

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
"Commercial Division"

No: 500-11-060024-219
No: 500-11-060303-217

**IN THE MATTER OF THE RECEIVERSHIP
OF:**

**AGRO TECH VENTURES 1 INC.
MALINA CAPITAL INC.
10553034 CANADA INC. (MALINA ENERGY)
GREEN CBD TECHNOLOGY INC.
CAPE COVE FINANCIAL MANAGEMENT INC.
CALIXA CAPITAL PARTNERS INC.
DOJO KAISHI INC.**

**SILVERMONT FINANCE INC.
SILVERMONT CAPITAL INC.
MARDI.INFO INCOME TRUST
MARDI.INFO OPERATING TRUST
MARDI.INFO EXEMPT MARKET L.P.
MARDI.INFO GENERAL PARTNER INC.
9428-5855 QUÉBEC INC.
GREEN RIVER INVESTMENTS INC.
GREEN RIVER FINANCE CANADA INC.
9129-6004 QUÉBEC INC. (F.A.S. GREEN RIVER
FINANCE)**

Collectively the "**Defendants**"

And

**RAYMOND CHABOT ADMINISTRATEUR
PROVISOIRE INC.**


The "**Receiver**"

REPORT OF THE RECEIVER DATED JUNE 7, 2023

**TO THE HONOURABLE CHRISTIAN IMMER, J.S.C., SITTING IN COMMERCIAL DIVISION, FOR
THE JUDICIAL DISTRICT OF MONTRÉAL, THE RECEIVER RESPECTFULLY SUBMITS THE
FOLLOWING REPORT IN CONNECTION WITH THE RECEIVERSHIP OF THE DEFENDANTS.**

This Report supports the Receiver's Application to obtain authorization for a method of distribution (the "**Application**").

RAYMOND CHABOT ADMINISTRATEUR PROVISOIRE INC.
Receiver for the Defendants

By: 
Emmanuel Phaneuf, M.Sc., CIRP, LIT
Designated

1. BACKGROUND

- 1.1. This report (the “**Report**”) pertains specifically to the Receiver’s Application to obtain authorization for a method of distributing the residual assets of all of the Defendants referred to in Court case numbers 500-11-060024-219 and 500-11-060303-217, i.e.:
 - Agro Tech Ventures 1 Inc. and Green CBD Technology Inc., hereinafter collectively referred to as “**Agro Tech**”;
 - Malina Capital Inc. and 10553034 Canada Inc., hereinafter collectively referred to as “**Malina**”;
 - Cape Cove Financial Management Inc. (“**Cape Cove**”);
 - Calixa Capital Partners Inc. (“**Calixa Partners**”);
 - Dojo Kaishi inc. (“**Dojo**”);
 - Silvermont Finance Inc. and Silvermont Capital Inc., hereinafter collectively referred to as “**Silvermont**”;
 - MarDi.info Income Trust, MarDi.info Operating Trust, MarDi.info Exempt Market L.P., MarDi.info General Partner Inc. and 9428-5855 Québec Inc., hereinafter collectively referred to as “**MarDi.Info**”;
 - Green River Investments Inc., Green River Finance Canada Inc. and 9129-6004 Québec Inc., hereinafter collectively referred to as “**Green River**”.
- 1.2. In the context of this Report, Cape Cove clients who invested in the Agro Tech, Malina, Silvermont, MarDi.Info and Green River funds (the “**Defendants/Issuers**”) on the exempt market are referred to as the “**Investors**”.
- 1.3. The reader is invited to read all of the Receiver’s reports available at <https://www.raymondchabot.com/fr/entreprises/dossiers-publics/cape-cove/>, in particular the situation update that has been prepared by the Receiver and that should be available no later than June 19, 2023, to review the procedural history as well as the action taken by the Receiver since April 15, 2022.
- 1.4. Unless indicated otherwise, the amounts presented in the tables are in thousands of dollars and have been rounded off for presentation purposes.

2. STRUCTURE OF THE REPORT

2.1. This Report has been prepared to present updated information to the Autorité des marchés financiers (“**Autorité**”), the Court and Investors with regard to:

- The results of efforts made with regard to the sale and investment solicitation process and the recovery of the Defendants’ assets;
- The situation regarding the Defendants’ liabilities, notably including amounts owed to Investors;
- The main flow of funds among the Defendants and relationships between the Defendants and their key directors, officers, representatives and employees;
- The scheme put in place by the Defendants’ officers with the admitted objective of diverting the Investors’ assets;
- The distribution methods that are available, an illustration of the various distribution scenarios and, finally, the Receiver’s recommendations.

2.2. More specifically, the Report is divided into the following sections:

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	• Summary of other realizable assets whose realizable value currently remains vague or unknown	6
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3. ASSET SITUATION

Statement of receipts and disbursements

3.1. The following table presents the statement of receipts and disbursements reflecting transactions involving the Receiver's trust accounts as at June 5, 2023:

In thousands of \$ - Unaudited	Cape Cove \$	Malina \$	Agro Tech \$	Silvermont \$	MarDi.Info \$	Green River \$	Total \$
Receipts							
Cash	77	-	-	294	34	98	502
Commissions	29	-	-	-	-	-	29
Investments - public corporations	-	-	-	45	-	-	45
Investments - private corporations	-	-	102	-	-	-	102
Reimbursement of taxes/taxes collected	57	-	-	-	-	-	57
Reimbursements - insurance	0	-	-	-	-	-	0
Reimbursements - loans	-	-	-	153	159	-	312
Reimbursements - micro loans	-	-	-	-	-	6	6
Office furniture	5	-	-	-	-	-	5
Goodwill	393	-	-	-	-	281	674
Advances - Autorité	575	-	-	-	-	-	575
	1 136	-	102	491	192	385	2 307
Disbursements							
Salaries and commissions	92	-	-	-	-	-	92
Source deductions	-	-	-	-	-	23	23
Miscellaneous	1	-	-	1	1	1	5
Taxes	127	-	-	64	18	34	243
Conservatory measures	16	-	-	-	-	-	16
	236	-	-	65	18	59	378
Fees							
Fees (Receiver and legal counsel)	732	-	-	426	116	230	1 505
Experts (IT and compliance)	99	-	-	-	-	-	99
	1 067	-	-	491	135	288	1 981
	69	-	102	-	58	97	325

Key findings:

- 3.2. **Cape Cove:** Cape Cove's realizable assets essentially consist of goodwill. While the considerations obtained differ from a normal transaction, the Receiver considers the amounts realized to be similar to those obtained as part of transactions carried out in similar circumstances.
- 3.3. **Agro Tech and Malina:** The Receiver was able to recover a \$102,000 loan out of amounts invested totalling \$9.8 million. No other investments have been recovered to date.
- 3.4. **Silvermont:** To date, an amount of \$491,000 has been recovered out of the \$6.1 million invested by way of loans that were recovered or investments that were realized.
- 3.5. **MarDi.Info:** The receipts obtained by the Receiver are exclusively interim payments (principal and interest) made by Diversico, a corporation that received a loan from MarDi.Info. No other assets have been realized to date.

- 3.6. **Green River:** The sale of assets, including the micro loans portfolio and goodwill, has made it possible to collect an amount of \$385,000 to date. Moreover, a balance of sale totalling approximately \$131,000 should eventually be added to the realization of Green River assets.
- 3.7. To summarize, the Receiver has been able to collect net receipts of approximately \$325,000 to date in its trust account, prior to reimbursement of the payment guarantee provided by the Autorité.
- 3.7.1. The Defendants' receivership has generated costs that were largely supported by the Autorité's payment guarantee (approximately \$575,000);
- 3.7.2. Administrative costs relate primarily to expenses for maintaining Cape Cove operations until the sale of its assets, as well as the professional fees of the Receiver and its legal counsel;
- 3.7.3. The Receiver is expecting to receive additional amounts in the short and medium terms, as discussed below.

Summary of projected receipts

- 3.8. In addition to the amounts presented above, estimated receipts should be added with regard to the Defendants' residual assets:

In thousands of \$ - Unaudited	Cape Cove \$	Malina \$	Agro Tech \$	Silvermont \$	MarDi.Info \$	Green River \$	Total \$
Estimated additional receipts							
Loan reimbursements (agreement)	-	-	-	416	-	-	416
Loan reimbursements (estimated)	-	-	-	-	1 404	-	1 404
Investments	-	-	-	-	100	-	100
Goodwill	-	-	-	-	-	131	131
	-	-	-	416	1 504	131	2 052

- 3.8.1. **Silvermont:** The amounts eventually to be received essentially relate to payments under out-of-court settlements reached in connection with legal proceedings initiated by the Receiver with regard to Silvermont borrowers. Silvermont's loan recovery measures were seriously undermined by the poor quality of certain loan files, the limited collateral provided to Silvermont and the lack of cooperation on the part of Silvermont shareholder, director and officer Nick Tzaferis;
- 3.8.2. **MarDi.Info:** The amounts eventually to be received essentially consist in the principal and interest receivable in connection with a loan extended to Diversico (discounted at zero cost). The interest receivable portion amounts to \$630,000;
- 3.8.3. **Green River:** The amounts eventually to be received relate to the balance of sale (referred to above) in respect of assets sold.

Summary of other realizable assets whose realizable value currently remains vague or unknown

- 3.9. In addition to the estimated amounts eventually to be received referred to above, certain investments held by the Defendants may be sold or repurchased. To date, the Receiver is unable to provide an opinion on the realizable value of these investments or when they may be sold off.
- 3.10. In any event, the Receiver believes that the realizable value of the assets may be limited.

Issuer/Defendant	Asset (investment/loan)	Amount invested \$	Comments
Agrotech	Y Kombucha	786	There have been many discussions with Mr. Gardy Fury, Y Kombucha's representative, to reach an agreement. The \$10,000 offered to date has been determined to be largely insufficient.
	Corporation Global Reiva	190	There have been recent conversations with the corporation's president. The corporation ceased operations several years ago. The Receiver refused an offer of \$1,000 which was considered to be insufficient.
	Ferme Gigrow / Steelfab	500	The Receiver tried several times to obtain the subscription documents as well as current financial information. The case is currently in the hands of the Receiver's legal counsel.
Malina	Y Kombucha	208	Same comment
	7954689 Canada inc. (Radio Station)	99	There have been certain conversations with the corporation's representatives.
	Corporation Global Reiva	10	Same comment
MarDi.Info	7954689 Canada inc. (Radio Station)	75	Same comment
	Les fermes Gigrow inc.	309	Same comment
	Trees of lives	130	The Receiver is currently in discussions regarding a possible buyback agreement in connection with a financing round for Trees of Lives in the summer of 2023.
	EVAH Corp.	250	The Receiver has not followed up on a \$100,000 offer received from the corporation. At the same time as this offer submitted to the Receiver, the corporation sought new financing, with amounts three times higher than the consideration offered.

- 3.11. Finally, for overall reconciliation purposes the table below lists investments totalling nearly \$1.8 million which the Receiver believes to have no possible realizable value ("Impaired assets").

Issuer/Defendant	Asset (investment/loan)	Amount invested (in thousands of \$)	Comments
Agro Tech	Farming project in Africa	235	Machinery has apparently being seized and leases terminated.
	Livewell	255	Company in bankruptcy
	Dojo Kaishi	5	Operations discontinued
	Aurora Wind Energy	80	Company cannot be found
Malina	Dojo Kaishi	100	Same comment
	9206-8501 Québec Inc. (Cliic)	198	Company has changed name several times. Shareholders have not returned.
	THETA ENTREPRISES	109	Related to a project in Africa (equipment purchase)
	AGLP Vert inc.	200	Investment refuted by the beneficiary
MarDi.Info	9406-3484 Quebec Inc. (Self Look)	9	Investment has never been finalized
	CBD Green Technology	187	Dummy corporation for Agro Tech
	Danjoco inc.	5	Company in which Bergeron is a shareholder. No operations to date.
	Demeter K Industries	381	Investment in a chocolate producer to manufacture edible cannabis products. The project no longer has any value or activities. The premises and leased equipment were apparently abandoned due to a lack of funds.

Pro forma statement of assets

3.12. The table below presents a pro forma statement of the Defendants' realized and residual assets (estimated additional assets to be realized):

In thousands of \$ - unaudited	Cape Cove \$	Malina \$	Agro Tech \$	Silvermont \$	MarDi.Info \$	Green River \$	Total \$
Realized receipts (in trust)	1 136	-	102	491	192	385	2 307
Estimated additional receipts	-	-	-	416	1 504	131	2 052
	1 136	-	102	908	1 697	516	4 358
Disbursements realized (in trust)	1 067	-	-	491	135	288	1 981
Estimated additional disbursements	28	-	-	98	55	58	239
	1 095	-	-	590	190	346	2 220
Estimated recovery prior to reimbursement of Autorité advance	41	-	102	318	1 507	170	2 138
Reimbursement of Autorité advance	(575)	-	-	-	-	-	(575)
Estimated balance available for distribution	(534)	-	102	318	1 507	170	1 563

3.13. This pro forma statement of assets presents a net overall balance, after reimbursement of the Autorité's payment guarantee but prior to realization of the Impaired assets, in the amount of \$1.6 million.

3.14. **The amounts received by officers, directors, employees and representatives, *de jure* and *de facto*, have been excluded from potentially realizable assets.**

The Investors could eventually benefit from various recourse taken against these parties. However, it is their responsibility to contact their legal counsel in order to enquire into possible action.

4. LIABILITY SITUATION

- 4.1. The Defendants' total liabilities include amounts owed to Investors as well as to other creditors, notably the related creditors.

Investors

- 4.2. Given that no accounting records were available, the Receiver reconciled the amounts using available information provided by Cape Cove and Investors, as well as the bank statements.
- 4.3. The following table presents the estimated Investor subscriptions for securities to be purchased from the Defendants/Issuers:

Defendants	Number of investors #	Investments via fiduciaries \$	Direct investments \$	Total \$
Agro Tech	389	4 636	2 269	6 905
Malina	218	2 494	1 027	3 522
Green River	75	1 278	-	1 278
MarDi.Info	166	1 662	549	2 210
Silvermont	227	4 232	1 843	6 075
	1 075	14 301	5 688	19 989

Note The number of investors is mutually exclusive for each Defendant/Issuer.

- 4.4. The Receiver's analysis revealed that most Investors subscribed for an investment in more than one of the Defendants/Issuers. The following tables illustrate the cross investments:

	Agro Tech #	Malina #	Green River #	MarDi.Info #	Silvermont Finance #
Agro Tech	178	44	5	24	38
Malina	44	40	6	14	20
Green River	5	6	7	-	6
MarDi.Info	24	14	-	85	2
Silvermont Finance	38	20	6	2	84

Correlation table

Legend

- 178 Investors subscribed exclusively with Agro Tech, 40 with Malina, 7 with Green River, etc.
- 44 Investors subscribed with both Agro Tech **and** Malina, 5 with both Agro Tech **and** Green River, etc.

Investment summary

Number of products	Number of investors	%
1	394	36,7%
2	159	23,2%
3	68	14,5%
4	31	7,9%
5	7	3,1%

Legend:

- 394 Investors (out of a total of 1,075) only subscribed for one (1) “product”, representing approximately 37% of total Investors;
- 159 Investors (out of a total of 1,075) only acquired two (2) “products”, representing approximately 23% of total investors.

Cross investments

Defendants	Number of investors	2 products or more	%
Agro Tech	389	211	54,2%
Malina	218	178	81,7%
Green River	75	68	90,7%
MarDi	166	80	48,2%
Silvermont	227	143	63,0%

Legend:

- Of the 389 Investors who subscribed with Agro Tech, 211 subscribed for more than one product. Consequently, more than 54% of Investors who subscribed with Agro Tech also subscribed for more than one product.;
- Of the 218 Investors who subscribed with Malina, 178 subscribed for more than one product. Consequently, more than 82% of Investors who subscribed with Malina also subscribed for more than one product.

Creditors (other than Investors)

- 4.5. The Receiver was able to trace certain information regarding the Defendants’ liabilities. The table below presents an overview of these amounts owed (other than amounts owed to Investors):

Defendant	Other related claims		Other unrelated claims		Total	
	#	\$	#	\$	#	\$
Cape Cove	3	1 348	7	306	10	1 654
Agro Tech	2	564	-	-	2	564
Malina	2	81	-	-	2	81
Silvermont	1	34	-	-	1	34
MarDi.Info	1	13	-	-	1	13
Green River	1	324	10	568	11	892
Dojo	-	-	-	-	-	-
Total	10	2 365	17	874	27	3 239

Note:

Related amounts owed pertain to shareholders, directors, officers, employees, representatives and all other individuals involved with the Defendants, among others.

- 4.6. **Cape Cove:** Liabilities essentially consist in amounts owed in respect of operations, accounting costs, software and data access, etc. (\$63,000), unpaid wages including a claim by Mr. Robert Audet (“**Audet**”) (\$27,000), subordinated loans from Cape Cove shareholders (\$1.3 million) as well as legal costs relating to the ongoing proceedings (\$0.2 million).
- 4.7. **Agro Tech and Malina:** The amounts owed consist in funds transferred among the Defendants (\$0.6 million) and amounts owed to Knightwood Holding Ltd (“**Knightwood**”), which is a shareholder pursuant to service agreements with the Defendants (\$54,000). Having Knightwood as a shareholder allowed the Investors to include the investments in a registered retirement savings plan.
- 4.8. **Silvermont:** The liabilities traced consist in amounts owed to Knightwood (\$34,000).

- 4.9. **MarDi.Info:** This entity's liabilities essentially consist in legal fees pertaining to the rejected challenge regarding the appointment of the Receiver.
- 4.10. **Green River:** Green River's liabilities include amounts owed to shareholders (\$0.3 million), suppliers (\$8,000) and the federal government's COVID-19 emergency fund (\$60,000). Liabilities also include loans extended to various related or unrelated individuals, totalling approximately \$0.5 million. John Theofilis, a Green River shareholder, director and officer, refers to these individuals as angel Investors.
- 4.11. **Dojo:** Liabilities essentially consist in unpaid rent.

Pro forma statement of liabilities

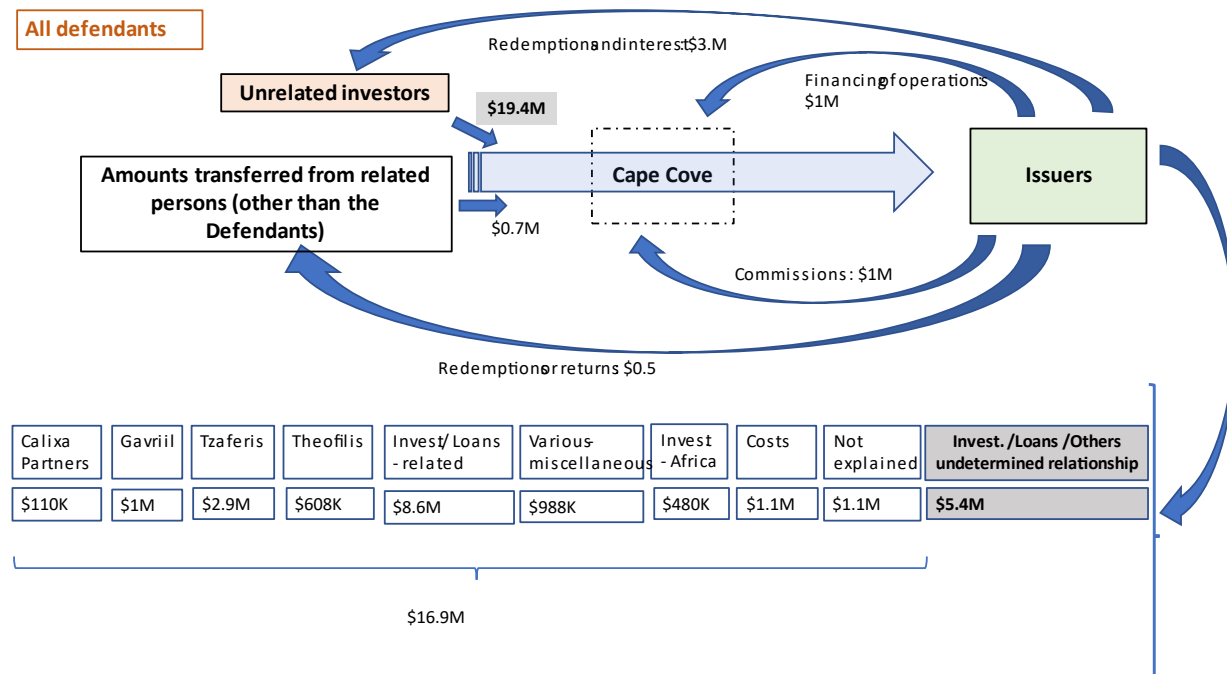
- 4.12. The following table combines the afore-mentioned information in the form of a pro forma statement of liabilities:

In thousands of \$ - unaudited	Cape Cove \$	Malina \$	Agro Tech \$	Silvermont \$	MarDi.Info \$	Green River \$	Total \$
Investors*		3 322	6 181	5 858	2 122	1 202	18 684
Related investors*		200	724	217	88	76	1 305
	-	3 522	6 905	6 075	2 210	1 278	19 989
Other related creditors	1 348	81	564	34	13	324	2 365
Other unrelated creditors	306	-	-	-	-	568	874
Total	1 654	3 603	7 469	6 109	2 223	2 170	23 228

- 4.13. **It is important to note that a claims process will eventually allow the Receiver to validate the Defendants' liabilities.**

5. MAIN FLOW OF FUNDS – SUMMARY AND OVERVIEW

5.1. The chart below illustrates the flow of funds between the Defendants and certain stakeholders:



5.2. Our main findings are as follows:

- 5.2.1. Cape Cove operated as an investment dealer, offering products on exempt markets. It was used as an intermediary, allowing the principal stakeholders to raise approximately \$19.4 million from investors;
- 5.2.2. These funds were raised by the Defendants/Issuers by way of subscriptions, primarily between May 2018 and July 2021;
- 5.2.3. The Defendants/Issuers initially benefitted—directly or indirectly¹--from funds transferred by certain Cape Cove employees, officers, representatives and shareholders totalling approximately \$0.7 million. All or substantially all of these amounts were reimbursed using funds that the Defendants/Issuers received from investors;
- 5.2.4. Cape Cove received approximately \$1 million in commissions on the sale of products of the Defendants/Issuers. It also received an additional amount of approximately \$1 million out of funds provided by investors, either directly or indirectly from the Defendants/Issuers. These amounts were mainly paid by the Defendants/Issuers to 9368-2037 Québec inc. (“9368”), a Cape Cove shareholder, which reinjected the amounts into Cape Cove in the form of subordinated loans, thereby allowing Cape Cove to continue operating as well as respect certain financial ratios in order to maintain the scheme of raising funds from Investors;
- 5.2.5. The Receiver was able to identify investments and loans which the Defendants/Issuers made to apparently unrelated individuals. These investments

¹ Some amounts were transferred directly to the target companies, for and on behalf of the Defendants/Issuers.

and loans totalled \$5.4 million, which represents 28% of amounts raised from investors;

- 5.2.6. In performing its investigation, the Receiver was able to identify a number of stakeholders involved in managing or operating the Defendants. These individuals were involved in various capacities and played different roles. It is their combined actions that made it possible to misappropriate a large portion of investors' funds as compared to what was indicated in the various offering memoranda. The involvement of some of these individuals is summarized in **Appendix XII**.
- 5.2.7. The Receiver noted that a number of financial transactions benefitted Efstratios Gavriil (the key player and directing mind) and some members of his family, notably his spouse, Kerasina Vountas, and their children. Nick Tzaferis and Dany Bergeron were also involved in these transactions.
- 5.2.8. An overview of the main flow funds for each of the Defendants/Issuers is presented in **Appendices II, III, VI, VII and VIII**.

6. SCHEME PUT IN PLACE

Preliminary comments

- 6.1. A number of variables should be considered when analyzing the scheme put in place, in particular:
 - 6.1.1. The type of transactions carried out, which notably consist in transfers of cash among the Defendants and transactions benefitting related or associated individuals;
 - 6.1.2. The time factor for the transactions carried out and, more generally, the structure put in place and the incorporation of the entities (i.e., the Defendants);
 - 6.1.3. The general use of bank accounts, including amounts transferred between a Defendant's accounts, in order to carry out the transactions;
 - 6.1.4. The use of false information, deception, dummy corporations, shell corporations, etc.
- 6.2. There a number of factors or indicators that point to a potentially fraudulent investment scheme. They differ according to the circumstances in each specific case. A partial list of the evidence of fraud is included in **Appendix IX**. Such evidence was identified in the review of major cases of financial fraud in Québec in recent years as well as the related jurisprudence.

Review of the scheme

- 6.3. Cape Cove is a brokerage firm founded by Audet in 1999 to conduct certain activities on financial markets. As part of a reorganization in 2017, Cape Cove:
 - 6.3.1. Brought in various partners (including Gavriil, Tzaferis and Bergeron);
 - 6.3.2. Recruited a number of people (employees and representatives); and
 - 6.3.3. Began to carry out brokerage activities, including on the exempt market.
- 6.4. Cape Cove's activities have since consisted in raising funds for eventual investment subscriptions with the Defendants/Issuers.
- 6.5. Generally speaking, and based on all of the information gathered, it appears that the Defendants/Issuers were created in succession, over a period of time, for the purpose of raising funds, meeting cash flow needs and satisfying the officers' greed, while artificially maintaining a structure to conceal what is really going on.
- 6.6. Cape Cove's financing, which was the cornerstone of the investment solicitation process, was ensured via commissions paid or subordinated loans extended to Cape Cove. Over time, these subordinated loans were essentially subsidized with the funds held by the Defendants/Issuers.
- 6.7. More specifically, and for illustrative purposes:
 - 6.7.1. Silvermont Finance was created after Silvermont Capital, when the latter company had exhausted its working capital. Where the Silvermont "group" is concerned, the

- analysis shows that all of the transactions between Tzaferis and related companies took place when one company in the group needed cash;
- 6.7.2. When Silvermont needed cash, Agro Tech (which was subsequently incorporated) transferred the amounts needed. The scheme also worked in reverse, with Silvermont making transfers when Agro Tech was short of cash;
- 6.7.3. In September 2019, when Agro Tech had exhausted its cash resources, Malina (which was also subsequently incorporated) transferred funds to Agro Tech to ensure that certain payments (i.e., interest or redemptions) could be made to investors;
- 6.7.4. Mardi.Info (the final entity on the list to be incorporated) acquired stakes in Agro Tech and invested in Malina, with no clear or rational justification (either given the nature of the investment or the amount paid) when Agro Tech and Malina bank accounts were empty.
- 6.7.4.1. Where Mardi.Info operations are concerned, Bergeron intended to convert Agro Tech's and Malina's bonds into Mardi.Info units. One consequence would have been to avoid repaying amounts in respect of term bonds to Investors, thereby allowing the scheme to continue. This is revealed not only by the information provided by Bergeron, but also Mardi.Info's offering memorandum;
- 6.7.5. In June 2020, Green River lent \$142,000 to Gavriil. This loan was reimbursed in part not by Gavriil, but rather by Malina since it had sufficient cash at the time. The loan date coincides with the receipt of investors' subscriptions in Green River. Moreover, part of this loan was used to repay a Malina investor who requested a redemption;
- 6.7.6. Various Defendants made a number of transfers to Cape Cove, either directly or indirectly, at a time when Cape Cove needed cash.
- 6.8. When the funds were invested in the Defendants/Issuers, the officers appropriated a substantial portion of the amounts in addition to using the funds to invest in various related corporations.
- 6.9. Suffice it to say that none of these transactions have any supporting documentation.
- 6.10. The masquerade and scheme described above provided a smoke screen to conceal the structure that was being used. Among other things, this structure made it possible to conceal Gavriil's involvement.
- 6.10.1. Gavriil has a long history of fraud, embezzlement and misappropriation of funds. He was convicted and sentenced to a 20-month prison term and has been permanently struck off the role as an investment dealer by the Chambre de la sécurité financière;
- 6.10.2. The Receiver has no doubt that, of all the Defendants, the directing mind behind the scheme was really Gavriil, followed by Tzaferis, Bergeron and Audet;
- 6.10.3. Few people really knew what was going on with the Defendants' activities. During the examinations led by the Receiver, the individuals referred the Receiver to Gavriil on a number of occasions to answer questions.

- 6.11. Various evidence of fraud involving the Defendants was also observed in addition to what was described above. This evidence is detailed in **Appendix X**.
- 6.12. Finally, the admissions made by some of the individuals involved in Cape Cove in the case before the Financial Markets Administrative Tribunal also corroborate the Receiver's conclusions regarding the scheme. These admissions are summarized in **Appendix XI**.
- 6.13. Without repeating the summary of admissions presented in Appendix XI, notably the admissions made by Audet, upon reading the decisions the Receiver recognizes that Gavriil was the directing mind for the Defendants and that Cape Cove was guilty of a number of violations, notably with regard to:
- The disclosure of conflicts of interest when selling securities of related or associated corporations;
 - Oversight of brokerage operations on the exempt market;
 - The general oversight structure;
 - Maintenance of files, books and records;
 - The obligation to be knowledgeable regarding investment products.
- 6.14. Appendix XIII, which includes excerpts of the examination involving Bergeron, also speaks for itself.
- 6.15. **In this context, the Receiver can only conclude that the Investors were swindled as a result of a fraudulent scheme.**

It was possible to commit this fraud due to the use of a complex corporate structure. Corporate reorganizations, a growing number of issuers and the use of shell corporations created an appearance of legality and legitimacy for the Defendants/Issuers.

The offering memoranda presented false, misleading and incomplete information, to say the least, in order to provide a sense of security for Investors.

The flow of funds among the Defendants made it possible for the fraud to continue—and allowed Gavriil and his partners to fill their pockets at the expense of Investors.

Similarities with a Ponzi scheme

- 6.16. In light of the temporal analysis of the transactions involving some of the Defendants' assets and liabilities, as well as the many cash inflows and outflows (including payments made to related persons), in all likelihood the facts show that a large portion of the funds were misappropriated in a "Ponzi scheme".

- 6.17. This scheme had to continually be maintained, which required new inflows of cash. All this explains why new funds, i.e. Silvermont Capital, Agro Tech, Malina, Silvermont Finance, Green River and Mardi.Info, were created over time.
- 6.18. Everything suggests that if the Autorité had not stepped in, this scheme would have continued for years, resulting in more investors being swindled and increasing the amounts of losses.
- 6.19. The fact that a small number of people controlled or held information, and were controlling subsequent investments, also points to this type of mechanism.

Group structure as the basis for committing fraud

- 6.20. However, the group's structure remains a critical factor in the scheme that was used, since it was needed to raise funds and conceal what was really going on.
- 6.21. The size of the fraud involving the Investors could not have been achieved without the creation of this structure composed of corporations controlled by a small group of individuals led by Gavriil.
- 6.22. In fact, the fraud was concealed by using dummy and shell corporations and by transferring funds between the Defendants and other related corporations, clearly with the objective of raising funds and then diverting a significant portion thereof.
- 6.23. However, this structure was only a shell. The transactions and facts were analyzed, clearly showing that there was no distinction between the respective patrimonies of each of the Defendants.
- 6.24. The investigation showed that the funds passed from one Defendant to the next, and from one bank account to the next, for no legitimate reason.
- 6.25. Many of the transactions between the Defendants were clearly carried out for the purpose of providing cash needed by the other Defendants, using the Investors' funds as though the amounts had been deposited in a single bank account to:
- i. Make payments to Investors in order to conceal the fraud;
 - ii. Divert a substantial portion of the assets for the benefit of the individuals involved;
 - iii. Cover operating costs in order to maintain the fraudulent activity;
 - iv. Maintain Cape Cove's essential operating activities, which made it possible to generate new investments on the exempt market.
- 6.26. **The Receiver is therefore of the opinion that the legal structures used by the Defendants must be analyzed and dealt with based on the maxim "Fraus omnia corrumpit" (fraud corrupts all).**

7. AVAILABLE DISTRIBUTION METHODS

- 7.1. There are essentially two possible distribution methods, which could include certain alternative terms of application:
 - i. “Consolidated” distribution;
 - ii. “Fund-by-fund” distribution.
- 7.2. “Consolidated” distribution consists in distributing all assets of the corporations involved to all Investors, irrespective of the fund in which the investment was made.
- 7.3. When the “fund-by-fund” distribution method is used, an investor who invested in a particular fund can only recover the full amount of the investment, or a portion thereof, based on assets held by the fund in which the investment was made, despite the fact that the investment may have been misappropriated and transferred to another fund or to individuals who benefitted from the fraud committed using several funds.

8. LEGAL PRINCIPLES

- 8.1. The choice of distribution method must be justified by the circumstances in the particular case, as well as the applicable legal principles.
- 8.2. The Receiver reviewed the relevant legislation and jurisprudence for this particular case, with assistance from its legal counsel. The key considerations in determining the appropriate distribution method are summarized below.

The *Act respecting the regulation of the financial sector*

- 8.3. The *Act respecting the regulation of the financial sector* does not specify a method of distributing the assets held by corporations in receivership.
- 8.4. However, it is important to remember that this legislation was implemented to protect investors, notably in the event of embezzlement, a breach of trust or another offence.
- 8.5. The *Act respecting the regulation of the financial sector* states that the Court may order the winding-up of a corporation and appoint a liquidator or authorize the assignment of its property. It therefore makes reference to the *Winding-up Act* (chapter L-4) and the *Business Corporations Act* (chapter S-31.1).
- 8.6. Section 25 of the *Winding-up Act* states that the Court may order and authorize any proceeding consistent with this Act to ensure the protection of the rights of interested parties and an orderly winding-up of the company.
- 8.7. Therefore, other than the principle of ensuring the protection of investors, the *Act respecting the regulation of the financial sector* does not provide any potential solutions for determining the appropriate distribution method, giving the Court full freedom and discretion.
- 8.8. This principle of protection, which is the cornerstone of this legislation, coupled with all legal proceedings initiated by the Autorité and the Receiver in this particular case, have but one objective and one party in mind, i.e. the Investors.

Consolidated distribution method

- 8.9. The underlying premise for this method is that fraud corrupts all (*fraus omnia corrumpit*), such that all of the Defendants' assets must be consolidated for the benefit of all Investors.
- 8.10. This premise was analyzed in detail, among other things in relation to the judgement rendered by the Honourable Judge Mongeon in the *Norboung* case, which is discussed below.
- 8.11. This principle that *fraud corrupts all*, which is not expressly codified in Québec law, nonetheless encompasses a number of rules that have been codified, such as the requirement to act in good faith in exercising civil rights, the nullity of contracts and the theory of the alter ego and lifting the corporate veil.

Theory of the alter ego and lifting the corporate veil

- 8.12. The *Civil Code of Québec* relies on the premise of lifting the corporate veil as the basis for controlling abuse involving a legal person. That is why the legislature and the courts have drawn up a series of exceptions to the principle of a corporation's distinct juridical personality.
- 8.13. Article 317 of the Civil Code stipulates that:
- “The juridical personality of a legal person may not be invoked against a person in good faith so as to dissemble fraud, abuse of right or contravention of a rule of public order.”
- 8.14. When the corporate veil is lifted between related persons, it becomes possible for them to be considered solidarily liable. For the purposes of this Report, this justifies the use of the “consolidated” distribution method.
- 8.15. Two factors must be present to lift the corporate veil between related persons:
- i. The persons must have acted as an alter ego, i.e. a tool, puppet, screen or sham;
 - ii. The alter ego is used to commit fraud, instigated by or benefitting another person;
- 8.16. The Supreme Court has already concluded that a corporation may be regarded as the *alter ego* of another corporation when there is such a close relationship between them that what apparently concerns one actually pertains to the activities of the other.
- 8.17. Professor Martel has stated that:
- Article 317 allows for the corporate veil to be “lifted” when the corporation is the alter ego of its shareholder or another corporation and when it is used to commit fraud, abuse a right or contravene a rule of public order at the instigation or for the benefit of the shareholder or other corporation (unofficial translation)
- 8.18. In such circumstances, the juridical personality of the Defendants should not be invoked against the Investors. In fact, this is due to the confusion regarding the Defendants' patrimonies, the large number of transactions and the flow of funds regardless of the entity and for no legitimate reason. In fact, it is currently difficult—if not impossible—to clearly determine which amounts were misappropriated and which were invested.
- 8.19. Consequently, based on the principle that *fraud corrupts all* it is not only appropriate to lift the corporate veil, but necessary to do so, to avoid creating an injustice for Investors who have been swindled. The funds should be pooled to create a single patrimony to be distributed to all of the Investors using the “consolidated” distribution method.
- 8.20. The fact that the Defendants also include trusts could raise the question as to whether the corporate veil could be lifted for a trust.

- 8.20.1. The legal structure has no bearing on the issue of the relationship between the persons and the possibility of considering such a person to be the alter ego of another;
- 8.20.2. Many factors need to be considered in determining whether such a relationship exists and qualifying it. According to the Supreme Court of Canada, the most explicit and most likely factor to cover all aspects of the concept is Control (*Buanderie centrale de Montréal inc. v. Montréal (City)*, [1994] 3 S.C.R. 29, par. 34 (*Buanderie centrale*))
- 8.20.3. Once this decision can be considered to apply in one case, the resulting confusion that is created can warrant lifting the corporate veil, notwithstanding the juridical personality of the entity in question.
- 8.20.4. For example, it is in this context that the Honourable Judge Luc Martineau, from the federal tax court, ordered the lifting of the corporate veil specifically for two trusts in case number T-1594-06 (reference: 2008 CF 460, *Her Majesty in Right of Canada v. Mario Laquerre, Fiducie Mario Laquerre, Fiducie ML, Fiducie MJ, 9122-9831 Québec inc. and 9067-6388 Québec inc.*)

Ponzi-type of fraud scheme

- 8.21. As mentioned previously, the scheme put in place has all the appearances of a Ponzi scheme. While this description of the type of fraud is not a determining factor in choosing the most appropriate distribution method, the Receiver considers that it is nonetheless relevant to highlight the following.
- 8.22. In a Ponzi-type of fraud, the fraudsters abuse people's good faith, luring Investors by offering high returns. Instead of placing the amounts raised from Investors in legitimate investment vehicles, the fraudsters use the amounts to fill their own pockets and pay the promised returns.
- 8.23. A Ponzi scheme is a type of investment fraud whereby existing investors are essentially paid using funds raised from new investors. The scheme falls apart when the flow of cash from new investors runs out.
- 8.24. The jurisprudence in the case of *Mount Real Corporation* serves as an example. In this case, the Court recognized that a Ponzi scheme was used and consolidated the related bankruptcy files based on the demonstration that it was impossible to clearly determine which assets and liabilities belonged to which of the specified corporations. In this same case, the Court certified a plan of arrangement to redistribute the assets to all creditors, on a pro rata basis, irrespective of the specified issuer.

Fund-by-fund distribution method

- 8.25. In the Norbourg case, the Honourable Judge Mongeon, who at the time was a Superior Court Judge, and the Court of Appeal examined the analysis of the two distribution methods (the “**Norbourg Judgements**”).
- 8.26. In this particular case, the liquidator opted for “fund-by-fund” distribution. The Superior Court accepted this recommendation and the decision was upheld by the Court of Appeal.
- 8.27. Judge Mongeon summarized the Norbourg case in the preamble to his judgement dated July 31, 2006 (unofficial translation):

[1] On August 25, 2005 the Autorité des Marchés Financiers (AMF) took control of the operations of the Norbourg Group, which was led by its principal shareholder, Vincent Lacroix. Thankfully, this type of intervention is quite rare in the financial world. However, it has recently become somewhat more common due to the discovery of a presumed fraud for some \$130,000,000 involving more than 9,200 accounts held by 8,300 investment clients who entrusted their savings and self-administered pension plans to a group of operators who, if the alleged facts are proven to be true, demonstrated an incredible lack of scruples and total contempt for the investors who put their trust in them. The Norbourg judgements made a distinction between the two distribution methods and the principles that apply to each.

[3] An order issued by the Minister of Finance therefore appointed Richard Messier as Receiver (exhibit P-2) effective August 25, 2005. The Receiver submitted his report to the Minister on September 26, 2005 (exhibit P-3). This Report pointed to a \$130,115,000 discrepancy between the securities held by the investment funds (the Funds) recorded by the Norbourg Group and the securities held by the Northern Trust Company Canada (Northern Trust), the securities custodian (Appendix 3 of the Report, exhibit P-3).

[4] The Receiver therefore recommended that the Funds be wound up.

[5] At the request of the AMF and as recommended by the BDRVM, the Minister of Finance ordered that the funds be wound up pursuant to sections 261 and following of the *Securities Act*, an appointed Pierre Laporte as Liquidator for the funds (exhibit P-5) effective October 25, 2005.

[6] In the meantime, Vincent Lacroix put the five main corporations in the Norbourg Group into bankruptcy on October 13, 2005[3].

- 8.28. Judge Mongeon provided the following details regarding application of the distribution methods (unofficial translation):

[34] The Liquidator is therefore ruling out the Consolidated Distribution Method. In fact, according to the proposed method [fund-by-fund distribution], each unit holder for a particular fund would receive a proportionate share of the balance of assets for the particular Fund. This means that the unit holders of the specific Funds that remained intact (either in whole or in part) would receive a substantial share, if not all, of their

investment. Under the second distribution method [consolidated distribution], all unit holders in all of the specific Funds would receive a share of all asset balances for all of the Funds grouped together artificially to create a single Fund. Hence, all of the 7,800 people who invested in the Norbourg Group would receive a portion of their investment (approximately 30% to 35% of the amount).

8.29. The Court of Appeal defined the consolidated distribution method as follows (unofficial translation):

A method of distribution whereby the remaining assets of each Fund would be consolidated into a single pool for distribution to all clients/investors, on a pro rata basis, according to their individual investment and irrespective of the Fund in which the investment was to be made.

8.30. It is for this reason that both the Superior Court and the Court of Appeal had to rule on the merits of the “fund-by-fund” distribution method, in the Norbourg case, as proposed by the liquidator and approved by the trial judge, versus the “consolidated distribution” method proposed by the appellant who was acting in the capacity of “friend of the Court”.

8.31. The liquidator recommended the use of the “fund-by-fund” distribution method and a pro rata distribution mechanism given that (unofficial translation):

- a) Each Fund is a trust with its own patrimony that is distinct from the other funds;
- b) This type of trust fund cannot transfer assets to another trust fund without fair, valid and sufficient consideration;
- c) This would go against the *modus operandi* of the financial services industry in general, particularly where mutual funds are concerned, by pooling all of the assets of different Funds, each with its own philosophy and investment strategy and consolidating all amounts into a single account to distribute the proceeds to all of the unit holders of all of the Funds.

8.32. Based on the Norbourg judgements, the following principles would apply to the distribution methods (unofficial translation):

- i. The Court must, at least on a prima facie basis, identify the general mechanism used to commit the fraud and the resulting impacts for the funds themselves, the related assets, the balances of securities or cash in each fund and the transactions carried out using the funds (S.C, par. 37).
- ii. The Court must analyze the following in stages:
 - 1) The key elements of the fraud in order to eventually be able to analyze the impact of the fraud on the distribution method to be used and, in particular, whether it is possible to annul the legal structure of the funds based on the maxim that *fraud corrupts all*;
 - 2) Audit work to confirm the balances for the funds to be wound up in order to determine whether the fraud actually had an impact on the reliability of

fund balances, such that they could no longer be considered the property of the unit holders of the funds in question.

- 8.33. It is also possible to conclude, based on the Norbourg judgements, that if the legal corporate structure of the corporations in question is not challenged, the maxim that *fraud corrupts all* cannot not apply.
- 8.34. Moreover, the Norbourg judgements recognize that the maxim *fraud corrupts all* does apply, but only if some clients/Investors or some Funds took advantage of or benefitted from the fraudulent acts.
- 8.35. In the Norbourg case, it is not the structure that was fraudulently put in place, since certain funds existed before Vincent Lacroix came into the picture. Rather, certain transactions carried out following the creation of the funds were fraudulent (i.e. funds withdrawn by Mr. Lacroix and his partners).
- 8.36. Moreover, in the Norbourg case, neither the clients/Investors nor the other funds took advantage of or benefitted from the fraudulent acts.
- 8.37. The Norbourg judgements also show that while the accounting records allowed for transactions or amounts to be identified or traced, there is no confusion or “mingling” of the assets.
- 8.38. When fund balances are reliable (i.e., amounts can be identified and traced), the patrimonies should not be pooled.
- 8.39. The Norbourg judgements also show that the method of distribution is a question of fact and that the final decision should be based on the evidence provided.

9. TRACEABILITY AND DISTRIBUTION MECHANISMS

- 9.1. Once the method of distribution has been determined (i.e., consolidated or fund-by-fund distribution), further analysis and consideration are required to determine how to distribute the residual assets, i.e., which tracing mechanism should be used as the basis for remitting funds.
- 9.2. There are mainly three mechanisms recognized by the courts:
 - 9.2.1. The “*lowest intermediate balance rule*” (“LIBR”) is the mechanism preferred by the courts² unless it does not apply in the circumstances;
 - 9.2.2. The “*first in first out rule*”³, whereby the objective is to reimburse the first investor who lost money. This actually legitimizes a Ponzi-type scheme;
 - 9.2.3. A “*pro rata approach*”, whereby the goal is to divide the residual benefits according to the respective weight of each person’s investments.
- 9.3. Court decisions generally indicate that the LIBR will be used in cases where it is possible to trace each investor’s proportionate share of a fund, whereas the pro rata approach will be used when the LIBR method is impractical.
- 9.4. It is also important to determine which method is the most fair, practical and equitable in the circumstances.
- 9.5. The Receiver is of the opinion that the pro rata approach is the only method that applies in the case under consideration.
- 9.6. In fact, in a situation where the Defendants’ patrimonies are pooled for no reason depending on the cash requirements, it would be perilous—if not impossible—to use “tracing” procedures since the assets have been transferred, diverted, replaced, confused and certainly not attributed.
- 9.7. For example:
 - 9.7.1. The consideration received for the goodwill in Green River cannot be attributed to anyone in particular. The same applies to the micro loans that existed when the Receiver began to intervene in the matter since they resulted from a number of transactions rather than one specific investment.
 - 9.7.2. The facts show that Bergeron disregarded MarDi.Info’s structure in its operations. Not only are the records inseparable but the plan to use bank accounts opened for each class of unit was never respected.
 - 9.7.2.1. In actual fact, certain amounts passed through specific accounts to ultimately be pooled in one common account and then transferred for different investments. Since money is fungible, it becomes impossible to clearly determine which amount provided by which individual was invested in which product or vehicle. Only a temporal analysis of the inflows and outflows of cash would allow for a clear

² Easy Loan Corporation v Wiseman, 2017 ABCA 58, Court of Appeal of Alberta

³ Clayton’s Case

determination to be made. The corresponding periods cannot be used as the basis for such an analysis or determination.

9.7.2.2. It should also be noted that the Receiver did not find any specific accounting records (entries, general ledger, trial balance, etc.) for each investment fund. Physical files were created to save invoices and subscription transactions, but none of this information was recorded in separate accounting records. The information gathered only adds another layer of confusion regarding the information provided by the bank statements.

9.8. All in all, although a prudent approach is required, the Receiver respectfully submits that it is virtually impossible to use a method other than the pro rata approach to trace and redistribute the amounts.

10. SIMULATED DISTRIBUTION SCENARIOS

10.1. The Receiver has simulated two asset distribution scenarios using the pro rata approach:

10.1.1. “Consolidated” distribution;

10.1.2. “Fund-by-fund” distribution.

10.2. In both scenarios being presented, the Receiver:

10.2.1. Corrected the apportionment of fees, more specifically those allocated to Cape Cove, to present a more equitable distribution. While a substantial portion of the fees attributed to Cape Cove refers to the sale and investment solicitation process, a significant amount of time was spent providing information to Investors with regard to the subscriptions involving the Defendants/Issuers.

10.2.2. Applied the reimbursement of the Autorité’s fee payment guarantee, on a pro rata basis, to the residual assets.

10.3. The table below presents the estimated balance available for distribution in accordance with the afore-mentioned adjustments:

In thousands of \$ - unaudited	Cape Cove \$	Malina \$	Agro Tech \$	Silvermont \$	MarDi.Info \$	Green River \$	Total \$
Estimated recovery prior to reimbursement of Autorité advance	41	-	102	318	1 507	170	2 138
Reclassification of fees (Receiver and legal counsel)	217	-	(11)	(33)	(156)	(18)	-
	258	-	91	285	1 351	153	2 138
Reclassification of reimbursement of advance to Autorité	(69)	-	(25)	(77)	(363)	(41)	(575)
Estimated balance available for distribution	188	-	67	208	988	112	1 563

10.4. The simulations presented below do not take into account amounts owed to creditors given the prevalence of Investors and, especially, the fact that all of the proceedings relating to this matter have been initiated for the benefit of Investors. The creditors have legislative provisions and recourse available to them specifically, notably the *Bankruptcy and Insolvency Act*.

“Consolidated” distribution method

10.5. The table below presents a distribution scenario whereby the consolidated assets are distributed among all Investors:

In thousands of \$ - unaudited	Cape Cove \$	Malina \$	Agro Tech \$	Silvermont \$	MarDi.Info \$	Green River \$	Total \$
Pro rata							
Estimated balance available for distribution							1 563
Distribution according to investment made (\$)	-	278	517	490	178	101	1 563
Average amount recovered according to investor (%)		8%	8%	8%	8%	8%	8%

10.6. The estimated average distribution for Malina, Agro Tech, Silvermont, MarDi.info and Green River investors would be approximately 8 %.

“Fund-by-fund” distribution method

10.7. The following table presents a distribution scenario based on a “fund-by-fund” distribution approach:

In thousands of \$ - unaudited	Cape Cove \$	Malina \$	Agro Tech \$	Silvermont \$	MarDi.Info \$	Green River \$	Total \$
Amount distributed according to fund							
Estimated balance available for distribution	188	-	67	208	988	112	1 563
Average amount recovered according to investor (%)		0%	1%	4%	47%	9%	8%

10.8. In this type of scenario, MarDi.Info, Silvermont and Green River investors would mainly benefit from the distribution of assets.

10.9. No distribution would be made for Malina and the amount would be insignificant for Agro Tech.

10.10. An amount of \$188,000 could be shared among Cape Cove creditors. Investors would not have access to this amount with this method of distribution. In fact, the Investors have no direct claim against Cape Cove. At best, they could consider taking recourse for damages in the circumstances and have themselves included on the list of Cape Cove creditors.

11. CONCLUSIONS

- 11.1. In light of all the information presented in this Report, the Receiver has no doubt that a fraudulent scheme was used.
- 11.2. Moreover, there is no doubt in the Receiver's mind that the Defendants acted as an *alter ego* for Cape Cove, and vice versa.
- 11.3. The Receiver is therefore of the opinion that the circumstances in this case differ from the Norbourg situation:
 - 11.3.1. Unlike the *Norbourg* case, it is clear that various fraudulent activities were not only carried out using the Defendants' assets, but also involved the creation and implementation of funds by the Defendants/Issuers. It can easily be concluded that the Defendants/Issuers were created for the purpose of committing fraud;
 - 11.3.2. Moreover, and also contrary to the *Norbourg* situation, in this case the Defendants' assets were "polluted" or "contaminated" by inappropriate transactions, notably transactions carried out between the Defendants, such that ownership of the assets must be called into question;
 - 11.3.3. Investors' funds were not always deposited in the bank account of one of the Defendants/Issuers, instead often being received directly in the bank account of one of the other Defendants. Moreover, there were many inflows and outflows of cash among the various Defendants, with no justification for the investments to be made by the Defendants/Issuers under the terms of the offering memoranda;
 - 11.3.4. Also contrary to the *Norbourg* case, the Defendants did not maintain any accounting or other records, such that there was no system in place to ensure the *complete traceability* of amounts received from Investors;
 - 11.3.5. All in all, the characteristics of the fraud differ (i.e., confusion of patrimonies, lack of accounting records, Ponzi-type of scheme, artificial structure for the sole purpose of misleading Investors, the fact that many individuals invested in several Defendants/Issuers and the existence of many related creditors).
- 11.4. In this context, the Receiver prefers the consolidated distribution method, which exclusively benefits Investors.
- 11.5. In the Receiver's opinion, the fraudulent scheme put in place by the Defendants affected the reliability of the Defendants' assets, as well as their distinct juridical personality, such that the patrimonies all of the Defendants should be grouped together.
- 11.6. In fact, the action taken was in bad faith with the intention of infringing upon the rights and interests of another person.
- 11.7. While the Defendants do not have the same shareholders or directors (even though a number of individuals played more than one role for the Defendants), the Defendants are the *alter ego* of Cape Cove and the other Defendants were created and used for the purpose of committing fraud.

- 11.8. In such a context, all amounts should be pooled to be considered a single patrimony and only one group of assets should be distributed to all Investors using the “consolidated” distribution method.
- 11.9. The fact that a Ponzi scheme was used also provides justification for the pooling of funds. The fraudulent nature of the activities is demonstrated by the interest payments and redemptions of certain investments using amounts provided by new Investors who had not invested in the financial product in question. In addition, the planned rollover of Agro Tech and Malina securities into MarDi.Info units was intended to bypass the investment maturity dates in order to allow the system to continue and avoid the redemption of bonds at maturity, which would have been impossible due to the misappropriation of funds. MarDi.Info was therefore created for the purpose of continuing the fraud and raising new funds while concealing the fraudulent activities.

12. RECOMMENDATIONS

12.1. Subject to the appreciation of the evidence by the Court, and considering:

12.1.1. The fact that the Receiver was appointed due to action taken by the Autorité under the *Act respecting the regulation of the financial sector* for the benefit of Investors;

12.1.2. The fraudulent scheme that was used, the principle that *fraud corrupts all* and the fact it is preferable to lift the corporate veil;

12.1.3. The limited traceability of the funds;

The Receiver is of the opinion that the consolidated distribution method, on a pro rata basis, would be appropriate for the exclusive benefit of Investors.