According to the government, if the Court's response to a jury question is erroneous, it cannot be considered in isolation but must be viewed in the context of the instructions given as a whole (United States v. Khalil, 279 F.3d 358, 367 (6th Cir. 2002)). To make this argument, the government would have to admit that the Court's response affirming that a "purchase" occurred during the "statute of limitations" period was erroneous but that the instructions as a whole could cure the error. However, this argument supports Hosseinipour, as the instructions as a whole contained numerous errors

The erroneous jury question answer must be viewed with instructions “as a whole,” which preannounced “victim investors” had purchased “securities.”  The government argues that the jury question implies that the jury had already made up its mind that “securities” purchases had taken place, which is true.   The jury could make no other conclusion because the Court and instructions affirmed that purchases were “securities” and that they took place.  “For Count 13,...the Government must prove...that a member of the conspiracy committed an overt act for the purpose of advancing or helping the conspiracy to commit securities fraud with respect to the sale of the following securities.” 298 R.554, #5263.  299 R.554, #5263-64.

The Court affirmed that a “purchase” took place within the statute of limitations.  As a result,  the jury had no choice but to conclude that a “security” offense occurred.  Rather than clarifying that whether a “securities purchase” took place within the statute of limitations was a determination for the jury, the Court affirmed that it had.  The Court went on to affirm that all “securities” sales to “victim investors” could be considered.  This was an affirmation of the defendant’s guilt by the Court.

When all the errors in the jury instructions are considered together, the impact of the incorrect answer to the jury question becomes significant. The "instruction errors as a whole" included defining a pyramid scheme as an automatic "scheme to defraud," using improper securities definitions, providing broad pyramid scheme definitions that could apply to any MLM, conspiracy instructions that failed to require intent, denying an affirmative defense, and not providing clarifying instructions to "distinguish between pyramid schemes and legitimate MLMs."