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**Yan Zhu (also known as Rachel Zhu), Guan Qiang Zhang
and Bossteam E-Commerce Inc.**

Securities Act, RSBC 1996, c. 418

Hearing

Panel	Suzanne K. Wiltshire George C. Glover, Jr. Kenneth G. Hanna	Panel Chair Commissioner Commissioner
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Findings

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I. INTRODUCTION

- ¶ 1 This is the liability portion of a hearing under sections 161(1) and 162 of the *Securities Act* RSBC 1996, c.418.
- ¶ 2 On April 30, 2012 the acting executive director issued a notice of hearing and temporary order against Yan Zhu (also known as Rachel Zhu), Guan Qiang Zhang (also known as Victor Zhang) and Bossteam E-Commerce Inc.
- ¶ 3 On November 22, 2012 the executive director amended the notice of hearing. In the amended notice of hearing, the executive director alleges that the respondents contravened the following sections of the Act:
- section 61, by offering to sell and selling securities of Bossteam to the public beginning in November 2011, without first having filed a prospectus;
 - section 25, by carrying on business as an exchange in British Columbia without being recognized by the commission;
 - section 57(b), by engaging in misconduct that perpetrated a fraud on investors who purchased Bossteam securities;

- section 168.1(1)(a), by submitting or giving information to persons appointed under the Act that was false or misleading in a material respect; and
- section 57.5, by concealing or refusing to provide information concerning the sale of Bossteam securities that was reasonably required for an investigation under the Act.

¶ 4 The hearing was held between March 21 and April 18, 2013.

II. BACKGROUND

Parties

- ¶ 5 Bossteam purported to be an online advertising business. A primary part of the business was its websites with platforms, including one where advertisers could post links to their own webpages as advertising to be viewed by others.
- ¶ 6 Bossteam has never been registered in any capacity or filed a prospectus under the Act.
- ¶ 7 Zhang was the chief executive officer of Bossteam. He was a resident of British Columbia until he returned to China on April 5, 2012 pursuant to a deportation order.
- ¶ 8 Zhu became the sole director of Bossteam and acted as Bossteam’s chief financial officer when it commenced business. She was resident in British Columbia but returned to China in March 2012 for an extended period.
- ¶ 9 Zhu was registered with the Mutual Fund Dealers Association as a dealing representative for Quadrus Investment Services Ltd. between 2009 and July 2012. Quadrus is a subsidiary of a large insurance company. Zhu was also registered with the Insurance Council of British Columbia as a life insurance agent.

Establishment of Bossteam

- ¶ 10 In May 2011 Zhang began discussing his concept for a business with others. It was decided that Zhang, Zhu, and Zhu’s husband, a software engineer, would be involved in the major work to set up Bossteam’s business.
- ¶ 11 Zhang’s role was the financing, marketing and overall management of the business. Zhu, because of her background in finance and accounting, was responsible for the incorporation and financial affairs of the business and other matters. As program manager, Zhu’s husband was responsible for website development.
- ¶ 12 On August 12, 2011 the internet domain name “youadworld.com” was registered. Zhu’s husband was the contact person listed in the registration and the address was Zhu’s personal address in Burnaby, British Columbia.

- ¶ 13 Bossteam was incorporated federally on October 5, 2011 and subsequently registered as an extra provincial company in British Columbia. Its registered office address was Zhu's address in Burnaby.
- ¶ 14 Bossteam issued shares to Zhang, Zhu and approximately 13 others. These distributions were exempt from registration and prospectus requirements under the Act and were not in issue in the hearing.
- ¶ 15 On October 12, 2011 Zhu opened a bank account in Bossteam's name. In the application, she was listed as the principal of the business and had signing authority over the account.
- ¶ 16 Bossteam's Youadworld website went online on November 18, 2011.

Bossteam's Operations

- ¶ 17 As described on the Youadworld website, an advertiser could purchase an advertising package from Bossteam. Ad packages ranged in price from \$300 to \$5000. Each package came with a certain number of advertising credits, which Bossteam called ad points. The concept was that each time a person viewed an ad, one ad point would be deducted from the advertiser's account.
- ¶ 18 Anyone could become a member of Bossteam by signing up online. However, the Youadworld website encouraged members and prospective members to become "qualified" members, in order to share in Bossteam's revenue and growth. A person could become a qualified member by purchasing, or selling, an ad package valued at \$2000 or more.
- ¶ 19 A posting appearing on the Youadworld website on December 16, 2011 outlined a number of ways qualified Bossteam members could make money, including:

By viewing ads posted on Youadworld

- A member could view an ad online by clicking the ad link posted on the Youadworld website. By clicking on the link, the member would be taken to the advertiser's webpage. Bossteam claimed that this increase in traffic to the advertiser's webpage would improve the ranking the Google search engine gave to that advertiser.
- Qualified members who clicked on at least 20 ads or more, and up to 100, per day, could earn cash payouts based on a pro rata sharing of 25% of Bossteam's revenue earned that day.
- The daily maximum a qualified member could earn was 1.5% of the value of all ad packages the member sold or purchased. Prior to May 1, 2012, the aggregate maximum a member could earn was 120% of the value. Effective May 1, 2012 the aggregate maximum was reduced to 70%.
- Members also received ad points when they viewed advertisements.

By buying Bossteam shares, which would pay dividends, could split, and could be traded on Bossteam’s internal trading platform

- Bossteam publicly offered shares on the Youadworld website. A December 14, 2011 Youadworld screenshot of a page titled “Initial Private Share Offering” states that Bossteam had decided to offer 8 million shares in three time-limited offerings running consecutively from November 18, 2011 to June 18, 2012, with the price per share increasing from one offering to the next. We refer to these shares, as distinct from the exempt distribution shares, as the Shares.
- Qualified members could purchase Shares equal to the value of the ad packages they bought or sold. The offer stated that after a holding period of at least three months, quarterly dividends would be paid and after the three offerings were completed, the Shares could be traded on a Bossteam trading platform. Other Youadworld screenshots taken on the same date and two days later, including of a member’s account, also provided details of the offering.
- The respondents concede that this offer to sell Shares constitutes a “trade” as defined in the Act; however, they deny that Bossteam sold any Shares pursuant to this offer.

By selling ad packages and receiving a commission

- A qualified member could earn commissions, which Bossteam also called bonuses, on ad packages sold by the qualified member and by other members who were enrolled as members through the qualified member. This was the multi-level marketing aspect of Bossteam’s business. There were as many as eight different levels and various types of commissions and bonuses described on the Youadworld website.

By cashing in ad points or trading them on Bossteam’s trading platform

Through Bossteam’s “consumer union” and “global yellow pages”, concepts which never came to fruition.

- ¶ 20 Members paid money to Bossteam in various ways, including cash, money order, PayPal and other similar online payment methods. Members’ online accounts were credited with a US dollar equivalent increase in “Ucash”. Transactions were then completed online using Ucash, with Bossteam crediting and debiting a member’s account to reflect the equivalent US dollar increase or decrease in a member’s Ucash. Zhu characterized Ucash balances as simply being Bossteam’s accounts payable and actual payments out of Ucash to members as being withdrawals, similar to a bank account.
- ¶ 21 In addition to the Youadworld website, the YouadHK and Youadall websites became operational during the relevant period. These three websites are discussed below.

i) Youadworld

- ¶ 22 Trading pages on Bossteam’s Youadworld trading platform resemble order entry forms and include action buttons for buying or selling, the order price and quantity, the “symbols” for shares and ad points and also bid and ask size and price, last trade details and account balances.
- ¶ 23 An online Youadworld account statement for a member on December 16, 2011 shows, among other things, the account balances for Ucash, ad points and Shares. Next to the ad point and share balances are links that say “Go Trading”. The statement also shows accumulated bonus and ad viewing statistics.
- ¶ 24 Notably, the statement states “*already issued stock: 400200 left: 7599800*”.
- ¶ 25 A January 3, 2012 screenshot of a notice on the Youadworld website, which appears to have been posted between December 24, 2011 and January 1, 2012, is titled “Public announcement regarding the quota of internal shares”. It states that every qualified member can purchase shares if they “send an email application to the Financial Department”. It goes on to state, “The members who purchased shares before the end of December 2011 can receive the dividends at the first quarter of 2012.”
- ¶ 26 A notice dated January 13, 2012 entitled “The Rules of 3 Million Consumer Credits Purchase and Trading” was posted on the Youadworld website and continued to appear in a Youadworld screenshot taken on January 19, 2012. It states that members who purchase an ad package of USD\$2000 or more can purchase “consumer credits” equal to the amount of purchased ad space and that consumer credit holders will receive dividends. The “rules of trading” state that there is a 2 month vesting period, daily price volatility “is within 20% up or down” and “sellers need to pay 5% of trading fees”. The January 19, 2012 screenshot states that 1,400,000 credits had been sold and that 1,600,000 are still available.
- ¶ 27 A Bossteam business plan that Bossteam’s lawyer provided to commission staff on January 27, 2012 included the following:

Consumers Credits

In the early stage of company, members can purchase consumers credits equal to the amount of sold ad spaces. Consumers credits will bring members benefit with it's [sic] long term appreciation. After some time, the consumers [sic] credits will be tradable internally. As the company's revenue generated more, the value of the consumers [sic] credits will go up which will bring members benefit.

ii) YouadHK

- ¶ 28 On January 8, 2012 the domain name “youadhk.com” was registered. Bossteam was listed as the registrant or owner with Zhu being listed as the contact person for the registrant and also as the billing contact. Bossteam’s address, which was also Zhu’s personal address, was provided as well as Zhu’s Bossteam email address. Zhu’s husband was listed as the administrative and technical contact, just as he continued to be for Youadworld.
- ¶ 29 The documentary evidence establishes that the Youadworld and YouadHK websites were similar. Both offered ad packages and opportunities for members to make money through ad viewing, commissions and bonuses and trading. Both had similar trading platforms. Members were able to use the same member identification numbers for both websites.
- ¶ 30 The respondents argue that the evidence points to the YouadHK website being the creation of Zhu’s husband because it was registered after he left Bossteam. We do not agree given the registration details for the domain name “youadhk.com” which show Bossteam as the registrant or owner and Zhu as the contact for Bossteam and for billing purposes.
- ¶ 31 The respondents also point to the testimony of the manager of customer service for the Youadworld website as indicating that the YouadHK website was the creation of Zhu’s husband. We give that evidence no weight as it was by the witness’s own admission not something that he knew for a fact but just speculation based on hearsay and rumours.
- ¶ 32 The respondents submit that Zhu’s husband could have uploaded Bossteam content to the YouadHK website because he had administrative access to Bossteam’s Youadworld website and the technical ability to create a competing website as well as the emotional motivation to do so given marital troubles between Zhu and her husband at the time. However, the respondents offered no evidence to support that Zhu’s husband had actually done so. We also found no credible reason why Zhu’s husband would create the YouadHK website when the YouadHK website provided a trading platform for Bossteam members.
- ¶ 33 Based on the registration details as to the ownership of the YouadHK domain name and the similarities between that website and Youadworld, we find that YouadHK is a Bossteam website.
- ¶ 34 A January 12, 2012 notice on the YouadHK website stated that members who purchased an ad package of \$2000 or more could purchase “YouAd Credits” equal to the amount of purchased ad space. It stated that the offering would close when 3 million YouAd Credits had been sold. Dividends would be paid. YouAd Credits with a vesting period of 2 months or more would be tradable on the online trading platform at a “free market price

with company's [sic] price index" and sellers would pay 5% commission. It further stated that when the price reached a certain amount, the YouAd Credits would be split at a ratio determined by the board of directors. The notice concluded with the statement "Bossteam E-Commerce Inc. reserves the right of making and explanation of the terms which are not covered in this regulation", followed by "youadworld.com" and the date.

- ¶ 35 This January 12, 2012 notice on the YouadHK website is very similar to the January 13, 2012 notice on the Youadworld website entitled "The Rules of 3 Million Consumer Credits Purchase and Trading" referred to above.
- ¶ 36 We note in a later February 6, 2012 screenshot that the YouadHK website trading platform referred to YouAd credits as consumer credits. We refer to both consumer credits and YouAd credits as consumer credits.
- ¶ 37 A February 6, 2012 YouadHK screenshot of a member account states that 3,005,400 credits had already been issued and none were left.

iii) Youadall

- ¶ 38 On February 29, 2012 the domain name "youadall.com" was registered. The registrant, billing, administrative and technical contact information is all for the same address in Beijing. The registrant is one of the exempt distribution shareholders of Bossteam and is described as a close personal friend of Zhang for more than seven years in the list of exempt distribution investors provided by Bossteam's lawyer.
- ¶ 39 Zhang testified that the Youadall website was set up by the members of Bossteam's Distributors Advisory Committee which, according to a January 5, 2012 Youadworld notice, had been created to refer ideas and solutions to the board of directors for decision making.
- ¶ 40 Zhang said the members of this committee asked him to make a trading platform available to trade consumer credits and he decided to let them create and operate such a website because it would be a test run of how a trading platform might work and would assist Bossteam in planning its own trading platform in the future. He then instructed Bossteam's operations department to facilitate the interface of the website with Bossteam's database.
- ¶ 41 The Youadall website had trading sections similar to the Youadworld and YouadHK websites. An order page on the Youadall website listed the member's Ucash, ad point and consumer credit balances; listed bid and ask sizes and quotes; last trade details, including price, volume and time; and had an order entry section for buying or selling, showing the "symbol", price and quantity.

- ¶ 42 A report page listed the deal and order id; the “symbol”; whether the order was to buy or sell; the filled price, quantity and time; and the trading fee.
- ¶ 43 Several witnesses testified that they went to the Youadall website to trade consumer credits, and that they could log into the website using their Youadworld login identification merely by changing one digit at the end.
- ¶ 44 Some witnesses testified that in order to purchase consumer credits they paid money to Bossteam employees to cover the purchase of the required ad package plus the consumer credits they wanted to purchase. When they did so the Bossteam employees went online to complete the transactions. One witness identified the Youadworld and Youadall websites as the websites the Bossteam employee opened to create an account for her and complete the ad package and consumer credit purchases.
- ¶ 45 We conclude the Youadall website is a Bossteam website because of its similarities to the Youadworld website and because it was a website authorized by Bossteam and tied into Bossteam’s database with ongoing access to Bossteam’s member accounts. The Youadall website also facilitated the trading platform promised to members as contemplated by the Bossteam business plan.

III. ANALYSIS

A. Distribution of securities

- ¶ 46 The executive director alleges that the respondents contravened section 61 of the Act by distributing securities in the following ways:
- the offer and sale of Bossteam Shares
 - the offer and sale of consumer credits and
 - the sale of ad packages,
- all without first having filed a prospectus.

1. Law

- ¶ 47 Section 61(1) of the Act states:
- (1) Unless exempted under this Act, a person must not distribute a security unless
 - (a) a preliminary prospectus and a prospectus respecting the security have been filed with the executive director, and
 - (b) the executive director has issued receipts for the prospectus and preliminary prospectus.
- ¶ 48 Bossteam did not file a prospectus and no receipts were issued by the executive director to Bossteam for a prospectus. Bossteam did not identify any exemptions under the Act, other than with respect to the exempt distribution shares which were not in issue.
- ¶ 49 To find, as alleged, that the offer and sale of Bossteam’s Shares, consumer credits and ad packages contravened section 61(1), we must find in respect of each that:

- the Shares, consumer credits and ad packages were “securities” under the Act;
- the respondents traded those securities in British Columbia; and
- the trades were a distribution.

¶ 50 The terms “security”, “distribution” and “trade” are defined in section 1(1) of the Act:

“distribution” means, as used in relation to trading in securities,

- (a) a trade in a security of an issuer that has not been previously issued; ...

“security” includes

- (a) a document, instrument or writing commonly known as a security,
- (b) a document evidencing title to, or an interest in, the capital, assets, property, profits, earnings or royalties of a person,
- (c) a document evidencing an option, subscription or other interest in or to a security,
- (d) a bond, debenture, note or other evidence of indebtedness, share, stock, unit, unit certificate, participation certificate, certificate of share or interest, preorganization certificate or subscription other than
- (i) a contract of insurance issued by an insurer, and
- (ii) an evidence of deposit issued by a savings institution...
- (l) an investment contract...
- (n) an instrument that is a futures contract or an option but is not an exchange contract...

whether or not any of the above relate to an issuer, but does not include an exchange contract.

“trade” includes

- (a) a disposition of a security for valuable consideration...
- (f) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the activities specified in paragraphs (a) to (e).

¶ 51 Substance rather than form is the governing factor in determining what constitutes a security. The Act is remedial in nature and is to be construed broadly and read in the context of the economic realities to which it is addressed. (See *British Columbia (Securities Commission) v. Gill*, 2003 BCCA 169, paras 45 to 50 and *Pacific Coast Coin Exchange of Canada Ltd. v Ontario (Securities Commission)*, [1978] 2 SCR 112, page 127).

2. Shares

¶ 52 The respondents did not contest that they publicly offered for sale up to 8 million Shares in Bossteam.

Are the Shares securities?

- ¶ 53 The definition of “security” in the Act includes shares. The evidence supports the conclusion that the Shares offered online by Bossteam were shares. The Shares could be traded, after a hold period, and carried quarterly dividends.
- ¶ 54 We find the Shares are securities.

Did Bossteam advertise the Shares?

- ¶ 55 The Youadworld online offering was an advertisement for the sale of securities. Advertisement in furtherance of the sale of securities is included in the definition of “trade” under the Act.
- ¶ 56 Zhang testified that he authorized the Youadworld online posting of the Share offering on the Youadworld website and that the “Initial Private Share Offering” notice seen in the December 14, 2011 screenshot, referred to above, probably appeared as early as November 18, 2011.
- ¶ 57 The respondents concede that the publication of the Share offering on the Bossteam Youadworld website was a trade under the Act.
- ¶ 58 We find the respondents traded Shares by advertising them for sale on the Youadworld website.

Did Bossteam sell Shares?

- ¶ 59 The respondents deny that any Shares were actually sold to the public.
- ¶ 60 Both Zhu and Zhang testified that upon consulting a lawyer in the beginning of January 2012, they learned the offering of the Shares to the public was not permissible. Zhang testified that he then had the public solicitation notice taken down and no Shares were sold.
- ¶ 61 The executive director points to the December 14, 2011 Youadworld screenshot of a member account that states “already issued stock: 400200 left: 7599800” as proof that Bossteam sold Shares in British Columbia.
- ¶ 62 Zhang agreed that the shares referred to in the December 14, 2011 screenshot statement were the Shares offered by Bossteam, but denied that this meant that Shares were sold. He offered different explanations at different times for the statement in the December 14, 2011 screenshot.
- ¶ 63 First, at a February 27, 2012 interview conducted by a commission investigator, he said that the statement might have been put on the website by a hacker.

¶ 64 Later, in his testimony at the hearing he said that the statement was probably a reference to the number of Shares that had been reserved online and that the trading platform screenshot of the same date showing Share trades probably reflected the reservation of Shares in members' accounts.

¶ 65 Zhang also said at the hearing that another reason Shares had not been sold pursuant to the Youadworld offering was because Bossteam's ad package sales were good and the shareholders who had bought shares pursuant to the exempt distribution did not want their shareholdings to be diluted.

¶ 66 In closing submissions, counsel for the respondents offered yet another explanation suggesting that the statement might refer to the reservation of shares under the exempt distribution for which the paperwork was not completed until January 2012, when the respondents first consulted a lawyer. We reject this suggestion as it is not supported by any evidence and ignores Zhang's acknowledgment that the statement refers to the publicly offered Shares.

¶ 67 We find Zhang's explanations regarding the statement that 400,200 Shares had already been issued to be at best hypothetical, as well as conflicting. We find none of his explanations credible. They also conflict with the documentary evidence that the executive director tendered which includes not only the December 14 screenshot that 400,200 Shares had been issued but also two other screenshots taken from the Youadworld website showing issued Shares.

¶ 68 One is the December 14, 2011 Youadworld screenshot of an online trading platform for shares displaying information on latest trades, including four share trades executed that day.

¶ 69 The second is the notice in the January 3, 2012 Youadworld screenshot titled "Public announcement regarding the quota of internal shares".

¶ 70 The notice states, in part:

In order for more members to be able to purchase **more internal shares**, grow and develop with the company, the company decided that every qualified member, regardless of their product type, can send an email application to the Financial Department. (emphasis added)

¶ 71 The notice goes on to specify the information to be included in the application, including the "amounts of shares that they hope to purchase". The notice also states that "members who **purchased shares before the end of December 2011** can receive the dividends at the first quarter of 2012." (emphasis added).

- ¶ 72 Zhu testified at the hearing that by December 2011, based on a forecast, there appeared to be no need to get more financing through the initial public Share offering and that this would only dilute existing shareholders.
- ¶ 73 She stated, however, that some existing shareholders wanted to buy more Shares. Zhu was careful in giving her evidence to side step the issue of whether or not Shares had been issued. She said that when the finance department received money from a member, the member's account was credited with an equal amount of Ucash. She insisted her knowledge as head of the finance department stopped with the crediting of Ucash to member accounts and that Zhang handled existing shareholder requests for more Shares.
- ¶ 74 While Zhu's evidence is not conclusive on the point of whether or not Shares were sold, we infer from her evidence that the finance department which she headed received not only applications from members to purchase Shares but also monies to pay for the Shares.
- ¶ 75 The respondents also point to the testimony of a Bossteam employee who at the time was a part-time customer service representative as corroborating Zhang's evidence that no Shares were sold. While this witness said she received information from her manager at the end of 2011 that the plan to sell Shares was not legal and to stop everything regarding that plan, she also said that as a customer service representative she was not trained to deal with calls regarding the Share offering and was not aware if Shares were sold pursuant to the offer. We do not find her evidence corroborative of Zhang's evidence. She was not directly involved in the Share offering or the sale of Shares, her evidence is based on hearsay and she admits she was not aware if Shares were sold pursuant to the offer or not.
- ¶ 76 As further proof that Bossteam sold Shares, the executive director points to the evidence of a former Bossteam employee who held senior positions at Bossteam from approximately September 2011 to June 2012, including the general manager position before she left. She testified that Bossteam sold Shares to members.
- ¶ 77 This witness also stated that she bought an ad package and then bought Shares in January or February 2012 but could not recall how many Shares she bought or how much she paid. She believed members could check their online account to see the Shares they owned and testified that those who bought Shares were able to sell them on Bossteam's trading platform. She could not recall if she ever traded Shares on the Bossteam trading platform, stating she would have to check her records. No records were produced to corroborate this testimony.
- ¶ 78 The respondents submit that this witness's evidence was vague and that she was most likely remembering her purchase of consumer credits on the Youadall trading platform.

The respondents argue that no other witness stated that they actually purchased Shares, while several witnesses testified they bought and sold consumer credits in the spring of 2012.

¶ 79 This witness, however, was directly asked if at the time she bought the Shares they were referred to as shares or consumer credits and responded that they were referred to as shares. She then testified that Zhang told people to stop calling them shares and to call them consumer credits in March or April 2012.

¶ 80 This witness's evidence is consistent with the Youadworld screenshots, referred to above, indicating Shares had been and were continuing to be sold and showing an online trading platform for Shares which displayed information on latest trades.

¶ 81 We find that Bossteam not only advertised Shares for sale but also sold Shares to members.

¶ 82 Bossteam's sale of Shares is a trade under the Act.

Conclusion on distribution of Shares

¶ 83 The Shares had not been previously issued and therefore trades of the Shares were distributions for the purpose of the Act.

¶ 84 We find that by advertising for sale and selling the Shares, Bossteam distributed the Shares in contravention of section 61(1).

3. Consumer credits

¶ 85 The executive director submits that consumer credits constitute "securities" under the Act in two ways: as shares and as investment contracts.

¶ 86 The respondents argue that the concept of consumer credits existed from the early planning stages and that consumer credits were envisaged as more than one thing.

¶ 87 In their testimony, Zhu and Zhang described consumer credits as being part of the consumer union concept and likened consumer credits to incentive or loyalty points. However as we have noted earlier that concept never came to fruition.

¶ 88 Zhu testified that consumer credits could be redeemed for ad points, which could then be used to purchase ads for posting on the Bossteam websites. This is consistent with content on Bossteam's websites.

¶ 89 Zhu also testified that Bossteam had planned that, among other things, consumer credits could be used by qualified members to acquire a "territorial agency". However, that too was a concept yet to be implemented.

¶ 90 Whatever rights might have existed or been envisaged with respect to consumer credits, the question we must determine is whether or not consumer credits were securities at the relevant time.

Are the consumer credits “shares”?

¶ 91 The executive director argues that after learning of the commission’s investigation, the respondents simply renamed the Shares as consumer credits and submits that consumer credits are therefore “shares” which fall under subsection (d) of the definition of “security” under the Act.

¶ 92 Bossteam offered consumer credits as an investment with the same eligibility requirement (the purchase of an ad package worth \$2000 or more) as the Shares. Like the Shares, consumer credits could be traded on an online trading platform, would possibly benefit from splits and would be entitled to quarterly dividends after a short vesting period.

¶ 93 Thus, consumer credits were just a continuation of the Bossteam Share offering under a different name and in substance indistinguishable from the Shares.

¶ 94 We find that the consumer credits are “shares” and therefore “securities” for the purpose of the Act.

Are the consumer credits “investment contracts”?

¶ 95 Common law has developed a definition of an investment contract as an investment of money in a common enterprise with profits to come from the efforts of others. (See *SEC v. W.J. Howey Co.* 328 U.S. 293 (1946), *SEC v. Glenn W. Turner Enterprises, Inc.* 474 F.2d 476 (1973), and *Pacific Coast Coin Exchange*).

¶ 96 While *Howey* referred to “profits to come solely from the efforts of others”, in *Pacific Coast Coin Exchange* the court adopted “a more realistic test” and also considered the meaning of “common enterprise”, stating at page 129:

The word ‘solely’ in that test has been criticized and toned down by many jurisdictions in the United States. It is sufficient to refer to *SEC v. Koscot Interplanetary, Inc.* and to *SEC v. Glenn W. Turner Enterprises, Inc.* As mentioned in the Turner case, to give a strict interpretation to the word “solely” (at p. 482) “would not serve the purpose of the legislation. Rather we adopt a more realistic test, whether the efforts made by those other than the investor are the undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise”. In the same case of Turner, the expression “common enterprise” has been defined to mean (p. 482) “one in which the fortunes of the investor are

interwoven with and dependent upon the efforts and success of those seeking the investment or of third parties”. These refinements of the test, I accept.

i) An investment of money

- ¶ 97 The January 13, 2012 Youadworld and January 12, 2012 YouadHK postings, and the business plan Bossteam’s lawyer provided to commission staff on January 27, 2012, all stated that eligible members could buy consumer credits equal to the amount of ad spaces they sold or purchased.
- ¶ 98 Various Bossteam members told commission staff that they paid money to Bossteam to purchase consumer credits.
- ¶ 99 At the hearing several witnesses who were members of Bossteam testified that they purchased consumer credits by going to Bossteam’s office and making payments to Bossteam employees. Another member of Bossteam testified that she gave cash to a Bossteam employee at the employee’s home.
- ¶ 100 We conclude the acquisition of consumer credits as envisioned in the business plan and as offered for sale on the Youadworld and YouadHK websites required an investment of money.

ii) Profits to come from the “undeniably significant, essential managerial efforts” of others

- ¶ 101 The Bossteam business plan stated that consumer credits would bring members long-term appreciation and, “as the company’s revenue generated more, the value of the consumers credits will go up which will bring members benefit”.
- ¶ 102 According to the website notices, the consumer credits also entitled holders to dividends.
- ¶ 103 Bossteam’s revenue and any dividends from Bossteam depended on the efforts of others, not on the members who owned consumer credits.

iii) A common enterprise

- ¶ 104 The necessary commonality was present as the “fortunes of the investor are interwoven with and dependent upon the efforts and success of those seeking the investment or of third parties”, namely the respondents.

iv) Conclusion on investment contracts

- ¶ 105 We find that consumer credits are “investment contracts” and therefore “securities” for the purpose of the Act.

Did Bossteam sell or offer to sell consumer credits

- ¶ 106 The executive director alleges that the respondents offered to sell and sold consumer credits. Offering to sell and selling securities fall within the definition of “trade” under the Act.
- i) Offer to sell consumer credits
- ¶ 107 The website notices of January 12 and 13, 2012 were offers to sell consumer credits.
- ii) Selling consumer credits
- ¶ 108 Bossteam created and issued the consumer credits.
- ¶ 109 The January 13, 2012 Youadworld notice stated that “So far 1,400,000 credits is sold [sic] and 1,600,000 credits are still available”. A member account screenshot of February 6, 2012 from the YouadHK website stated “Until now, already issued credit: 3005400 left:0.”
- ¶ 110 Zhang testified that consumer credits were not sold but rather given to distributor leaders who had demanded consumer credits as a reward for their excellent sales. He said it was decided to give them consumer credits as an incentive bonus based on their team’s market sales volume; for example, 5000 consumer credits for \$5000 commission earned. Zhang provided no corroborating evidence to support this claim.
- ¶ 111 If we accept Zhang’s testimony, Bossteam’s promise to “give” high performing distributors consumer credits based on their performance constitutes an exchange of valuable consideration. Therefore, the issue of consumer credits to high performing distributors for their marketing services is a disposition of securities for valuable consideration and a trade.
- ¶ 112 We prefer, however, the January 13, 2012 and February 6, 2012 documentary evidence referred to above which shows the ongoing sale of consumer credits until the three million consumer credits offered for sale had all been sold, consistent with Bossteam’s offers to sell consumer credits in the January 12 and 13, 2012 website notices. Based on this evidence, we find that Bossteam sold consumer credits.
- ¶ 113 The executive director also argued that Bossteam sold consumer credits on its online trading platforms. Bossteam members told commission investigators and testified that they purchased consumer credits online.
- ¶ 114 The respondents argued these were secondary market sales between members and referred to some trades as being matching buys and sells between members.
- ¶ 115 Certainly the documentary evidence includes trading statements that show purchases by members, but those statements do not show who the selling party was. Without more, the

evidence as to whether Bossteam sold consumer credits on its online trading platforms or whether the purchases were secondary market trades or a mix of both is inconclusive.

- ¶ 116 What is clear is that Bossteam created all of the consumer credits and issued them in the first instance. All of these consumer credits were issued for valuable consideration, whether for monetary or other valuable consideration and were, therefore, trades.

Conclusion on distribution of consumer credits

- ¶ 117 Bossteam traded securities that had not previously been issued. These trades were distributions for the purpose of the Act.

- ¶ 118 We find that Bossteam contravened section 61(1) by offering to sell and selling consumer credits.

4. Ad packages

Are the ad packages securities?

- ¶ 119 The executive director submits that Bossteam’s advertising packages were a security because they provided the right to purchase Shares and later consumer credits and are therefore “options” within subsections (c) and (n) of the definition of “security” in the Act.

- ¶ 120 Subsections (c) and (n) state that a “security” includes

- (c) a document evidencing an option, subscription or other interest in or to a security,
- (n) an instrument that is a futures contract or an option but is not an exchange contract.

- ¶ 121 The term “option” is not defined in the legislation.

- ¶ 122 *Black’s Law Dictionary* provides the following definitions:

Option A privilege existing in one person, for which he has paid money, which gives him the right to buy ...certain specified securities from another person, if he chooses, at any time within an agreed period, at a fixed price.

Stock Option The right to buy stock in the future at a price fixed in advance.

¶ 123 The *Canadian Oxford English Dictionary* gives the following definition:

Option....**3a** the right, obtained by payment, to buy, sell, etc. specified stocks etc. at a specified price within a set time.

¶ 124 The evidence establishes that to purchase Shares or to purchase consumer credits, members had to first purchase an ad package priced at \$2000 or more. By April 30, 2012 Bossteam had sold approximately \$14 million worth of ad packages.

¶ 125 As set out in the December 14, 2011 website posting of the Share offering, a member who purchased an ad package worth \$2000 or more had the right to buy an equivalent dollar amount of Shares, during the periods and at the prices specified in the three offering stages.

¶ 126 Similarly, the website postings of January 12 and 13, 2012 stated that a member who purchased an ad package for \$2000 or more had the right to purchase consumer credits equal to the amount paid for the ad package.

¶ 127 Ad packages had the attributes of an option as they gave a member the right to purchase Shares or consumer credits, which we have found to be securities. A member's online account statements evidenced that the member had purchased an ad package and the website postings set out the terms of the member's rights to buy the securities.

¶ 128 We find the ad packages are options and therefore securities under the Act.

Did Bossteam sell ad packages?

¶ 129 Between November 2011 when Bossteam began selling ad packages and April 30, 2012, Bossteam had "product sales" of slightly in excess of \$14 million, involving more than 7,700 transactions. Zhu described this amount as the total paid by members to purchase ad packages up to April 30, 2012.

Conclusion on distribution of ad packages

¶ 130 The ad packages were securities that had not previously been issued. Bossteam's sales of ad packages were trades in a security that had not been previously issued and therefore were distributions for the purpose of the Act.

¶ 131 We find that Bossteam contravened section 61(1) by selling ad packages.

B. Carrying on business as an unrecognized exchange

¶ 132 The executive director alleges that the respondents carried on business as an exchange contrary to section 25 of the Act when they operated online trading platforms where investors could buy and sell Bossteam Shares and consumer credits.

¶ 133 Section 25 of the Act states:

A person must not carry on business as an exchange in British Columbia unless the person is recognized by the commission under section 24 (b).

¶ 134 An online trading platform was part of the Bossteam business plan. Similar online trading platforms were available on each of the Youadworld, YouadHK and Youadall websites and trading of Bossteam Shares or consumer credits took place on these trading platforms.

¶ 135 Neither the respondents nor any other person applied to the commission to have any of these online trading platforms recognized as an exchange.

¶ 136 The executive director provided no submissions as to how the trading platforms were an exchange for the purpose of the Act. The respondents did not address the issue of whether or not the trading platforms were an exchange.

¶ 137 The term “exchange” is not defined in the Act.

¶ 138 While companion policies are not law and only constitute guidance from commission staff, the Companion Policy 21-101CP to National Instrument 21-101 Marketplace Operation states the following:

3.1 Exchange

(1) Securities legislation of most jurisdictions does not define the term “exchange”.

(2) The Canadian securities regulatory authorities generally consider a marketplace, other than a quotation and trade reporting system, to be an exchange for purposes of securities legislation, if the marketplace

(a) requires an issuer to enter into an agreement in order for the issuer's securities to trade on the marketplace, i.e., the marketplace provides a listing function;

(b) provides, directly, or through one or more marketplace participants, a guarantee of a two sided market for a security on a continuous or reasonably continuous basis, i.e., the marketplace has one or more marketplace participants that guarantee that a bid and an ask will be posted for a security on a continuous or reasonably continuous basis. For example, this type of liquidity guarantee can be carried out on exchanges through traders acting as principal such as registered traders, specialists or market makers;

(c) sets requirements governing the conduct of marketplace participants, in addition to those requirements set by the marketplace in respect of the

method of trading or algorithm used by those marketplace participants to execute trades on the system (see subsection (3)); or
(d) disciplines marketplace participants, in addition to discipline by exclusion from trading, i.e., the marketplace can levy fines or take enforcement action.

- ¶ 139 The Youadworld, YouadHK and Youadall trading platforms as described in the evidence do not appear to have the above attributes generally considered by Canadian securities regulatory authorities to make a marketplace an exchange.
- ¶ 140 The executive director did not make any submissions as to why, on a principled basis, Bossteam’s trading platforms should be considered an exchange for the purposes of the Act.
- ¶ 141 We find the executive director has not proven that any of the trading platforms was an “exchange”, a necessary element of the contravention, and therefore we dismiss the allegation that the respondents contravened section 25.

C. Fraud

1. Law

- ¶ 142 Section 57(b) of the Act says:

57 A person must not, directly or indirectly, engage in or participate in conduct relating to securities or exchange contracts if the person knows, or reasonably should know, that the conduct

(b) perpetrates a fraud on any person.

- ¶ 143 We have found that Bossteam’s Shares, consumer credits and ad packages are securities.
- ¶ 144 The respondents engaged in or participated in conduct relating to these securities when they offered or sold or facilitated the offer or sale of these securities.
- ¶ 145 The British Columbia Court of Appeal in *Anderson v. British Columbia (Securities Commission)*, 2004 BCCA 7 stated the following regarding fraud in the context of the Act:

29 Fraud is a very serious allegation which carries a stigma and requires a high standard of proof. While proof in a civil or regulatory case does not have to meet the criminal standard of proof beyond a reasonable doubt, it does require evidence that is clear and convincing proof of the elements of fraud, including the mental element.

¶ 146 The Court cited the elements of fraud from *R. v Théroux*, [1993] 2 SCR 5 (at p. 20):

...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).

2. Prohibited Acts

¶ 147 The Amended Notice of Hearing alleges two sorts of falsehoods.

¶ 148 The first is that the respondents created the false impression that persons, including Bossteam members, well-known local businesses and international businesses, were paying Bossteam to advertise on its websites, that Bossteam was earning revenue from the paid advertising, and that members shared in that revenue.

¶ 149 The second is that the respondents created the false impression that members would make and were making a profit from the trading and splitting of Bossteam Shares and consumer credits on the Bossteam trading platforms.

False impression of paid advertisements and advertising revenue

¶ 150 Bossteam described itself on its websites, in documents and in presentations as an online advertising business having huge growth potential and ready to become a leading global online advertising company. It referred to well-known online businesses such as Google, Amazon and eBay, and to the fast-growing advertising revenues of these businesses.

¶ 151 Information on Bossteam's websites and provided in Bossteam presentations created the impression that members who clicked on ads on the advertising platforms, would share in Bossteam's advertising revenue.

¶ 152 During the relevant period, members were told they would receive back their initial investment in an ad package, plus 20%, within a few months. They were told such payments would be made from Bossteam's revenues, up to an aggregate maximum of 25% of such revenues. Another 50% of its revenues were allotted to cover bonus payments under Bossteam's multi-level marketing scheme.

- ¶ 153 While Bossteam emphasized its potential for growth and profitability based on a growing number of paying advertisers, the evidence demonstrates that there were few paying advertisers and little actual advertising revenue.
- ¶ 154 Although hundreds of “ads” appeared on the advertising platforms, the majority of the ads posted on Bossteam’s websites were associated with Bossteam’s own administrative accounts (accounts accessible by those controlling its systems) and not to accounts for advertisers or members who had paid to post links to their websites on Bossteam’s websites.
- ¶ 155 One list shows more than 500 ads linked to Bossteam’s administrative accounts with the balance of the ads posted (approximately 100) being associated with individual member accounts.
- i) Ads associated with Bossteam’s administrative accounts
- ¶ 156 Ads associated with Bossteam’s administrative accounts included webpages for well-known local and international businesses.
- ¶ 157 Local businesses whose webpages appeared on Bossteam’s websites included a restaurant, a security systems company, a heating company and a private career college. Websites of well-known businesses and personalities included World Wrestling Entertainment, Miriam-Webster and Britney Spears.
- ¶ 158 The ads for the above described local and international businesses were posted without the knowledge or permission of the businesses, and the businesses did not pay Bossteam for the advertising. The one exception was a local business whose owner agreed to the posting of her business’s webpage but only when it was offered by a friend for free.
- ¶ 159 One of the local businesses received free advertising for seven or more months. Another local business contacted Bossteam to find out why its webpage had been posted without permission and was offered free advertising by Bossteam.
- ¶ 160 Posting the websites of local and international businesses on Bossteam’s websites without payment created a false impression that such businesses were advertising on Bossteam’s websites and paying Bossteam to do so.
- ii) Ads associated with member accounts
- ¶ 161 Ads that were not associated with Bossteam’s administrative accounts were associated with individual member account numbers. They included multiple sign-in pages for large Chinese social networking and search engine sites, an advertising platform similar to Bossteam’s, personal blogs, and what appeared to be some business websites.

- ¶ 162 Zhang testified that the reason for the appearance of multiple well-known search engine sites and social networking sign-in pages, as well as ads that were noted in Bossteam’s records as “unpaid”, was that members had simply posted potential advertisers.
- ¶ 163 While that may be so, it did not result in advertising revenue to Bossteam. It did, however, give the false impression that members were advertising on Bossteam’s website and paying to do so, consistent with Bossteam’s portrayal of its business as an online advertising business with fast growing advertising revenues.
- iii) Advertising revenue
- ¶ 164 Several members testified that they had nothing to advertise. Some said they bought ad packages not to advertise but to make money by clicking on ads to get back what they paid for the ad package plus a 20% return. One witness stated she was told ads could be posted for free for 3 months but she did not advertise because her intention was to make money by clicking on ads. Other witnesses said they bought ad packages in order to be able to buy consumer credits.
- ¶ 165 Evidence from Zhang and Bossteam employees was consistent with Bossteam having little paid advertising or advertising revenue.
- ¶ 166 Zhang testified that it was usual for new websites similar to Bossteam’s to offer free advertising for a period of 3 to 6 months. He confirmed that members could contact staff at Bossteam to arrange for an ad to be posted for free.
- ¶ 167 Zhang also stated that he told Bossteam staff to post business websites on Youadworld for test running and to associate those postings to administrative accounts.
- ¶ 168 The former marketing director and later general manager of Bossteam testified that Bossteam offered a promotion that allowed members to post ads for free. During a presentation to prospective members, another senior Bossteam employee told prospective members that when speaking to potential advertisers they could offer three months free advertising.
- ¶ 169 Zhu’s husband, Bossteam’s program manager from August through December 2011, provided information by email and later in an affidavit concerning the posting of ads. He stated that in September 2011 Zhang decided Bossteam would post “dummy links” to websites of random businesses that had no relationship with Bossteam and did not purchase advertising as this was needed to show prospective ad package purchasers. Zhu’s husband stated it was also necessary that there be ads for members to click on to make money. He stated that he conducted a query in November 2011 that showed less than one percent of ad links were associated with a member account.

¶ 170 Zhu's husband also stated that when he left in December 2011 the system still had serious "bugs" including problems with tracking and deducting ad points for advertising. This was confirmed by a programmer, who started working for Bossteam in November 2011, when he told a commission investigator that he had worked on a new website to correct the problems on Bossteam's Youadworld website, including those with tracking and deducting ad points from advertisers. The programmer indicated the new website still had problems when it was launched in March 2012.

iv) Fraud conclusion with respect to false impression of paid advertisements and advertising revenue

¶ 171 Overall the evidence leads to the following conclusions:

- While hundreds of local and international businesses appeared to be advertising on Youadworld, most of those ads were associated with Bossteam's administrative accounts, were not authorized by those businesses and Bossteam received no payment for them.
- Ads associated with member accounts were largely not paid ads but postings by members of miscellaneous webpages and some free ads giving the false impression that members were paying Bossteam to advertise.
- While a few members of Bossteam may have advertised their businesses on the Youadworld website, most members were not paying to advertise but were paying for ad packages to obtain the right to purchase Shares or consumer credits or to earn a return by clicking on ads.
- Bossteam generated little actual advertising revenue.

¶ 172 We find the respondents created a number of false impressions (the prohibited acts) in support of their scheme to offer and sell ad packages, Shares and consumer credits based on Bossteam being an online advertising business with fast growing advertising revenues, when Bossteam had little actual advertising revenue.

¶ 173 The prohibited acts caused deprivation. The purchasers of Bossteam securities paid over \$14 million for ad packages, Shares and consumer credits. They risked losing all they paid because Bossteam had few paying advertisers and little actual advertising revenue.

¶ 174 Zhang as a co-founder and the directing mind behind Bossteam was not only the chief executive officer but a de facto director of Bossteam. In order to entice the public to invest in Bossteam, he authorized information posted on the Bossteam websites and gave presentations giving rise to the false impressions when he knew Bossteam had little actual advertising revenue.

¶ 175 We find Zhang had subjective knowledge of the prohibited acts and the risk of deprivation.

¶ 176 Zhu as a co-founder, director and chief financial officer of Bossteam knew of and acquiesced in the distribution of information giving rise to the false impressions when she knew Bossteam had little actual advertising revenue.

¶ 177 We find Zhu had subjective knowledge of the prohibited acts and the risk of deprivation

¶ 178 We find the all of the respondents contravened section 57 (b) by engaging in conduct relating to securities that they knew perpetrated a fraud on those who purchased the securities.

False impression that investors would and were making considerable profit from the trading and splitting of Bossteam Shares and consumer credits, when Bossteam had no advertising revenue.

¶ 179 We have already found Bossteam had little actual advertising revenue.

¶ 180 However, the splitting of consumer credits (which increased the number of consumer credits held in member accounts) and increases in the trading prices for consumer credits shown on Bossteam's trading platforms gave the impression that consumer credits were increasing in value.

¶ 181 The evidence indicates that consumer credits had split, sometimes on a five for one basis and sometimes on a lesser ratio, approximately seven times prior to April 30, 2012. The splitting of consumer credits was under Bossteam's control.

¶ 182 There is evidence that some early participants did benefit from the splitting and apparent increase in value of consumer credits to make a considerable profit from trading consumer credits. As such, we are not satisfied that the impression that members were making a considerable profit from the trading and splitting of Bossteam securities was false.

¶ 183 That members would continue to make profit from the trading and splitting of consumer credits, when Bossteam had little actual advertising revenue, was not certain but remained a possibility, at least until some intervening event disruptive to its operations. The question was how long Bossteam could continue to operate when it was dependent on a continuous stream of new members being willing to purchase ad packages to be able to pay its own operating expenses and to pay members for ad clicking and for their multi-level marketing efforts in finding new members.

¶ 184 However, theoretically there is no reason why trading would not continue to be profitable so long as Bossteam continued to operate and for whatever reason splits continued to occur and trading prices continued to increase, notwithstanding minimal actual advertising revenue. This means that, at least for a time, the impression that investors would continue to make a profit from trading was not necessarily false.

¶ 185 We find the false impression alleged by the executive director that investors were making and would continue to make considerable profit from the trading and splitting of consumer credits is not proven.

D. False and misleading statements to investigators

1. Law

¶ 186 Section 168.1(1)(a) of the Act states:

A person must not

(a) make a statement in evidence or submit or give information under this Act to the commission, executive director or any person appointed under this Act that, in a material respect and at the time and in light of the circumstances under which it is made, is false or misleading, or omit facts from the statement or information necessary to make that statement or information not false or misleading.

¶ 187 The meaning of materiality in section 168.1(1)(a) was considered in *Jo Ann Nuttall*, 2011 BCSECCOM 521, where the panel held at paragraphs 43 through 45:

¶ 43 The materiality of false and misleading information is not measured by the materiality of that information to the investigation. It cannot be – at the start of an investigation, what is ultimately material as a result of the investigation is not known with any certainty. Indeed, that is the purpose of an investigation: to determine whether there is evidence to support the allegation or suspicion being investigated. That is why the investigative powers granted to investigators under the Act are broad – investigators must have wide scope to investigate potential wrongdoing in order to protect the public interest. It is not uncommon that an investigation leads investigators down paths not expected when the investigation began.

¶ 44 The materiality threshold in section 168.1(1)(a) measures the degree to which the information given is false or misleading – how far it departs from the truth – not its relevance to the investigation.

¶ 45 Accordingly, the phrase “in a material respect and at the time and in light of circumstances under which it is made” requires a comparison of the information that was given to the facts that were known to the person giving the information at the time the person gave it.

¶ 188 To find that the respondents contravened section 168.1(1)(a), as alleged in the Amended Notice of Hearing, we must find that they

- a. made a statement in evidence or submitted or gave information under the Act to a person appointed under the Act; and
- b. the statement or information was, in a material respect and at the time and in light of the circumstances under which it was made, false or misleading.

¶ 189 The statements and information in issue were submitted or given to a staff investigator who was a person appointed under the Act to investigate the respondents.

2. False statements about Bossteam selling Shares and hacker putting information on Bossteam's website

¶ 190 On February 27, 2012 Zhang and Zhu voluntarily attended the commission's office, with their lawyer, and were interviewed by commission staff.

¶ 191 The executive director alleges that Zhang contravened section 168.1(1)(a) when he falsely stated during the interview that

1. Bossteam had not sold any Shares to investors; and
2. a hacker had put the information on Bossteam's website that 400,200 Shares had been sold, which false statement Zhang attempted to corroborate by later providing invoices from a computer services company and misrepresenting them.

Statements by Zhang that Bossteam had not sold any Shares

¶ 192 The commission investigator's notes of the February 27, 2012 interview indicate the December 2011 Youadworld website screenshots, detailing the initial private Share offering in three stages and containing the information "400,200 shares sold", were shown to Zhang, Zhu and their lawyer.

¶ 193 Following this reference, the notes state that "no one bought shares in the 3 Private Offerings mentioned" and "400,200 shares not issued" and "never charged members for 400,200 shares". The notes do not state who made these statements.

¶ 194 The investigator did not testify at the hearing but the executive director tendered an affidavit of the investigator. Her notes were not attached or referred to in the affidavit. In her affidavit, the investigator deposed that Zhu and Zhang told staff that "no one has bought shares through Bossteam's private offering" and "the 400,200 shares were never issued". The affidavit does not state whether Zhu or Zhang made these statements.

¶ 195 The allegation is that Zhang made the specific statement that Bossteam did not sell Shares. We are unable to conclude from the evidence that Zhang, as opposed to Zhu, made the statement and therefore we find that this allegation is not proven.

Statement by Zhang that a hacker put false information on Bossteam's website

- ¶ 196 Following the reference to the website printouts, the investigator's notes also state that "hackers attacked website in December 2011" and "hackers may have changed dates on website". The notes do not state who made these statements.
- ¶ 197 In her affidavit, the investigator deposed that at the interview, Zhang claimed that "the computer hacker may have changed information on the Website".
- ¶ 198 The allegation in the amended notice of hearing is that:

When confronted with the fact that Bossteam's own website stated that 400,200 shares had been sold, Zhang falsely stated that a hacker had put that information on Bossteam's website...

- ¶ 199 The investigator's evidence does not state that Zhang told staff that a hacker put the statement "400,200 shares had been sold" on Bossteam's website. At most, the evidence, from the investigator's affidavit, is that Zhang said a hacker "may have changed" information on the website. And it is more likely that the investigator's notes, made close in time to the interview, are most accurate. They state that someone said that hackers "may have changed dates" on the website.
- ¶ 200 The allegation is that Zhang made the specific statement that "a hacker had put [the information that 400,200 shares had been sold] on Bossteam's website". The evidence does not prove that he made this specific statement, and therefore we find that this allegation is not proven.

3. False statement by Zhu that she had informed Quadrus about Bossteam

- ¶ 201 The executive director alleges that Zhu contravened section 168.1(1)(a) when she falsely stated during the February 27, 2012 interview that she had informed her mutual fund dealer employer (Quadrus) about her business activities with Bossteam when she had not.
- ¶ 202 Pursuant to Rule 1.2.1(c) of the MFDA, in addition to her MFDA business Zhu was permitted to have another "gainful occupation" if Quadrus was aware and approved of her engaging in the other occupation.
- ¶ 203 In her notes of the February 2012 interview, the investigator wrote that "Zhu told her mutual fund mgr about her job at Bossteam (Oct or Nov 2011)". The investigator also deposed to this in her affidavit filed at the hearing.
- ¶ 204 At the hearing, Zhu gave contradictory evidence about this statement. Under cross-examination, she initially confirmed the investigator's note. She subsequently denied that the note was correct, and testified that at the February 2012 interview she had said

that she had told another individual who was her insurance company manager about her Bossteam activities.

- ¶ 205 However, Zhu's evidence regarding the details of the conversation with her insurance company manager was that it took place in August 2011 (which was at least 2 months before Bossteam was incorporated and she became a director and officer of Bossteam). Zhu also testified that the conversation concerned the possibility of securing future group benefits insurance business for the insurance company (and not the reporting of her outside business activities to Quadrus as required by the MFDA).
- ¶ 206 While Zhu may indeed have talked to her insurance company manager in August 2011 about the possibility of securing future group insurance business, we find that Zhu told the investigator at the February 27, 2012 interview that she had reported her job at Bossteam to her Quadrus manager in October or November 2011.
- ¶ 207 In a March 1, 2012 reply email to the investigator, Zhu's Quadrus manager advised that she had just met with Zhu who had confirmed that she became a director of Bossteam towards the end of 2011 but had not reported her Bossteam activities to Quadrus. The Quadrus manager also stated that on her instructions, Zhu had just sent a report of her Bossteam business activities to Quadrus' head office.
- ¶ 208 The Quadrus manager testified at the hearing that she did not know of Zhu's involvement with Bossteam before receiving the investigator's March 1, 2012 email.
- ¶ 209 It is clear from the Quadrus manager's evidence that Zhu had not reported her Bossteam business activities to her and that no written report had been made to Quadrus.
- ¶ 210 We find Zhu's statement to the investigator during the February 27, 2012 interview, that she had informed her mutual fund manager in October or November 2011 about her job with Bossteam, was false. In making that statement, Zhu contravened section 168.1(1)(a).

E. Obstruction of justice

1. Law

- ¶ 211 Section 57.5 of the Act states:

- (1) A person must not
- (a) refuse to give any information or produce any record or thing, or
 - (b) destroy, conceal or withhold, or attempt to destroy, conceal or withhold, any information, record or thing
- reasonably required for a hearing, review, investigation, examination or inspection under this Act.

(2) A person contravenes subsection (1) if the person knows or reasonably should know that a hearing, review, investigation, examination or inspection is to be conducted and the person takes any action referred to in subsection (1) before the hearing, review, investigation, examination or inspection.

2. Withholding information about sale of Bossteam Shares and consumer credits

¶ 212 The executive director alleges that the respondents withheld information about the sale of Bossteam Shares and consumer credits in their response to the commission's demand to the respondents for a list of all monies paid to Bossteam by its members, contrary to section 57.5 of the Act.

¶ 213 A staff investigator issued a demand to Bossteam under section 144 of the Act for a list of all YouAdWorld members, including their names, contact information, amount of monies and the dates each YouAdWorld member paid [Bossteam] between October 1, 2012 [sic] and April 30, 2012, and what Bossteam provided in return to each member.

¶ 214 Bossteam provided three spreadsheets in response to the demand:

1. A list of members by member identification number showing each member's Ucash balance and other information (not always complete) as to their name, email address, phone number, country and street address. This list was referred to by the respondents as "Identification".
2. A list identifying by member identification number and date the amount and method of payment of monies paid to Bossteam. This list was referred to by the respondents as "Product Sales" and was described by Zhu as being a list of monies paid for the purchase of ad packages.
3. A list identifying by member identification number and date the amount and method of payment of monies paid out to members. This list was referred to by the respondents as "Withdrawals".

¶ 215 The executive director argues that while the respondents disclosed money received by Bossteam for ad packages, the respondents failed to disclose money received from investors for the purchase of Shares or consumer credits, thereby contravening section 57.5.

¶ 216 The respondents make three arguments, discussed below.

i) Incorrect time period in demand

- ¶ 217 Bossteam argues that it is entitled to rely on the literal and technical interpretation of the apparent error in the demand which on its face seeks documents between October 1, 2012 and April 30, 2012 and that during that period, Bossteam received no monies at all from members.
- ¶ 218 Bossteam did not raise this objection when staff made the demand. Nor did Bossteam respond that no monies were received at all from members during the period indicated in the demand.
- ¶ 219 Instead Bossteam responded providing the information it did on the basis that the correct period was October 1, 2011 to April 30, 2012, but omitting to provide detailed disclosure as requested with respect to amounts paid by members to Bossteam other than to purchase ad packages. This selective provision of information is both a withholding of and an attempt to conceal information relating to monies paid by members for Shares and consumer credits. To respond by providing information with respect to Ucash balances and payments out of Ucash, when Ucash simply represents credits and debits of cash in Bossteam's accounts is non-responsive and deliberately misleading.
- ¶ 220 Having elected to provide selective information for what everyone understood to be the correct period, Bossteam cannot now rely on a technical argument.

ii) Interpretation of section 144

- ¶ 221 Bossteam argues that, even though it compiled spreadsheets in response to the demand, it had no obligation to do so because section 144 only requires the production of pre-existing documents. Bossteam did not raise this objection when staff made the demand.
- ¶ 222 This argument takes an overly narrow view of section 144. Section 144(1)(c) authorizes an appointed investigator to compel witnesses to produce records and things. "Record" is defined in the *Interpretation Act* as follows:

"record" includes books, documents, maps, drawings, photographs, letters, vouchers, papers and any other thing on which information is recorded or stored by any means whether graphic, electronic, mechanical or otherwise.

- ¶ 223 By virtue of this definition, an appointed investigator could compel Bossteam to produce the electronic or mechanical thing upon which the information Bossteam produced was recorded or stored. The fact that Bossteam was asked for the information that had been recorded or stored in a certain format instead of the actual record itself is immaterial. The investigator had authority to get the information. Bossteam did not object when it was demanded in a particular form. Bossteam cannot now say it had no obligation to comply.

iii) Are the spreadsheets responsive?

- ¶ 224 Bossteam argues that the three spreadsheets are responsive to the demand in that they collectively disclose both the monies paid to Bossteam for advertising products and monies received into members' accounts and either held in the accounts or paid out to the members.
- ¶ 225 We agree that collectively the three spreadsheets provide a list of Bossteam members, including their names and contact information, and a list of the amounts and dates when members paid Bossteam to purchase ad packages.
- ¶ 226 One of the lists provided discloses total Ucash balances payable to members as being approximately \$3.2 million, presumably as at April 30, 2012. Another of the lists discloses payments out of Ucash by Bossteam of approximately \$2.7 million, over the period October 1, 2011 to April 30, 2012.
- ¶ 227 Bossteam appears to be arguing that any monies paid to it other than for the purchase of ad packages were for the purchase of Ucash but provides no reason or rationale for why members would pay monies to Bossteam only to obtain a credit entry in Bossteam's accounts in the form of Ucash.
- ¶ 228 The total Ucash balances and the amounts represented as Ucash in members accounts that were paid out total some \$5.9 million dollars for which the requested information has not been provided, whether it be in the form of original records, including accounting records, or summary spreadsheets.
- ¶ 229 We have already found that Bossteam also sold Shares and consumer credits. What the lists do not provide is information as to the amounts and dates when investors paid monies to Bossteam for the purchase of Shares and consumer credits.

Conclusion on withholding information about the sale of Bossteam Shares and Consumer Credits

- ¶ 230 At the time the section 144 demand was made, Bossteam was aware of the ongoing investigation.
- ¶ 231 We conclude that Bossteam withheld information concerning monies paid by members of Bossteam for the purchase of Shares and consumer credits and that such information was reasonably required for the investigation and hearing.
- ¶ 232 In so doing, we find Bossteam contravened section 57.5 of the Act.

3. Bossteam instructed employees and investors to say Bossteam had not offered Shares and consumer credits

- ¶ 233 The executive director alleges that Bossteam instructed its employees and investors to tell commission staff and the RCMP that Bossteam had not offered Shares and consumer credits to the public and to avoid mentioning the online trading platform.
- ¶ 234 A document recovered from a computer hard drive located in Bossteam's offices in Burnaby indicated that the commission and RCMP would be continuing to look for members, staff and related persons for questioning. The document instructed those contacted for questioning to contact Bossteam and prepare for the interview and to follow the "guiding ideology" set out in the document.
- ¶ 235 If asked whether the company was issuing shares to the public, the document suggested members respond "No. The company only sells advertising space, no shares have offered [sic] to the public." If asked whether the company has a trading platform for stock or credit trading, the document suggested members refer to the official website as being "youadworld.com" and the new website as being "new.Youadworld.com" and say that the company now only offers services on the site with future plans to have ad points and consumer credits trading.
- ¶ 236 A witness testified that she attended a webinar in May 2012 during which Zhang said that if contacted by the commission, members were not to mention consumer credits but to just say they bought an advertising package.

Conclusion about instructing others not to say Bossteam sold Shares and consumer credits

- ¶ 237 We conclude Bossteam instructed others to tell commission staff that Bossteam was selling only advertising and to deny that Bossteam had offered Shares or consumer credits to the public and to refer to the concept of online trading as being planned for the future.
- ¶ 238 In so doing, we find Bossteam attempted to conceal or withhold information reasonably required for the investigation, contrary to section 57.5.

4. Zhang's direction that Bossteam's Shares no longer be called shares

- ¶ 239 The executive director alleges that in response to commission staff's investigation, Zhang directed that Bossteam's Shares no longer be called shares and instead be called consumer credits in a further attempt to conceal their true nature and avoid application of the Act.
- ¶ 240 The testimony of the former Bossteam employee who had held senior positions with Bossteam, including that of general manager, was clear that in March or April 2012

Zhang told people to stop calling Shares that had been purchased “shares” and instead to call them “consumer credits”.

Conclusion about Zhang’s direction that Shares no longer be called shares

¶ 241 We find Zhang’s direction to others to stop referring to Shares as shares and to instead call them consumer credits was an attempt to conceal information reasonably required for the investigation contrary to section 57.5.

F. Liability under section 168.2

¶ 242 The executive director alleges that Zhu as the sole director and Zhang as a de facto director of Bossteam authorized, permitted or acquiesced in Bossteam’s contraventions of the Act and therefore also contravened those same provisions by operation of section 168.2 of the Act.

¶ 243 Section 168.2 says that “If a person, other than an individual, contravenes a provision of this Act...an...officer [or] director...of the person who authorizes, permits or acquiesces in the contravention...also contravenes the provision.”

¶ 244 We have found that Bossteam contravened the following provisions of the Act:

- section 61(1) by distributing Shares, consumer credits and ad packages, without first having filed a prospectus;
- section 57(b) by engaging in conduct that perpetrated a fraud on those who purchased Shares, consumer credits and ad packages;
- section 57.5 by withholding information concerning the sale of Bossteam securities in response to the order for production issued under section 144 of the Act; and
- section 57.5 by attempting to conceal or withhold information concerning the sale of Bossteam securities by instructing others to deny that Bossteam had offered Shares and consumer credits to the public and to refer to the concept of online trading as being planned for the future.

¶ 245 Zhang and Zhu were co-founders of Bossteam. We find that Zhang was the directing mind of Bossteam and as such a de facto director of Bossteam. Zhu was a director of Bossteam.

¶ 246 We find Zhang and Zhu authorized, permitted or acquiesced in Bossteam’s contraventions of the Act.

¶ 247 We therefore find, pursuant to section 168.2, that Zhang and Zhu contravened the same provisions of the Act as Bossteam.

IV. SUMMARY OF FINDINGS

¶ 248 We find that all of the respondents contravened the following provisions of the Act:

- section 61(1) by distributing Shares, consumer credits and ad packages, without first having filed a prospectus;
- section 57(b) by engaging in conduct that perpetrated a fraud on those who purchased Shares, consumer credits and ad packages;
- section 57.5 by withholding information concerning the sale of Bossteam securities in response to the order for production issued under section 144 of the Act; and
- section 57.5 by attempting to conceal or withhold information concerning the sale of Bossteam securities by instructing others to deny that Bossteam had offered Shares and consumer credits to the public and to refer to the concept of online trading as being planned for the future.

¶ 249 We find that Zhang also contravened section 57.5 by attempting to conceal information concerning the sale of Bossteam securities when he directed others to stop referring to Shares as shares and instead call them consumer credits.

¶ 250 We find that Zhu also contravened section 168.1(1)(a) by submitting or giving false information to the investigator respecting the reporting of her outside business activities with Bossteam to Quadrus.

V. SUBMISSIONS ON SANCTIONS

¶ 251 We direct the parties to make their submissions on sanctions as follows:

By September 5, 2014 The executive director delivers submissions to the respondents and to the Secretary to the Commission

By September 26, 2014 The respondents deliver response submissions to the executive director, to each other, and to the secretary to the Commission

Any party seeking an oral hearing on the issue of sanctions so advises the Secretary to the Commission

By October 10, 2014

The executive director delivers reply submissions (if any) to the respondents and to the secretary to the Commission.

¶ 252 August 8, 2014

¶ 253 **For the Commission**

Suzanne K. Wiltshire
Commissioner

George C. Glover, Jr.
Commissioner

Kenneth G. Hanna
Commissioner