

IN THE MATTER OF THE SECURITIES ACT
S.B.C. 1985, c. 83

AND

IN THE MATTER OF YUEN CHOW INTERNATIONAL GROUP,
YUEN WAY HANG LUNG INTERNATIONAL FOREIGN EXCHANGE CO.,
YUEN CHOW EQUITIES LIMITED,
HANG LUNG MARKET DATA INFORMATION SERVICES, INC.,
SONNY TAT WONG AND JOHN LAI

HEARING

PANEL:	DOUGLAS M. HYNDMAN	CHAIR
	JOYCE C. MAYKUT, Q.C.	VICE CHAIR
	ADRIENNE R. WANSTALL	MEMBER

APPEARING: CATHARINE ESSON FOR COMMISSION STAFF

DATE: JULY 7, 1994

DECISION OF THE COMMISSION

1. **INTRODUCTION**

This is a hearing under sections 144 and 144.1 of the Securities Act, S.B.C. 1985, c. 83. On February 15, 1994, the Superintendent of Brokers issued temporary orders under section 144(2) of the Act ordering the respondents to comply with the registration requirements of the Act and to cease trading in certain foreign exchange contracts said to be securities as defined in the Act. The temporary orders were accompanied by a notice of hearing. After several adjournments, the matter was heard on July 7, 1994.

The respondents are Yuen Chow International Group ("Yuen Chow Group"), Yuen Way Hang Lung International Foreign Exchange Co. ("Yuen Way"), Yuen Chow Equities Limited ("Yuen Chow Equities"), Hang Lung Market Data Information Services, Inc. ("Hang Lung") and Sonny Tat Wong. John Lai was originally named as a

respondent but the temporary orders against him were revoked and the proceedings against him were discontinued. None of the respondents appeared at the hearing.

Commission staff allege that the respondents acted as advisers and traded in securities without registration, and without an exemption from registration, contrary to section 20 of the Act, and that they distributed securities without filing a prospectus, and without an exemption from the requirement to file a prospectus, contrary to section 42 of the Act. The allegations relate to foreign exchange ("forex") contracts, purporting to represent the purchase or sale on margin of certain foreign currencies, which staff say were securities.

2. **BACKGROUND**

Yuen Chow Group is a group of associated and affiliated companies, based in Hong Kong, including Yuen Way and Yuen Chow Equities. The principals of the Yuen Chow Group are Cheng Si Lam and Chang Tze Kwong. Yuen Chow Equities is registered as a limited company in Hong Kong. Yuen Way is a sole proprietorship registered as a business in Hong Kong. Neither Yuen Way nor Yuen Chow Equities is registered to carry on business in British Columbia.

Hang Lung is incorporated under the Company Act, R.S.B.C. 1979, c. 59, and acts as an agent in British Columbia for the Yuen Chow Group, Yuen Way and Yuen Chow Equities. Sonny Tat Wong is the sole director and officer of Hang Lung.

None of the respondents is a reporting issuer under the Act or registered in any capacity under the Act. None has been granted an exemption from registration.

From about July or August 1992 to about February 1994, Hang Lung operated a forex contract business from an office in Vancouver. Wong was assisted in setting up and running Hang Lung's forex contract business by Louis Li. Wong and Li had previously, from January until April 1992, been involved in a similar forex contract operation in Montreal, conducted under the name Handsome Market Information Services Inc. Handsome had a similar logo and used similar forms to those used by Hang Lung. In an interview under oath with Commission staff on March 10, 1994, Wong claimed that, prior to opening Hang Lung, he had no previous experience in the forex contract business.

Hang Lung represented itself to be part of the Yuen Chow Group. Brochures, customer agreements and other documents used in the forex contract business were sent

to Wong by William Chung, whom Wong described as president of Yuen Way and an employee of the Yuen Chow Group.

Hang Lung contracted with individuals who acted as managers, overseeing and assisting groups of clients. The managers were paid a salary by Hang Lung and received a commission of \$3 for each forex contract transaction completed by a client.

The managers were required to understand and explain to inexperienced clients how the forex contract trading was conducted at Hang Lung and how to access market information and world news from various information sources. From time to time, they met with groups of clients to discuss matters such as opinions about the market and the effect of events on the market. Most or all of the clients were from the Chinese and Iranian communities in Vancouver.

Hang Lung designated some of the clients as "tenants" or account executives. The account executives were permitted to place orders to open or liquidate forex contracts on their own account or for clients. Hang Lung paid them a commission for each transaction conducted for clients they had recruited. The commissions were based on a schedule recommended to Wong by Chung. The purpose of paying commissions to the account executives was to encourage them to increase the number of client transactions and thereby to increase the financial return to Yuen Way and Hang Lung, part of which was derived from commissions and price spreads on forex contract transactions.

Many clients entered into agreements allowing the account executives to trade on their behalf. If instructed to do so, Hang Lung would contact a client or automatically execute an order for the client when the price of a currency reached a specified level.

At least some of the account executives entered into a so-called "package office tenancy agreement" and paid \$200 per month in "rent" to Hang Lung. In exchange, the account executives were said to receive office facilities and services, account recording services and access to Hang Lung's market information terminals.

Hang Lung provided business cards to the managers and account executives, representing them to be with Hang Lung. At least some of the cards represented Hang Lung to be a member of the Yuen Chow Group.

Hang Lung provided to the managers and account executives market information documents, which, according to Wong, were prepared by Yuen Way. These documents contained descriptions of economic factors and world events said to influence currency prices. They also contained charts showing currency price trends and describing

supposed “technical” indicators of future price trends. They were to be used by managers and account executives to formulate advice to clients on forex contract trading.

Yuen Chow Group or Yuen Way faxed a daily information sheet, which Hang Lung posted for clients’ information. The daily information sheet contained information taken from financial newspapers and provided an analysis of activity on major world stock markets and in markets for currencies and precious metals. The sheets were printed in Chinese. Clients who did not speak Chinese could ask the managers for assistance.

Hang Lung caused advertisements to be placed in Chinese language newspapers distributed in the province, including the Sing Tao Daily News and the World Journal. Of the two advertisements presented in evidence, one advertised office space and services for tenants and the other advertised for administration supervisors. These and similar advertisements were placed in the newspapers from time to time during the entire period of Hang Lung’s operation.

According to Wong, people responding to the advertisements would come to the office and see the forex contract business being carried on and then decide whether to become clients. He said the advertisements did not identify Hang Lung as being in the forex contract business because he provided only a bookkeeping service and because he believed that “it is illegal to run a trading company”. Wong described the U.S. \$80 commission charged by Hang Lung on each forex contract as a bookkeeping fee.

Mohsen (Max) Shoja Nia, a marketing manager with Hang Lung, acting on instructions from Wong, placed advertisements in Persian language newspapers distributed in the province. The advertisement in evidence was published in December 1993 in a Persian language newspaper called Future. Under a Hang Lung logo and the name Hang Lung in both Chinese and English characters, the advertisement read (in translation) as follows:

Did you know that you could participate in Foreign Exchange market the same way as you would buy shares with small investment?

Have you ever tried investing in foreign exchange?

Let us introduce you to Informational Services of Hang Lung Inc. related to one of the largest Foreign Exchange Dealers on Hong Kong. In the Foreign Exchange office of Hang Lung Inc., through Satellite and Reuter News Channel, we inform you of the latest fluctuations and changes in the Foreign Exchange market to enable you to make an informative decision

in the market. For more information and free consultation, please contact the following address.

The advertisement provided Shoja Nia's name, title, phone number and address at Hang Lung. The advertisement also contained a small section describing employment opportunities for part time employees.

From about November 1992 to May 1993 Hang Lung placed brochures in its office for clients. The brochures were in Chinese and English and contained the following introduction:

In recent years, Foreign Currencies have been popularly accepted by many corporations, institutions and individuals as an effective and efficient investment vehicle. Apart from medium and long term investment, people also engage in Foreign Exchange Trading in anticipation of price fluctuation for monetary gain.

Hang Lung Market Data Information Services, Inc. is a member of Yuen Chow International Group providing full range of financial and consulting services in Foreign Exchange, Gold and Silver Trading. With our well experienced and professionally trained personnel as well as advanced communication and analysis equipment in the Research Department, we are pleased to serve our clients in Forex Trading to meet their particular investment needs.

According to Wong, the brochures were removed from the office in May 1993 because they were not necessary. However, at least one member of the public received a brochure in the mail in August 1993.

Hang Lung's office was divided into two areas. In one area, accessible to the public, there were desks and computer terminals that displayed currency price quotations provided by the Reuters information service. Account executives worked in this area. The other area was a dealing room, accessible only through Wong's office, in which employees of Hang Lung worked. The employees in the dealing room would receive orders to open or liquidate forex contracts from the account executives through a window between the two areas.

To open forex contracts at the offices of Hang Lung, a member of the public was required to enter into a "Customer Agreement" with Yuen Way and to deposit a minimum of U.S. \$5,000. Under the customer agreement, a client could open a contract for the purchase or sale of a currency on margin, and then settle the contract either by

taking or making delivery of the currency in exchange for the full value in U.S. dollars or by entering an order to liquidate the contract. In fact, however, clients always settled by liquidating the contracts. Clients never took or made delivery of foreign currency.

Each forex contract was purported to represent a purchase or short sale of a foreign currency in an amount approximately equivalent to U.S. \$100,000. Contracts were offered for several major currencies. To open a contract, a client was required to pay a margin deposit of U.S. \$1,000 to Yuen Way. If the contract was held past noon without being liquidated, additional margin of U.S. \$1,000 was required. If the client held an open contract to purchase a currency and the currency value declined, the client was required to deposit enough to restore the margin. Conversely, if the client held an open contract to sell a currency and the currency value increased, the client was required to deposit enough to restore the margin.

A forex contract opened through Hang Lung could be liquidated only through Hang Lung. As long as clients continued to make margin payments required of them, they were not required to pay the full purchase price for currency purchased or to deliver currency sold short. When a client failed to deposit funds necessary to restore the margin, the forex contract was simply liquidated by Hang Lung. If the loss on liquidation exceeded the amount of margin on deposit, the client would be obligated to pay the deficiency to Yuen Way.

Hang Lung charged clients a commission of U.S. \$80 on each complete transaction (the opening and liquidation of a forex contract) executed by a client. Account executives received a rebate of Cdn \$40 on each complete transaction they did for themselves or their clients.

After receiving an order from an account executive, a dealing room employee would place a call to a number at the Yuen Chow Group in Hong Kong to obtain a price for the currency. According to Wong, this phone number was provided to Hang Lung by Chung and was for use only by Hang Lung. About 600 to 800 calls per month were made from Hang Lung's office to this number. The price obtained by calling this number was always 10 points different from the Reuters quote. For example, if a client wished to open a contract for the purchase of Pounds Sterling and the Reuters quote for the purchase of Pounds Sterling was 1.6775 (meaning one Pound could be purchased at U.S. \$1.6775), the client would pay U.S. \$1.6785 per Pound. Similarly, if a client wished to open a contract for the sale of Pounds Sterling and the Reuters quote for the sale of Pounds Sterling was 1.6765 (meaning one Pound could be sold at U.S. \$1.6765), the client would sell at U.S. \$1.6755 per Pound.

A buy or sell order ticket was completed for each transaction. The ticket indicated the client's account number, the type of order, the currency, the number of lots, the price, and whether the order was a new order or a liquidation of a previous order. A copy of the ticket was provided to a Hang Lung employee and the information was entered into Hang Lung's computer.

Hang Lung produced and faxed to Yuen Way in Hong Kong each day a daily summary of all client transactions. Someone in Hong Kong would inform Hang Lung by telephone if any clients were short on margin funds.

Hang Lung also prepared and provided to clients daily account statements. The statements were shown as being in the name of Yuen Chow Equities and were in three sections. The first section was headed "Transactions". It detailed each contract liquidated during the day, showing the prices at which the contract was opened and liquidated and the profit or loss (before commission and interest) on the transaction. The second section was headed "Open Position". It listed each contract that remained open at the end of the day, showing the opening price, the current price, interest charged for the day and the "floating" profit or loss. The third section had no heading. It showed the previous day's closing cash balance of the account; the addition or deduction of profit or loss on liquidated contracts, deposits and withdrawals by the client, and commissions and interest charged; and the new cash balance of the account. The floating profit or loss on open contracts was then added to or subtracted from the cash balance to calculate the "equity" in the account. The margin amount required for all outstanding contracts was then deducted from the equity to determine whether the client was required to deposit additional funds to meet margin requirements.

A client could obtain funds from an account by filling out an "Authorization of Withdrawal" form. A representative of Hang Lung then faxed this form to Yuen Way in Hong Kong. The money was paid to the client directly from Yuen Way in Hong Kong or by cheque signed by Wong on Yuen Way's account in Vancouver. When a client had a dispute concerning, for example, the liquidation of an account, Wong would attempt to settle it over the telephone with Chung or other persons in Hong Kong whom he believed to be from the Yuen Chow Group.

Hang Lung had four bank accounts and Yuen Way had two bank accounts at the Hong Kong Bank in Vancouver. Clients' funds were deposited variously into at least one of the Hang Lung accounts and the two Yuen Way accounts. There was no trust account for client funds.

Hang Lung paid its office expenses and other expenses from the Hang Lung account into which the client funds were deposited. Wong had signing authority over the

Hang Lung accounts and the Yuen Way accounts. Funds flowed between the Hang Lung accounts, the Yuen Way accounts and Wong's personal account.

Hang Lung's practice was to accumulate the funds paid by clients in the accounts in British Columbia until there was about \$10,000, and then to send the funds to Yuen Way in Hong Kong.

Yuen Way was taking the opposite position from the client on each contract. It appears that Yuen Way was not hedging its risk under the forex contracts. Therefore Yuen Way would make a trading profit on a contract only if the client incurred a trading loss. Conversely, if the client made a trading profit on a contract, Yuen Way would incur a trading loss.

The manner in which the business was conducted virtually ensured that, on average, clients would lose money. The Reuters currency quotes, on which the contract prices were based, provided for a normal spread of 10 points between buying and selling prices. Yuen Way increased this spread, it appears to 30 points, by adding or subtracting 10 points from the Reuters buying or selling price. As a result, a client would lose a significant amount on opening and liquidating a contract, apart from any movement in the Reuters quotes. In the examples cited above, a client opening and liquidating a contract for Pounds Sterling would lose about U.S. \$180 as a result of the price spread. In addition, the client would pay commission of U.S. \$80 and, in certain circumstances that were not explained in the evidence, the client would be charged interest. These transactions costs might, for an individual transaction, be outweighed by a significant favourable movement in the currency value. More commonly the transaction costs would either outweigh any favourable currency movement or be exacerbated by an unfavourable movement.

Commission staff began to investigate the affairs of Hang Lung in early 1993. By a letter dated March 11, 1993, staff advised Hang Lung that its foreign exchange trading operations constituted trading in securities and required registration under the Act. On March 19, 1993, Hang Lung responded through counsel that it had changed its activities from foreign exchange trading to the leasing of package office space permitting clients to deal directly with foreign dealers and the provision of bookkeeping services to clients. Hang Lung represented that it would not handle client funds; would withdraw from circulation its forex pamphlets and its business cards showing it to be part of the Yuen Chow Group; would provide no advice to clients regarding investments, securities or futures contracts; and would not collect or pay commissions respecting securities or spot trading.

Despite these representations, Hang Lung continued to carry on its business as before until a temporary cease trading order was issued against it by the Superintendent on February 15, 1994. At that time Hang Lung owed its clients more than U.S. \$500,000, in the form of margin credits in client accounts. The bank accounts in British Columbia of Hang Lung and Yuen Way had in them, at that time, approximately Cdn \$76,000 and U.S. \$15,000.

On March 1, 1994, Hang Lung liquidated all open forex contracts. Following these transactions, Hang Lung owed clients U.S. \$210,442.74 in margin funds. The decrease in margin funds between February 15 and March 1 appears to have been caused by currency fluctuations. None of the clients who were owed money at February 15, 1994, have been repaid.

During the period August 1992 to February 15, 1994, Hang Lung, Yuen Way and Wong transferred about Cdn \$1 million to banks in Hong Kong. They received transfers of about \$420,000 from Hong Kong for payment of expenses and client withdrawals, leaving a net transfer to Hong Kong of about Cdn \$580,000. During the period November 1, 1993, to February 15, 1994, Hang Lung received client deposits of about U.S. \$470,000 and paid out client withdrawals of about U.S. \$190,000.

3. **FINDINGS**

The key issues in this hearing are:

1. whether the forex contracts traded by Hang Lung are securities;
2. if so, whether each of the respondents was trading in the securities; and
3. if so, whether the respondents were also advising with respect to the securities.

There are also two secondary issues concerning allegations that Wong and Hang Lung misrepresented to Commission staff Wong's prior experience in forex contract trading and Hang Lung's intentions for carrying on its business.

3.1 Are the forex contracts securities?

Commission staff argue that the forex contracts sold by Hang Lung are securities because they are investment contracts or, alternatively, because they have the inherent characteristics of instruments intended to be regulated under the Act.

The definition of security in section 1(1) of the Act is not exhaustive. It contains 15 paragraphs describing various types of financial instruments that are to be included in the term security. One of these is “an investment contract”. There has been considerable jurisprudence with respect to the term investment contract, both in Canada and in the United States.

Commission staff rely primarily on the majority judgment of the Supreme Court of Canada in *Pacific Coast Coin Exchange of Canada et al. v. Ontario Securities Com’n* (1977), 80 D.L.R. (3d) 529. That case dealt with a scheme designed to enable members of the public to speculate in silver coins by purchasing the coins under “commodity account agreements”, similar to the forex contracts used by Hang Lung. The Ontario Securities Commission issued a cease trading order pending the filing of a prospectus, on the grounds that this activity constituted trading in securities. The OSC found the agreements were securities by virtue of being investment contracts or documents evidencing title to or interest in the property of a person. On appeal, the Ontario Divisional Court found that the agreements were investment contracts but were not securities by virtue of being documents evidencing title to or interest in the property of a person. Further appeals were dismissed by the Ontario Court of Appeal and the Supreme Court of Canada.

The majority of the Supreme Court of Canada emphasized the broad scope that should be given to the definition of security. Mr. Justice de Grandprè, writing for the majority, stated at p. 538:

If any doubt could be entertained as to the intention of the Legislature in the present instance, that doubt should be dispelled by the very wide terms employed in defining the word “security”. The fourteen subdivisions of the definition encompass practically all types of transactions to such an extent that this definition had to be narrowed down by a long list of exceptions to be found in S. 19 [am. 1971, Vol. 2, c. 31, s. 3].

At this point, reference should be made to a work by Professor Louis Loss who was called by appellant as an expert witness before the Commission. In the second edition of his *Securities Regulation* (1961), vol. I at pp. 483, 488-489, and in the 1969 supplement thereto (vol. IV at p. 2501), Prof. Loss recognizes that “the various categories in the definition are not mutually exclusive and are meant to be ‘catchalls’”. This view of the definition in the United States statute is valid in our case as well.

Such remedial legislation must be construed broadly, and it must be read in the context of the economic realities to which it is addressed. Substance, not form, is the governing factor. As noted in *Tcherepnin v. Knight (1967)*, 389 U.S. 332 at p.336:

... in searching for the meaning and scope of the word "security" in the Act, form should be disregarded for substance and the emphasis should be on economic reality.

In the search for the true meaning of the expression "investment contract", another guideline must also be present in the forefront of our thinking. In the words of the Supreme Court of the United States in *Securities Exchange Com'n v. W.J. Howey Co. et al.* (1946), 328 U.S. 293 at p. 299, any definition must permit

... the fulfillment of the statutory purpose of compelling full and fair disclosure relative to the issuance of "the many types of instruments that in our commercial world fall within the ordinary concept of a security." ... It embodies a flexible rather than a static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek the use of the money of others on the promise of profits.

Which does not mean that the legislation is aimed solely at schemes that are actually fraudulent; rather, it relates to arrangements that do not permit the customers to know exactly the value of the investment they are making.

The Court then applied the now well-known *Howey* and *Hawaii* tests from United States jurisprudence and found that the agreements for the purchase of silver coins on margin were investment contracts. The Court concluded, at p. 542:

At the invitation of the parties, I have examined the facts in the sole light of the *Howey* and *Hawaii* tests. Like the Divisional Court, however, I would be inclined to take a broader approach. It is clearly legislative policy to replace the harshness of caveat emptor in security related transactions and Courts should seek to attain that goal even if tests carefully formulated in prior cases prove ineffective and must continually be broadened in scope. It is the policy and not the subsequently formulated judicial test that is decisive.

The Supreme Court's analysis of the applicability of the *Howey* and *Hawaii* tests in *Pacific Coin* is applicable directly to the facts in this case and leads us to the conclusion that the forex contracts are investment contracts. However, there are significant differences between the forex contracts, which are instruments for speculating on currency prices, and the investments in business enterprises that were at issue in *Howey* and *Hawaii*. In our view it is more appropriate to examine the forex contracts using the broader approach suggested by the Court in *Pacific Coin*.

The forex contracts offered to the public by Hang Lung involved the investment of money for the purpose of speculating in foreign currencies. The intention of any client opening a contract would be to earn a profit, not to take delivery of the currency.

By investing as little as U.S. \$1,000 or \$2,000 for a margin deposit, a client would be exposed to the fluctuations in value of about U.S. \$100,000 worth of a foreign currency. Small movements in the price of the currency would result in a substantial profit or loss in relation to the initial investment. Any client with an open contract is at the risk of losses that could far exceed the initial investment.

In our view, it is legislative policy, as expressed in the broad definition of security in the Act, to replace the harshness of *caveat emptor* in transactions involving risky and intangible investments of this type. We find that the forex contracts offered by Hang Lung are investment contracts and therefore securities as defined in section 1(1) of the Act.

In the case of *Re Superintendent of Brokers and Lazerman Inv't Metals Int'l* (1985), 18 D.L.R. (3d) 529, the British Columbia Court of Appeal distinguished *Pacific Coin* and concluded that a scheme managed by a company's promoters to permit investment in precious metals (silver bars) was not an investment contract and hence not a security. The Court determined that there was no parallel between the facts of the case and those in *Pacific Coin*, *Howey* or *Hawaii*. In our view, the case before us is not distinguishable from *Pacific Coin* and we have applied here the Court's reasoning in that case.

Deleted: '

3.2 Were the respondents trading in securities without being registered and were they distributing securities without filing and obtaining a receipt for a prospectus?

This question involves the consideration of two of the most important provisions of the Act. Section 20(1)(a) of the Act provides that

- No person shall trade in a security unless he is registered as
 - (i) a dealer, or

- (ii) a salesman, partner, director or officer of a registered dealer and is acting on behalf of that dealer,
- ...

Trade is defined in section 1(1) as follows:

“trade” includes

- (a) a 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 a transfer, pledge, mortgage or other encumbrance of a security for the purpose of giving collateral for a debt,
- ...
- (c) the receipt by a registrant of an order to buy or sell a security,
- ...
- (e) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the activities specified in paragraphs (a) to (d).

Registrant is defined as “a person registered or required to be registered under this Act or the regulations”.

Contrary to the assertions Hang Lung made to Commission staff through counsel on March 19, 1993, Hang Lung was not merely providing package office space. Hang Lung’s business involved the disposition for valuable consideration, with payments on margin, of securities in the form of forex contracts. It received orders from its clients to open and liquidate the contracts. It engaged in advertising, solicitation and other acts in furtherance of its forex contract business. On this basis, we find that Hang Lung was trading in securities and, accordingly, was required to be registered under section 20(1)(a). Hang Lung was not registered under the Act and no exemption from registration was available for this trading. Hang Lung was therefore trading in securities in contravention of section 20(1)(a).

Wong, as the sole director and controlling mind behind Hang Lung was also engaged in the same activities and was also trading in securities. He was not registered and no exemption was available for his trading. Wong was therefore trading in securities in contravention of section 20(1)(a).

Yuen Chow Group, Yuen Way and Yuen Chow Equities have no physical presence in British Columbia and were somewhat removed from the activities of Hang

Lung. Nevertheless, Louis Li was sent by Yuen Chow Group to help Wong set up Hang Lung. Yuen Chow Group also supplied materials to Hang Lung to assist in the solicitation of trading and permitted Hang Lung to promote its business as being under their umbrella, which gave the business an aura of size and stability. Client account agreements were represented as being with Yuen Way. Client account statements were prepared in the name of Yuen Chow Equities. Yuen Chow Group sent daily faxes to Hang Lung providing information on foreign currency markets and there was a high volume of telephone and facsimile calls from Hang Lung to Yuen Chow Group and Yuen Way. Calls to establish prices for client forex contracts were made to Yuen Chow Group or Yuen Way. Some of the client margin funds were deposited into Yuen Way's account in Vancouver and substantial sums were transferred by Hang Lung and Yuen Way to Yuen Way in Hong Kong. In our view, these constitute acts in furtherance of the contract trading and are therefore trading.

We find that Yuen Chow Group, Yuen Way and Yuen Chow Equities were required to be registered under section 20(1)(a) and, since they were not registered and no exemption from registration was available for this trading, they were trading in securities in contravention of section 20(1)(a).

Section 42(1) of the Act provides that:

Unless exempted under this Act or the regulations, a person shall not distribute a security unless a preliminary prospectus and a prospectus respecting that security

- (a) have been filed with, and
- (b) receipts obtained for them from,

the superintendent.

Distribution is defined in section 1(1) as follows ...

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

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

The forex contracts were previously unissued securities when they were traded to clients. These trades were therefore distributions. No prospectus was filed with the Superintendent under section 42 and no exemption from section 42 was available.

Accordingly, we find that the securities were distributed by the respondents in contravention of section 42.

3.3 Were the respondents advising with respect to the securities?

Section 20(1)(c) of the Act provides that:

No person shall

...

- (c) act as an adviser unless he is registered as
 - (i) an adviser, or
 - (ii) a partner, director or officer of a registered adviser and is acting on behalf of that adviser

in accordance with the regulations.

Section 1(1) defines adviser as follows:

“adviser” means a person engaging in, or holding himself out as engaging in, the business of advising another with respect to investment in or the purchase or sale of securities.

The Commission has had an opportunity recently to consider the issue of what constitutes advising within the meaning of the Act. In the decision *In the Matter of Atlantic Trust Management Group*, [1995] 14 BCSC Weekly Summary 54, the Commission stated at page 73:

A person who recommends an investment in an issuer or the purchase or sale of an issuer’s securities, or who distributes or offers an opinion on the investment merits of an issuer or an issuer’s securities, is advising in securities. If a person advising in securities is distributing or offering the advice in a manner that reflects a business purpose, the person is required to be registered under the Act.

Based on the *Atlantic* decision, we are of the view that Hang Lung was clearly engaging in the business of advising others with respect to investment in the forex contracts. Hang Lung provided advice to clients both in meetings conducted by its managers and through the posting of the daily faxes from Yuen Chow. Account executives, who were paid commission by Hang Lung, also advised clients and exercised discretion over trading in client accounts.

Wong, as the directing mind behind Hang Lung, was also in the business of advising.

Yuen Chow Group and Yuen Way provided the materials used by Hang Lung in the giving of advice and permitted their names to be used by Hang Lung in the promotion of its business. In our view, they were holding themselves out as being in the business of advising.

We find that Hang Lung, Wong, Yuen Chow Group and Yuen Way were required to be registered as advisers under section 20(1)(c) and, since they were not registered and no exemption from registration was available for them to act as advisers, they contravened section 20(1)(c).

3.4 Misrepresentation by Wong

Wong testified under oath in an interview with Commission staff in March 1994 that he had no previous experience in the securities or forex contract business. Staff subsequently obtained documents from police in Montreal showing that Wong had been involved in an operation similar to Hang Lung in early 1992.

Although Wong chose not to attend the hearing and therefore was not given an opportunity to comment on this discrepancy, it is difficult to see what explanation there could be. We find that Wong lied to Commission staff under oath about his previous forex trading activities.

3.5 Misrepresentation by Hang Lung

In March 1993, Hang Lung represented through counsel that it would no longer be involved in foreign exchange contract trading. Hang Lung said its business was leasing package office space, through which it permitted clients to deal directly with foreign dealers, and providing bookkeeping services to clients. Hang Lung represented that it would not handle client funds, would withdraw from circulation its foreign exchange pamphlets and its business cards showing it to be part of the Yuen Chow Group, would provide no advice to clients regarding investments, securities or futures contracts, and would not collect or pay commissions respecting securities or spot trading.

Despite these representations, Hang Lung continued to trade in forex contracts, to handle client funds, to circulate its foreign exchange pamphlets and business cards, to provide advice to clients on forex contracts, and to collect and pay commissions on contract trading.

Hang Lung and its sole director, Wong, did not appear at the hearing. Based on the evidence produced, the only conclusion that can be drawn is that Hang Lung deliberately misrepresented its business activities to Commission staff so that it could carry on its activities in contravention of the Act.

4. **DECISION**

This case involves trading in securities in a form not previously dealt with by the Commission. In such circumstances, it might be open to a respondent to say that he did not realize that he was required to become registered and file a prospectus and that he should not be prohibited from participating in the market in the future. Here, however, that defence is not open. Wong and Hang Lung misrepresented the nature of their background and activities to Commission staff when their business first came to staff's attention. These misrepresentations were clearly intended to, and did temporarily, divert staff from taking enforcement action. As a result Hang Lung was able to carry on business for another year and its clients suffered significant losses. These losses were reflected by the fact that, during the period August 1992 to February 15, 1994, Hang Lung, Yuen Way and Wong transferred a net amount of approximately Cdn \$580,000 to banks in Hong Kong.

Given this deliberate flouting of British Columbia's regulatory standards, we consider it necessary to protect investors from the activities of the respondents. Accordingly, we order:

1. under section 144(1)(a) of the Act, that Hang Lung, Yuen Chow Group, Yuen Way, Yuen Chow Equities and Wong comply with sections 20 and 42 of the Act;
2. under section 144(1)(b) of the Act, that Hang Lung, Yuen Chow Group, Yuen Way, Yuen Chow Equities and Wong cease trading in forex contracts;
3. under section 144(1)(c) of the Act, that the exemptions described in sections 30 to 32, 55, 58, 80 and 81 of the Act do not apply to Hang Lung, Yuen Chow Group, Yuen Way, Yuen Chow Equities or Wong for a period of 20 years from the date of this order;
4. under section 144(1)(d) of the Act, that Wong is prohibited from becoming or acting as a director or officer of an issuer for a period of 20 years from the date of this order;

5. under section 144.1 of the Act, that Hang Lung, Yuen Chow Group, Yuen Way, Yuen Chow Equities and Wong each pay an administrative penalty of \$50,000; and
6. under section 154.2 of the Act, that Hang Lung, Yuen Chow Group, Yuen Way, Yuen Chow Equities and Wong pay costs of or related to the hearing in an amount to be determined following submissions from the parties.

DATED at Vancouver, British Columbia, on June 7, 1995.

FOR THE COMMISSION

Douglas M. Hyndman
Chair

Joyce C. Maykut, Q.C.
Vice Chair

Adrienne R. Wanstall
Member