 1(1)(n) of the Act. The fact that the Blackett Investment documents, entitled “Loan Agreement”, characterized Blackett and/or 215 Inc. as the “borrower(s)” and investors as “lenders” does not detract from the true nature of the agreement as an investment arrangement. Investors understood that they were signing agreements to provide Blackett and 215 Inc. with money for Blackett to engage in forex trading and, as a result, investors would be entitled to receive a monthly or yearly rate of return on their investment. Therefore, the Blackett Investors made an investment with the expectation of profit, in which the returns were dependent upon the efforts and success of Blackett and 215 Inc., who solicited the investment, directly and indirectly through other respondents. The Blackett Investors did not contribute to profit generation, while Blackett’s conduct was undeniably essential to the failure or success of the investment scheme.

[223] I received consistent and credible evidence of the Blackett Investments from investors, supported by documentary evidence, including 75 agreements signed by Blackett, on behalf of himself and/or 215 Inc. I find that during the Material Time, Blackett and 215 Inc. engaged in trades or acts in furtherance of trades, including:

- Blackett met with investors, including M.L.T. and D.D., to discuss the Blackett Investment;
- Blackett prepared the Blackett Investment documentation and provided it to investors for execution;
- Blackett and 215 Inc. obtained \$3,018,649 from at least 56 Blackett Investors for the purpose of investing in the Blackett Investments; and
- Blackett and 215 Inc. had authority over the Blackett Accounts into which investor funds were deposited and from which Blackett directed the use of funds, including monthly payments to the Blackett Investors.

[224] It is clear from the evidence that Blackett actively solicited investors and sent documents and materials to Blackett Investors in furtherance of trades.

[225] Neither Blackett nor 215 Inc. was registered with the Commission during the Material Time. There is no evidence that any exemption from the registration requirement was available to them.

**(b) Smith and 177 Inc.**

[226] Having found that the Blackett Investments are investment contracts which constitute securities, as defined under subsection 1(1)(n) of the Act, trades in or acts in furtherance of trades of the Blackett Investments without registration would be conduct in breach of the Act.

[227] Despite having personally invested with Blackett, the evidence supports, and Smith admitted in his compelled testimony of August 12, 2010, that he and 177 Inc. committed acts in furtherance of trades. Specifically, I find that during the Material Time, Smith and 177 Inc. engaged in acts in furtherance of trades, including:

- Smith referred at least 48 investors, including P.P., to Blackett and those investors collectively invested approximately \$1.2 million in the Blackett Investments;
- Smith met with potential investors and explained to some, including P.P., the features of the Blackett Investments;
- Smith facilitated the execution of Blackett Investment documentation by some investors and the delivery of investors' cheques to Blackett;
- 177 Inc. facilitated monthly payments to investors from the end of 2008 until June 2009 through its bank account, under the direction of Smith;
- Smith received a ten percent referral fee, which amounts to a commission, on each investment he referred to Blackett; and
- 177 Inc. received \$41,150.00 as a service fee for facilitating monthly payments to investors.

[228] Smith submitted that referring clients is not a trade. In the circumstances, I find that the "referrals" of investors, for which Smith received compensation, were acts in furtherance of trades. The Blackett Investments constitute securities and Smith admitted that he received a fee of ten percent of each investment. Therefore, these acts in furtherance of trades fall within the definition of "trade" in subsection 1(1) of the Act.

[229] Neither Smith nor 177 Inc. was registered with the Commission during the Material Time. There is no evidence that any exemption from the registration requirement was available to them.

**(c) The Rezwealth Respondents**

[230] I find that the Rezwealth Investments, as described at paragraph 79 above, are investment contracts and constitute securities as defined under subsection 1(1)(n) of the Act. The fact that the Rezwealth Investment documents were entitled "Participation Agreement", "Subscription

Form for Participating Debenture”, “Promissory Note” and “Unsecured Debenture”, does not diminish that all the agreements were used for the same purpose – investment. Investors understood that they were signing agreements to provide the Rezwealth Respondents with money for Rezwealth to invest in various projects, including forex trading by Blackett. In return, Rezwealth offered various rates of return on the Rezwealth Investment, as determined by Ms. Ramoutar, on behalf of Rezwealth. Therefore, the Rezwealth Investors made an investment with the expectation of profit, in which the returns were dependent upon the efforts and success of Rezwealth and its representatives or associates. Rezwealth’s representatives solicited the investment, directly and indirectly through the Tiffin Respondents. The Rezwealth Investors did not contribute to profit generation, while Rezwealth and Ms. Ramoutar’s conduct was undeniably essential to the failure or success of the investment scheme.

[231] As noted above, there are a number of activities which constitute acts in furtherance of a trade. Providing subscription agreements for investors to execute, distributing promotional materials, and meeting with individual investors for the purpose of soliciting or enabling investment can constitute “trading” within the meaning of the Act.

[232] The evidence supports a finding that the Rezwealth Respondents traded and/or committed acts in furtherance of trades of the Rezwealth Investments, including 56 agreements between Rezwealth and investors. Ms. Ramoutar made a number of admissions under cross examination, and Mr. Ramoutar made certain admissions in his compelled examination of January 28, 2010 which corroborate and confirm their conduct with respect to the Rezwealth Investments. Specifically, I find that during the Material Time the Rezwealth Respondents engaged in the following trades and/or acts in furtherance of trades, including:

- Ms. Ramoutar, Mr. Ramoutar, and other representatives of Rezwealth, met with investors, including J.R., C.G. and S.L. to discuss the Rezwealth Investment and provided investors with documentation to execute for that purpose;
- Mr. Ramoutar helped design and was responsible for the approval of the Rezwealth brochure, which guaranteed returns on the Rezwealth Investments and was disseminated to potential investors;
- Rezwealth obtained \$2,910,305 from at least 45 Rezwealth Investors for the purpose of investing in the Rezwealth Investments;
- Ms. Ramoutar and Mr. Ramoutar accepted investor funds for the purpose of investing in the Rezwealth Investments, including from J.R. and S.L.;
- Investor funds were deposited into the Rezwealth Account, to which Ms. Ramoutar and Chris Ramoutar were the only signatories;
- Rezwealth pooled investor funds in the Rezwealth Account and provided \$575,175 to Blackett and 215 Inc. for forex trading;
- Rezwealth received a five percent, and later ten percent, referral fee on each investment it referred to Blackett; and

- Ms. Ramoutar directed the use of investor funds from the Rezwealth Account, including making monthly payments to investors in the Rezwealth Investments;

[233] As stated above, the referral of clients in these circumstances and based on the evidence is an act in furtherance of trade.

[234] None of Rezwealth, Ms. Ramoutar or Mr. Ramoutar was registered with the Commission during the Material Time.

[235] In August 2009, Rezwealth Investors were asked to fill in new documentation to replace previous agreements entered into for the purpose of making Rezwealth Investments. The new documents appended “accredited investor” forms. No reliable evidence was provided at the Merits Hearing that would support a finding that any of the Rezwealth Investors qualified as accredited investors at the time they invested. Further, the Rezwealth Respondents made no submissions on the application or availability of the accredited investor exemption in the circumstances. In the absence of sufficient evidence on the issue and noting that the onus is on the Respondents who traded without registration to prove the availability of an exemption from registration requirements in the circumstances, I do not find that the Rezwealth Respondents had the accredited investor exemption available to them. There is no evidence that any other exemption from the registration requirement was available to them.

[236] Ms. Ramoutar testified at the Merits Hearing that Mr. M. was representing Rezwealth as its lawyer and that she relied on his advice. Ms. Ramoutar also acknowledged that Mr. M. was not a lawyer and she took no steps to ascertain whether or not he was properly qualified. It appears from Mr. Ramoutar’s submissions that he too was advancing a defence of reliance on legal advice. I agree with Staff’s submissions that legal advice is only relevant in cases where a due diligence defence is available (*Re YBM Magnex Inc.* (2003), 26 O.S.C.B. 5285 at paras. 246 and 254; *Re CTC Crown Technologies Corp.* (1998), 8 A.S.C.S. 1940 at pp. 7-9). A due diligence defence is not available to respondents who have traded in securities without registration or distributed securities without a prospectus. I concur with the Commission’s decision in *Sabourin* that there is no need for me to determine a respondent’s motive, knowledge, intention or belief in order to determine whether that respondent traded in breach of the Act or contravened section 53 of the Act (*Re Sabourin* (2009), 32 O.S.C.B. 2707 at paras. 68-69).

#### **(d) The Tiffin Respondents**

[237] Having found that the Rezwealth Investments are investment contracts which constitute securities, as defined under subsection 1(1)(n) of the Act, trades in or acts in furtherance of trades of the Rezwealth Investments without registration would be conduct in breach of the Act.

[238] I accept the admissions made by the Tiffin Respondents in the Agreed Facts and find that the following conduct constitutes acts in furtherance of trades of the Rezwealth Investments:

- Tiffin Respondents solicited Ontario residents to invest in the Rezwealth Investments;
- Tiffin Respondents promoted the Rezwealth Investments via email and on Tiffin Financial’s website;

- Tiffin, as a representative of Tiffin Financial, met with investors, to discuss features of the Rezwealth Investment, assisted some investors with the execution of documentation for that purpose and facilitated payments of some of the investors' funds to Rezwealth;
- Tiffin Respondents directly referred eight investors and indirectly referred 11 further investors to Rezwealth, who collectively invested approximately \$2 million; and
- Tiffin Respondents received a total of approximately \$517,000 in referral fees.

[239] Neither of the Tiffin Respondents was registered with the Commission during the Material Time and no exemption was available to them.

### **3. Findings**

[240] I conclude that the Blackett Investments and the Rezwealth Investments are securities. I find that the Respondents traded in those securities and/or engaged in acts in furtherance of trading those securities without being registered to do so under the Act and without an exemption from registration being available to them, contrary to subsection 25(1)(a) of the Act, for conduct predating September 28, 2009, and subsection 25(1) of the Act, for conduct on and after September 28, 2009. I find the Respondents' conduct in this respect to be contrary to the public interest.

## **B. Did the Respondents distribute securities without a prospectus, contrary to subsection 53(1) of the Act and contrary to the public interest?**

### **1. The Law**

[241] Subsection 53(1) sets out the prospectus requirement under the Act:

**53. (1) Prospectus required** – No person or company shall trade in a security on his, her or its own account or on behalf of any other person or company if the trade would be a distribution of the security, unless a preliminary prospectus and a prospectus have been filed and receipts have been issued for them by the Director.

[242] The prospectus is the primary disclosure document of an issuer for the benefit and protection of investors. In accordance with section 56 of the Act, a prospectus must provide “full, true and plain disclosure of all material facts relating to the securities issued or proposed to be distributed”.

[243] The Commission has acknowledged that the prospectus requirement is fundamental to the protection of the investing public because it ensures investors have full, true and plain disclosure to properly assess investment risk and make an informed decision. The panel in *Limelight* articulated:

The requirement to comply with section 53 of the Act is important because a prospectus ensures that prospective investors have full, true and plain disclosure of information to properly assess the risks of an investment and make an informed

investment decision. The prospectus requirements of the Act play a significant role in the overall scheme of investor protection. As stated by the court in *Jones v. F.H. Deacon Hodgson Inc.* (1986), 9 O.S.C.B. 5579 (H.C.) (at p. 5590), “there can be no question but that the filing of a prospectus and its acceptance by the Commission is fundamental to the protection of the investing public who are contemplating purchase of the shares.”

(*Limelight, supra* at para. 80)

[244] A “distribution” is defined in subsection 1(1) of the Act and includes “a trade in securities of an issuer that have not been previously issued.”

[245] Exemptions from the prospectus requirement are provided in NI 45-106 and include, among others, exemptions for a trade in a security if the purchaser is an accredited investor. There is some indication that the Rezwealth Respondents may seek to rely upon the “accredited investor” exemption from prospectus requirements that existed during the Material Time, as provided in subsection 2.3(2) of NI 45-106. The definition of “accredited investor” is found at section 1.1 of NI 45-106 and is substantially the same as the language articulated at paragraph 219 above.

[246] Again, once Staff has proven that the Respondents distributed shares without qualifying the shares under a prospectus, the onus shifts to the Respondents to prove an exemption from prospectus requirements is available in the circumstances (*Limelight, supra* at para. 142, citing *Re Euston Capital Corp.* 2007 ABASC 75, *Re Lydia Diamond Exploration of Canada Ltd.* (2003), 26 O.S.C.B. 2511, and *Re Ochnik* (2006), 29 O.S.C.B. 3929).

## 2. Analysis

[247] As decided above, the Respondents traded in the Blackett Investments and the Rezwealth Investments. For the trades to constitute distributions of those securities they must not have been previously issued. There is no evidence that the Blackett Investments or the Rezwealth Investments had been previously issued. In fact, the Blackett Investments and Rezwealth Investments were frequently created on an *ad hoc* basis upon confirmation by the investor that he or she wanted to invest with 215 Inc. or Rezwealth. I heard from various investors that the agreements were created and executed by certain of the Individual Respondents on behalf of 215 Inc. and Rezwealth on the day that the investors decided to provide funds for their investment. Therefore, the Blackett Investments and the Rezwealth Investments were previously unissued securities and trades and/or acts in furtherance of trades in those securities constitute a distribution within the meaning of the Act.

[248] Documentary evidence confirms that during the Material Time neither 215 Inc. nor Rezwealth was a reporting issuer. Further, no preliminary prospectus or prospectus in respect of Blackett Investments or the Rezwealth Investments was filed with the Commission during the Material Time, and no receipts in respect of a preliminary prospectus or prospectus for those securities were issued by the Director.

[249] As articulated at paragraph 236 above, I do not accept that a due diligence defence is available to the Rezwealth Respondents for allegations that they distributed securities without a prospectus, contrary to subsection 53(1) of the Act.

[250] As discussed above, while there was some evidence that the Rezwealth Respondents purported to rely on the accredited investor exemption, no such exemption was available to them. For the same reasons set forth in paragraph 235, the accredited investor exemption from the prospectus requirement of subsection 53(1) of the Act is not available to the Rezwealth Respondents. There is no evidence that any other exemption from the prospectus requirement was available to the Respondents in respect of the distribution of the previously unissued Blackett Investments and Rezwealth Investments.

### **3. Findings**

[251] I conclude that the Respondents engaged in trades or acts in furtherance of trades. At the time of these trades, the Blackett Investments and the Rezwealth Investments, which were then traded, had not previously been issued, and I therefore conclude that the trades constitute a distribution. Since no prospectus was filed for these securities, I find that the Respondents have contravened subsection 53(1) of the Act, as there was no exemption available to the Respondents. I further find that such contraventions were contrary to the public interest.

**C. Did 215 Inc., Blackett, Rezwealth, Ms. Ramoutar and Mr. Ramoutar engage or participate in acts, practices or courses of conduct relating to securities that they knew or reasonably ought to have known perpetrated a fraud on persons or companies contrary to subsection 126.1(b) of the Act and contrary to the public interest?**

#### **1. The Law**

[252] Subsection 126.1(b) of the Act sets out the fraud provision as follows:

**126.1 Fraud and market manipulation** – A person or company shall not, directly or indirectly, engage or participate in any act, practice or course of conduct relating to securities or derivatives of securities that the person or company knows or reasonably ought to know,

...

(b) perpetrates a fraud on any person or company.

[253] It is well established, by previous Commission decisions, that the elements of fraud under subsection 126.1(b) of the Act are:

...the *actus reus* of the offence of fraud will be established by proof of:

1. the prohibited act, be it an act of deceit, a falsehood or some other fraudulent means; and
2. deprivation caused by the prohibited act, which may consist in actual loss or the placing of the victim's pecuniary interests at risk.

Correspondingly, the *mens rea* of fraud is established by proof of:

1. subjective knowledge of the prohibited act; and
2. subjective knowledge that the prohibited act could have as a consequence the deprivation of another (which deprivation may consist in knowledge that the victim's pecuniary interests are put at risk).

(*R. v. Théroux*, [1993] 2 S.C.R. 5 (“**Théroux**”) at 21; *Re Al-Tar Energy Corp.* (2010), 33 O.S.C.B. 5535 (“**Al-Tar Energy**”) at paras. 216-221)

[254] In *Anderson v. British Columbia (Securities Commission)* (2004), 192 B.C.A.C. 119 (leave to appeal to the Supreme Court of Canada denied) (“**Anderson**”), the British Columbia Court of Appeal discussed the mental element of the fraud provision in the British Columbia *Securities Act*, R.S.B.C. 1996, c. 418, as amended (the “**BC Act**”) and stated:

...[the fraud provision of the BC Act] does not dispense with the requirement that there must be a fraud involved in the transaction, which requires a guilty state of mind...[the fraud provision of the BC Act] simply widens the prohibition against participation in transactions to include participants who know or ought to know that a fraud is being perpetrated by others, as well as those who participate in perpetrating the fraud. It does not eliminate proof of fraud, including proof of subjective knowledge of the facts constituting the dishonest act, by someone involved in the transactions.

(*Anderson, supra* at paras. 24 and 26)

As the fraud provision of the BC Act has identical operative language to section 126.1 of the [Ontario] Act, the Commission has adopted the analysis in *Anderson* in cases involving subsection 126.1(b) of the Act (*Al-Tar Energy, supra* at para. 218).

[255] The Commission has also recognized that, for a corporation, it is sufficient to show that its directing minds knew that the acts of the corporation perpetrated a fraud to prove breach of subsection 126.1(b) of the Act (*Al-Tar Energy, supra* at para. 221; *Lewis, supra* at 230; *Re Global Partners* (2010), 33 O.S.C.B. 7783 (“**Global Partners**”) at para. 245).

[256] Courts and tribunals have concluded that non-disclosure of important facts, such as concealment from an investor of material information on a risk to his or her investment is an example of a fraudulent act (*Théroux, supra* at 16; *Anderson, supra* at para. 30). In addition, unauthorized diversion of funds, use of corporate funds for personal purposes, unauthorized arrogation of funds or property are also examples of fraudulent acts (*Théroux, supra* at 16).

[257] In *Lewis*, the Commission decided that diversion of investor funds for purposes other than forex investments, transferring significant sums of investor funds to oneself without explanation and deceiving investors by telling them they were earning monthly profits constituted evidence of the *actus reus* of fraud (*Lewis, supra* at para. 231). Other Commission decisions have also found that use of investor funds for personal rather than legitimate business

purposes is fraudulent conduct (*Global Partners* at para. 312; *Re Hibbert* (2012), 35 O.S.C.B. 8583 at paras. 98 and 101).

[258] It should be noted that the second element of the actus reus of fraud is deprivation. The element of deprivation may be satisfied by actual loss to the investor, prejudice to an investor's economic interest or the risk of prejudice to the economic interest of the investor (*Théroux, supra* at 15-16; *Lewis, supra* at 226). Therefore, no actual economic loss is necessary for conduct to be found fraudulent.

[259] In respect of the mental element of fraud, the Commission is conscious that the legislature statutorily widened the scope of the prohibition against fraud by imposing liability where a respondent "reasonably ought to have known" that their conduct perpetrates a fraud. Subjective knowledge that a prohibited act could have as a consequence the deprivation of another is established when it is determined that the respondent "knowingly undertook the acts in question, aware that deprivation, or the risk of deprivation, could follow as a likely consequence" or was reckless as to the consequences (*Théroux, supra* at 20-21).

## **2. Analysis**

[260] Blackett, 215 Inc. and the Rezwealth Respondents deceived investors. I find that Blackett, 215 Inc., Rezwealth and Ms. Ramoutar participated in acts and engaged in courses of conduct relating to securities, which they knew or reasonably ought to have known perpetrated a fraud within the meaning of subsection 126.1(b) of the Act and contrary to the public interest and Mr. Ramoutar participated in acts and engaged in courses of conduct relating to securities, which he reasonably ought to have known perpetrated a fraud within the meaning of subsection 126.1(b) of the Act and contrary to the public interest

### **(a) Blackett and 215 Inc.**

[261] I find that there is cogent evidence which establishes that Blackett and or 215 Inc. participated in acts and engaged in a course of conduct which can be described as deceitful, falsehoods or other fraudulent means resulting in deprivation to investors as follows:

- Blackett represented to investors that their funds would be used for forex trading, but only a fraction of the investor funds were ever transferred to forex entities;
- Blackett represented to investors that their monthly returns would be funded by profits of his forex trading, but the evidence indicates he received \$27,540 back from forex entities, which was not sufficient to fund the \$1,383,122 paid to investors during the same period;
- Blackett and 215 Inc. used investor funds from the Blackett Accounts for payments to other investors;
- Blackett and 215 Inc. used \$705,254 from the Blackett Accounts for personal purposes including cash withdrawals, car payments, loan payments, payments to Blackett's mother and payments to retailers and a further \$320,701 for credit card payments;

- Blackett told investors, including D.D. and Ms. Ramoutar, that he was unable to make monthly payments because his accounts had been frozen, but there is no evidence that any of the Blackett Accounts was frozen during the Material Time; and
- Blackett and 215 Inc.'s conduct has resulted in actual losses to investors, including approximately \$1.6 million that has never been returned.

[262] I find that Blackett, on his own behalf and as the directing mind of 215 Inc., had subjective awareness that he and 215 Inc. were undertaking dishonest acts which could and did put investors' financial interests at risk, including:

- Blackett, as the directing mind of 215 Inc., created and was responsible for the Blackett Investments;
- Blackett controlled the Blackett Accounts, accepted investor funds into them and directed payments out of them;
- Blackett represented to investors that the investor funds would be used for forex trading, when he knew that the majority was not;
- Blackett represented to investors that monthly returns would be funded by profits of his forex trading, despite knowing that only \$27,540 was received from forex entities while \$1,383,122 was paid to investors out of the Blackett Accounts;
- Despite knowing that the vast majority of funds in the Blackett Accounts was investors funds, Blackett used at least \$1,025,955 for personal purposes; and
- Blackett knew that none of the Blackett Accounts was frozen when he made representations to the contrary.

[263] In essence, Blackett, personally and through 215 Inc., formulated a fraudulent ponzi scheme, which was cultivated through misrepresentations and involved payments to early investors out of funds received from later investors. Furthermore, Blackett's diversion of a significant amount of investors' funds for personal purposes supports a finding that Blackett and 215 Inc. were aware that their actions placed investors' interests at risk. Blackett, and consequently 215 Inc., directly participated in acts and engaged in a course of conduct relating to securities, that they knew or reasonably ought to have known perpetrated a fraud on the Blackett Investors.

### **(b) The Rezwealth Respondents**

[264] Ms. Ramoutar spent a great deal of time at the Merits Hearing testifying and making submissions on the proposition that it was Tiffin's idea to structure the investment scheme in such a way that Rezwealth would accept investor funds and direct their use to Blackett for forex trading. Further, Ms. Ramoutar submitted and called character evidence to support her argument that Tiffin had in fact taken control of Rezwealth during the Material Time. I was not persuaded on the evidence before me that Tiffin ever controlled the Rezwealth Investment scheme offered by Rezwealth and its representatives, including Ms. Ramoutar and Mr. Ramoutar. Nor do I

accept the claims by Ms. Ramoutar and Mr. Ramoutar that their actions were reliant upon legal advice of Mr. M., a person whom Ms. Ramoutar admitted was not in fact a qualified lawyer and for whom she did not seek credentials. I have no evidence before me on the nature of the advice that was purportedly relied upon, no testimony from Mr. M. and no information on whether or not the respondents made reasonable inquiries. For the reasons that follow, I find that the Rezwealth Respondents engaged in a course of conduct that was fraudulent and which resulted in deprivation to investors.

[265] I find that there is compelling evidence establishing that the Rezwealth Respondents participated in acts and engaged in a course of conduct, which can be described as deceit, falsehoods or other fraudulent means resulting in deprivation as follows:

- Ms. Ramoutar hired a consultant to review Rezwealth's agreements, which resulted in Mr. Ramoutar assisting investors to complete replacement forms for their Rezwealth Investments, as an attempt to "repaper" investment contracts that had already been made and were not in compliance with the Act;
- The Rezwealth Respondents continued to solicit and/or accept new investments from July to December 2009, after Blackett had stopped making payments (the "**2009 Period**"), including from investors J.R., C.G. and S.L., without telling investors that Rezwealth was not making payments to or receiving payments from any forex traders;
- Although investors were told their funds would be used for forex trading, loans and other investments, Rezwealth used new investor funds to pay other investors in the 2009 Period;
- Rezwealth represented to investors, including M.L., J.R. and C.G., that their monthly payments in the 2009 Period were interest earned on their investments, despite the fact that they were made using investor funds;
- During the 2009 Period, payments totalling \$206,063 were made from the Rezwealth Account to Ms. Ramoutar, Mr. Ramoutar and members of their family as well as cash withdrawals, despite that fact that Rezwealth had no significant sources of income, other than investor funds;
- Ms. Ramoutar, Mr. Ramoutar and representatives of Rezwealth told investors, including J.R. and C.G., that their principal was guaranteed when it was not; and
- The Rezwealth Respondent's conduct has resulted in actual losses of \$2,239,111 to investors.

[266] I conclude that Ms. Ramoutar, on her own behalf and as the directing mind of Rezwealth, had subjective awareness that she and Rezwealth were undertaking dishonest acts which could and did put investors' financial interests at risk, including:

- Ms. Ramoutar, as the directing mind of Rezwealth, created and was responsible for the Rezwealth Investments;

- Ms. Ramoutar admitted that she made decisions to accept or refuse investors;
- Ms. Ramoutar controlled the Rezwealth Account, accepted investor funds into it and directed payments out;
- Despite knowing that Rezwealth was not receiving payments from or making payments to forex traders during the 2009 Period, Ms. Ramoutar continued to solicit and accept new investments without informing investors of Rezwealth's true state of affairs;
- Rezwealth continued to make monthly payments to investors after Rezwealth stopped receiving payments from forex traders, and represented to investors that these payments were interest earned on their investment and Ms. Ramoutar admitted that she knew that Rezwealth used investor funds to make payments to other investors;
- Despite knowing that investor funds were the main source of funds in the Rezwealth Account during the 2009 Period, Ms. Ramoutar permitted \$206,063 from the Rezwealth Account to be used for payments to herself, Mr. Ramoutar, and members of her family, as well as cash withdrawals.

[267] I also find that Mr. Ramoutar, had subjective awareness because he reasonably ought to have known that that he was undertaking dishonest acts, which could and did put investors' financial interests at risk, including:

- Despite knowing that Rezwealth was not receiving payments from Blackett during the 2009 Period, Mr. Ramoutar continued to accept new investor funds during that time; and
- Mr. Ramoutar received at least \$51,158 in payments from the Rezwealth Account during the 2009 Period, despite knowing that Rezwealth was not receiving payments from Blackett.

[268] Ms. Ramoutar was conscious of the fact that money was not coming into Rezwealth, but nevertheless she continued to use new investor funds to pay previous investors on the false representation that they were accruing interest on their Rezwealth Investments. As a signatory to the Rezwealth Account, she knew that Rezwealth had no significant sources of income, aside from investors' funds, during the 2009 Period and yet she continued to use funds from the Rezwealth Account for her personal benefit and for the benefit of her family members. Mr. Ramoutar admitted that he knew Blackett stopped making payments in March 2009 and yet by the 2009 Period he continued to accept funds and receive income from Rezwealth. Ms. Ramoutar and Rezwealth directly participated in acts and engaged in a course of conduct relating to securities, that they knew or reasonably ought to have known perpetrated a fraud on the Rezwealth Investors. Mr. Ramoutar participated in acts and engaged in conduct relating to securities, that he reasonably ought to have known perpetrated a fraud on the Rezwealth Investors.

### 3. Findings

[269] I conclude that Blackett, 215 Inc. and Rezwealth and Ms. Ramoutar participated in acts and engaged in courses of conduct relating to securities, which they knew or reasonably ought to have known perpetrated a fraud within the meaning of subsection 126.1(b) of the Act. I also find that Mr. Ramoutar participated in acts and engaged in a course of conduct relating to securities, which he reasonably ought to have known perpetrated a fraud within the meaning of subsection 126.1(b) of the Act. Their conduct in this respect was contrary to the public interest.

**E. Did Blackett, Smith, Ms. Ramoutar, Mr. Ramoutar and/or Tiffin authorize, permit or acquiesce in non-compliance with Ontario securities law by the Corporate Respondents, such that they are deemed, pursuant to section 129.2 of the Act, to have not complied with Ontario securities law and to have acted contrary to the public interest?**

#### 1. The Law

[270] Under the Act, a director or officer or an individual who performs similar functions can be liable for breaches of securities law by a corporation. Section 129.2 of the Act states:

**129.2 Directors and officers**—For the purposes of this Act, if a company or a person other than an individual has not complied with Ontario securities law, a director or officer of the company or person who authorized, permitted or acquiesced in the non-compliance shall be deemed to also have not complied with Ontario securities law, whether or not any proceeding has been commenced against the company or person under Ontario securities law or any order has been made against the company or person under section 127.

[271] In subsection 1(1) of the Act, a “director” is defined as “a director of a company or an individual performing a similar function or occupying a similar position for any person” and an “officer” is defined as:

- (a) a chair or vice-chair of the board of directors, a chief executive officer, a chief operating officer, a chief financial officer, a president, a vice-president, a secretary, an assistant secretary, a treasurer, an assistant treasurer and a general manager,
- (b) every individual who is designated as an officer under a by-law or similar authority of the registrant or issuer, and
- (c) every individual who performs functions similar to those normally performed by an individual referred to in clause (a) or (b).

[272] The Commission determined in *Momentas* that the threshold for a finding of liability against a director or officer under section 129.2 of the Act is low. Indeed, merely acquiescing in the conduct or activity in question will satisfy the requirement of liability. The *Momentas* panel discussed the threshold and defined the terms “authorize”, “permit” and “acquiesce” as follows:

The degree of knowledge of intention found in each of the terms “authorize”, “permit” and “acquiesce” varies significantly. “Acquiesce” means to agree or consent

quietly without protest. “Permit” means to allow, consent, tolerate, give permission, particularly in writing. “Authorize” means to give official approval or permission, to give power or authority or to give justification.

(*Momentas, supra* at para. 118)

[273] Section 129.2 of the Act attaches liability to directors and officers or individuals who perform similar functions (ie. a “*de facto*” director or officer) who authorize, permit or acquiesce in the non-compliance by a company, whether or not any proceedings have been commenced against the company itself.

## **2. Analysis**

[274] Based on the evidence, I find that Blackett, Smith, Ms. Ramoutar and Tiffin authorized, permitted or acquiesced in non-compliance with Ontario securities law by 215 Inc., 177 Inc. Rezwealth and Tiffin Financial, respectively. I also conclude that Mr. Ramoutar permitted or acquiesced in non-compliance with Ontario securities law by Rezwealth.

[275] Corporate records indicate, and investor testimony confirms, that Blackett was the directing mind of 215 Inc. during the Material Time. Specifically, Blackett met with investors and signed investment agreements on behalf of 215 Inc. and had sole control over 215 Inc.’s bank account, into which investor funds were deposited. Accordingly, Blackett authorized, permitted or acquiesced in the commission of the violations of subsection 25(1)(a), for conduct predating September 28, 2009, subsection 25(1), for conduct on and after September 28, 2009, subsection 53(1) and subsection 126.1(b) of the Act by 215 Inc., and Blackett is deemed, pursuant to section 129.2 of the Act, to also have not complied with Ontario securities law and to have acted contrary to the public interest.

[276] Smith acknowledged that he was the only director of 177 Inc. that was involved with Blackett. Smith admitted that he authorized the facilitation of payments to the Blackett Investors through 177 Inc.’s bank account. Therefore, Smith authorized, permitted or acquiesced in the commission of the violations of subsection 25(1)(a), for conduct predating September 28, 2009, subsection 25(1), for conduct on and after September 28, 2009 and subsection 53(1) of the Act by 177 Inc., and Smith is deemed, pursuant to section 129.2 of the Act, to also have not complied with Ontario securities law and to have acted contrary to the public interest.

[277] Corporate records show, investor testimonies confirm and admissions made corroborate that Ms. Ramoutar was the directing mind and an officer and director of Rezwealth and Mr. Ramoutar was an officer and director of Rezwealth during the Material Time. Ms. Ramoutar met with investors and accepted their funds for investment on behalf of Rezwealth and had control over the Rezwealth Account into which investor funds were deposited. Mr. Ramoutar admitted to authorizing Rezwealth’s promotional materials and the evidence supports that he provided direction to Rezwealth’s consultant and he met with investors on behalf of Rezwealth. Accordingly, Ms. Ramoutar authorized, permitted or acquiesced in, and Mr. Ramoutar permitted or acquiesced in, the commission of the violations of subsection 25(1)(a), for conduct predating September 28, 2009, subsection 25(1), for conduct on and after September 28, 2009, subsection 53(1) and subsection 126.1(b) of the Act by Rezwealth, and Ms. Ramoutar and Mr. Ramoutar are

deemed, pursuant to section 129.2 of the Act, to also have not complied with Ontario securities law and to have acted contrary to the public interest.

[278] In light of the evidence and admissions referred to above, I find that Tiffin, being the sole director and officer of Tiffin Financial, authorized, permitted or acquiesced in the commission of the violations of subsection 25(1)(a), for conduct predating September 28, 2009, subsection 25(1), for conduct on and after September 28, 2009 and subsection 53(1) of the Act by Tiffin Financial, and Tiffin is deemed, pursuant to section 129.2 of the Act, to also have not complied with Ontario securities law and to have acted contrary to the public interest.

### **3. Findings**

[279] I conclude that Blackett authorized, permitted or acquiesced in non-compliance with Ontario securities law by 215 Inc. I also find that Smith authorized, permitted or acquiesced in non-compliance with Ontario securities law by 177 Inc. Further, Ms. Ramoutar authorized, permitted or acquiesced in non-compliance with Ontario securities law by Rezwealth and Mr. Ramoutar permitted or acquiesced in non-compliance with Ontario securities law by Rezwealth. Tiffin similarly authorized, permitted or acquiesced in non-compliance with Ontario securities law by Tiffin Financial. As a result, Blackett, Smith, Ms. Ramoutar, Mr. Ramoutar and Tiffin are deemed, pursuant to section 129.2 of the Act, to also have not complied with Ontario securities law and to have acted contrary to the public interest.

## **VI. CONCLUSION**

[280] For the reasons given above, I conclude that:

- (a) The Respondents traded in securities and/or engaged in acts in furtherance of trades in securities without having been registered under the Act to do so, contrary to subsection 25(1)(a), for conduct predating September 28, 2009 and subsection 25(1), for conduct on and after September 28, 2009, of the Act and contrary to the public interest;
- (b) The Respondents engaged in an illegal distribution of securities contrary to subsection 53(1) of the Act and contrary to the public interest;
- (c) 215 Inc., Blackett, Rezwealth and Ms. Ramoutar participated in acts and engaged in courses of conduct relating to securities that they knew or reasonably ought to have known perpetrated a fraud on persons or companies contrary to subsection 126.1(b) of the Act and contrary to the public interest;
- (d) Mr. Ramoutar participated in acts and engaged in a course of conduct relating to securities that he reasonably ought to have known perpetrated a fraud on persons or companies contrary to subsection 126.1(b) of the Act and contrary to the public interest;
- (e) Blackett, as officer and director of 215 Inc., Smith, as officer and director of 177 Inc., Ms. Ramoutar, as officer and director of Rezwealth, and Tiffin, as officer and director of Tiffin Financial, authorized, permitted or acquiesced in non-compliance with the

Act by the Corporate Respondents, respectively, and are deemed to have not complied with Ontario securities law pursuant to section 129.2 of the Act and such conduct is contrary to the public interest; and

- (f) Mr. Ramoutar, as officer and director of Rezwealth, permitted or acquiesced in non-compliance with the Act by Rezwealth and is deemed to have not complied with Ontario securities law pursuant to section 129.2 of the Act and such conduct is contrary to the public interest.

[281] For the reasons outlined above, I will also issue an order dated July 17, 2013 which sets down the date for the hearing with respect to sanctions and costs in this matter. That order will also extend the temporary cease order of the Commission with respect to the Rezwealth Respondents, the Tiffin Respondents, 215 Inc. and Blackett, dated March 16, 2011, until the conclusion of the proceeding.

Dated at Toronto this 17<sup>th</sup> day of July, 2013.

*“Edward P. Kerwin”*

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Edward P. Kerwin