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Commodity Futures Act of Ontario (R.S.O. 1990, c. C.20)

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Editor's Note: On Friday, April 29, 2022, the Securities Commission Act, 2021 (SCA), came into force by proclamation of the Lieutenant Governor of Ontario. The SCA's proclamation implemented key structural and governance changes to the OSC: the separation of the OSC Chair and Chief Executive Officer roles, and the creation of a new Capital Markets Tribunal. These new structural and governance changes are now reflected in the Bulletin, with one section to report and record the activities of the Capital Markets Tribunal and one section to report and record the activities of the Ontario Securities Commission: www.capitalmarketstribunal.ca/en/resources.

A. Capital Markets Tribunal

A.2
Other Notices

A.2 Other Notices

A.2.1 Trevor Rosborough et al.

FOR IMMEDIATE RELEASE
May 26, 2022

TREVOR ROSBOROUGH,
TAYLOR CARR, AND
DMITRI GRAHAM,
File No. 2020-33

TORONTO – The Tribunal issued a Reasons and Decision in the above named matter.

A copy of the Reasons and Decision dated May 25, 2022 is available at capitalmarketstribunal.ca.

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A.2.2 Paramount Equity Financial Corporation et al.

FOR IMMEDIATE RELEASE
May 26, 2022

PARAMOUNT EQUITY FINANCIAL CORPORATION,
SILVERFERN SECURED MORTGAGE FUND,
SILVERFERN SECURED MORTGAGE LIMITED PARTNERSHIP,
GTA PRIVATE CAPITAL INCOME FUND,
GTA PRIVATE CAPITAL INCOME LIMITED PARTNERSHIP,
SILVERFERN GP INC.,
TRILOGY MORTGAGE GROUP INC.,
MARC RUTTENBERG,
RONALD BRADLEY BURDON and
MATTHEW LAVERTY,
File No. 2019-12

TORONTO – Take notice that an attendance in the above named matter is scheduled to be heard on June 9, 2022 at 9:30 a.m.

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A.2.3 Majd Kitmitto et al.

FOR IMMEDIATE RELEASE
May 27, 2022

MAJD KITMITTO,
STEVEN VANNATTA,
CHRISTOPHER CANDUSSO,
CLAUDIO CANDUSSO,
DONALD ALEXANDER (SANDY) GOSS,
JOHN FIELDING AND
FRANK FAKHRY,
File No. 2018-70

TORONTO – The Tribunal issued its Reasons and Decision in the above named matter.

A copy of the Reasons and Decision dated May 26, 2022 is available at capitalmarketstribunal.ca.

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A.2.4 Stableview Asset Management Inc. and Colin Fisher

FOR IMMEDIATE RELEASE
May 27, 2022

STABLEVIEW ASSET MANAGEMENT INC. AND
COLIN FISHER,
File No. 2020-40

TORONTO – Take notice that the hearing in the above named matter scheduled to be heard on May 30, 2022 will not proceed as scheduled.

The hearing on the merits will continue on June 1, 2022 at 10:00 a.m.

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A.2.5 Aux Cayes Fintech Co. Ltd.

FOR IMMEDIATE RELEASE
May 30, 2022

AUX CAYES FINTECH CO. LTD.,
File No. 2021-29

TORONTO – Take notice that the attendance in the above named matter scheduled to be heard on May 31, 2022 will not proceed as scheduled.

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A.2.6 Stableview Asset Management Inc. and Colin Fisher

FOR IMMEDIATE RELEASE
May 30, 2022

STABLEVIEW ASSET MANAGEMENT INC. and
COLIN FISHER,
File No. 2020-40

TORONTO – Take notice that the hearing in the above named matter scheduled to be heard on June 1, 2022 will not proceed as scheduled.

The hearing on the merits will continue on June 2, 2022 at 10:00 a.m.

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A.2.7 Strike Holdings Inc. et al.

FOR IMMEDIATE RELEASE
May 31, 2022

STRIKE HOLDINGS INC.,
KM STRIKE MANAGEMENT INC.,
MICHAEL AONSO AND
KEVIN CARMICHAEL,
File No. 2021-13

TORONTO – The Commission issued an Order in the above named matter.

A copy of the Order dated May 31, 2022 is available at capitalmarketstribunal.ca.

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A.3
Orders

A.3 Orders

A.3.1 Strike Holdings Inc. et al. – ss. 127(8), 127(1)

IN THE MATTER OF
STRIKE HOLDINGS INC.,
KM STRIKE MANAGEMENT INC.,
MICHAEL AONSO AND
KEVIN CARMICHAEL

File No. 2021-13

Adjudicators: M. Cecilia Williams (chair of the panel)
Cathy Singer
Geoffrey D. Creighton

May 31, 2022

ORDER
(Subsections 127(8) and 127(1) of the
***Securities Act*, RSO 1990 c S.5 (the Act))**

WHEREAS on May 31, 2022, the Capital Markets Tribunal held a hearing by videoconference to consider a motion by Staff of the Commission to further extend a temporary order dated November 25, 2021 (the **Temporary Order**), against Strike Holdings Inc., KM Strike Management Inc., Michael Aonso and Kevin Carmichael (together, the **Respondents**);

AND WHEREAS on March 16, 2022, charges were laid against Mr. Aonso and Mr. Carmichael in the Ontario Court of Justice arising from alleged breaches of the Act (the **Criminal Proceeding**);

ON READING the materials filed by Staff of the Commission and hearing the submissions of the representative of Staff of the Commission, no one appearing on behalf of the Respondents, although properly served, and on considering that the Respondents do not oppose an extension of the Temporary Order;

IT IS ORDERED THAT:

1. pursuant to subsection 127(8) and paragraph 2 of subsection 127(1) of the Act, all trading in any securities by the Respondents shall cease until the expiration of any applicable appeal periods following the conclusion of the Criminal Proceeding;

2. pursuant to subsection 127(8) and paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to the Respondents until the expiration of any applicable appeal periods following the conclusion of the Criminal Proceeding; and

3. notwithstanding paragraph 1 above, Mr. Aonso, shall be permitted to trade securities in any registered retirement savings plan (as defined in the *Income Tax Act*, RSC, 1985, c 1 (5th Supp)) in which he has sole legal and beneficial ownership, provided that such trading is carried out through a registered dealer in Canada to whom he has given a copy of this Order.

“M. Cecilia Williams”

“Cathy Singer”

“Geoffrey D. Creighton”

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A.4
Reasons and Decisions

A.4 Reasons and Decisions

A.4.1 Trevor Rosborough et al. – s. 127(1)

Citation: *Rosborough (Re)*, 2022 ONCMT 11
Date: 2022-05-25
File No. 2020-33

IN THE MATTER OF
TREVOR ROSBOROUGH,
TAYLOR CARR, AND
DIMITRI GRAHAM

REASONS AND DECISION
(Subsection 127(1) of the *Securities Act*, RSO 1990, c S.5)

Adjudicators:	Timothy Moseley (chair of the panel) Frances Kordyback Cathy Singer	
Hearing:	November 8 and 11, 2021; written submissions delivered November 26 and December 31, 2021	
Appearances:	Alvin Qian	For Staff of the Ontario Securities Commission
	Dimitri Graham	For himself
	Philip Millar Luke Reidy	For Taylor Carr

REASONS AND DECISION

1. OVERVIEW

[1] The three respondents are alleged to have engaged in insider trading in shares of WeedMD Inc. while in possession of material non-public information about WeedMD relating to a planned expansion.

[2] Taylor Carr was an employee of WeedMD who was aware of the planned expansion. In this hearing, Carr admitted that the planned expansion was a material fact and that he traded in shares of WeedMD while that information had not yet been generally disclosed. He also admitted that he illegally tipped his family friend Trevor Rosborough, who was a registered mutual fund dealing representative. We accept Carr's admissions and find that he contravened s. 76 of the *Securities Act* (the **Act**).[1]

[3] Before this hearing, Rosborough reached a settlement with Staff of the Ontario Securities Commission in which he admitted to having been tipped and to having traded while in possession of the material non-public information. The Tribunal approved that settlement. Rosborough testified at this hearing for Staff.

[4] Staff alleges that Rosborough in turn illegally tipped the remaining respondent Dimitri Graham, who executed trades in shares of WeedMD before and immediately after the announcement of the planned expansion. Staff asks us to conclude on the basis of circumstantial evidence that Graham knew of the planned expansion from Rosborough, a fact that is denied by both Graham and Rosborough. While the timing of Graham's trades is suspicious, we cannot conclude on a balance of probabilities that Graham knew the material non-public information at the time he purchased WeedMD shares, particularly in the face of Rosborough's denial and the fact that while Rosborough implicated Graham in other respects in his settlement agreement, he did not implicate Graham on this point. We therefore dismiss the insider trading allegations against Graham.

[1] RSO 1990, c S.5

[5] Finally, Staff alleges that during its examination of Graham as part of the investigation, Graham misled Staff in three areas. We conclude that Graham misled Staff in one of those areas, *i.e.*, with respect to whether Graham assisted Rosborough with work-related activities at a time when Rosborough was not registered. In so doing, Graham contravened s. 122(1)(a) of the Act.

2. BACKGROUND FACTS

2.1 Introduction

[6] We set out here the background facts about WeedMD's planned expansion, the announcement of that expansion, and how Rosborough learned of that news from Carr and communicated it to a former client.

[7] The facts in this background section are drawn from:

a. the settlement agreement entered into between Staff and Rosborough, the contents of which Rosborough adopted when testifying at this hearing; and

b. an Agreed Statement of Facts and Admissions filed by Carr, against whom the proceeding still exists, but who did not participate in the oral portion of the hearing, having submitted those admissions of fact and law.

[8] Graham contests Staff's allegations, but he does not dispute any of the facts contained in this section.

[9] Following this background section, we begin our analysis of the allegations against Carr and Graham. In that analysis section, we examine the contested evidence that relates to Graham.

2.2 WeedMD's planned announcement that it would expand

[10] Staff's allegations relate to trading in securities of WeedMD in November of 2017. At the time, WeedMD was a reporting issuer in Ontario, listed on the TSX Venture Exchange. WeedMD was a producer and distributor of cannabis and cannabis extracts.

[11] The impugned trading surrounds a news release issued by WeedMD on November 22, 2017, entitled "WeedMD Launches Major Production Expansion with 610,000 Square Foot State-of-the-Art Greenhouse". The news release announced that WeedMD had entered into a definitive lease and purchase agreement with a large-scale modern greenhouse cultivator.

[12] The release described the plan as a "transformational expansion" and contemplated that WeedMD's annual production would grow initially from 1200kg to more than 21,000kg, and ultimately to more than 50,000kg.

[13] On November 2, about three weeks prior to the announcement, WeedMD's board authorized management to execute the necessary agreements. WeedMD planned to make the announcement on November 16, although that was later deferred by a week.

2.3 Carr's communication to Rosborough

[14] In November 2017, Carr was a Production Technician at WeedMD, having worked at the company since 2016.

[15] Carr knew Rosborough through a family connection. After their initial meeting, Rosborough contacted Carr on numerous occasions to ask about the status of WeedMD.

[16] On or before November 10, Carr learned about WeedMD's planned expansion. On or about that same day, he told Rosborough about the plan, which had not been disclosed to the public.

2.4 Rosborough's communication to a client

[17] Rosborough was a registered mutual fund dealing representative with Quadrus Investment Services Ltd. until October 31, 2017, when Quadrus terminated him, thereby suspending his registration. He restored his status as a mutual fund dealing representative when he began working with Sterling Mutuals Inc. in July 2018.

[18] On November 10, the same day on which Carr told Rosborough about WeedMD's planned expansion, Rosborough sent an email to an individual who had been a client of his at Quadrus. Rosborough stated that he had a friend who was the head grower at WeedMD, and that the friend had told Rosborough "off the record" that WeedMD would be announcing a "huge new facility". Rosborough's friend and source of information was Carr, although the email did not identify Carr by name.

[19] Rosborough told the former client that "we need to buy that stock" before November 17 and sell it on November 17, the day after the planned announcement.

2.5 WeedMD's delay of the announcement

[20] On November 11, WeedMD decided to delay the announcement to November 22.

3. ANALYSIS

3.1 Introduction

[21] Staff's allegations fall into two main categories:

a. illegal tipping by Carr, and insider trading by Carr and Graham; and

b. Graham misleading Staff when he testified in examinations during Staff's investigation.

[22] We begin with the allegations of illegal tipping and trading.

3.2 Illegal tipping and trading

3.2.1 WeedMD's planned expansion was a material fact

[23] For Staff to prove its allegations of illegal tipping and insider trading, Staff must show, among other things, that WeedMD's planned expansion was a material fact about WeedMD.

[24] The term "material fact" is defined in s. 1(1) of the Act to be "a fact that would reasonably be expected to have a significant effect on the market price or value of the securities". Carr admits that the planned expansion, as authorized by WeedMD's board, was a material fact. Graham does not dispute that it was.

[25] We agree with Carr's admission. The planned expansion was expected to increase WeedMD's production by almost 20 times initially, and ultimately by more than 40 times its pre-expansion level. There is no doubt that this was a material and positive fact, a conclusion that is supported by the approximately 33% increase in the closing price of WeedMD's shares (from $1.56 to $2.08 per share) following the public announcement of the planned expansion.

3.2.2 Carr illegally tipped Rosborough about WeedMD's planned expansion

[26] We turn to Staff's allegation that Carr illegally tipped Rosborough about the expansion, contrary to s. 76(2) of the Act. To prove that allegation, Staff must show:

a. the existence of a material fact or material change about WeedMD;

b. that the material fact or material change had not been generally disclosed;

c. that Carr was "in a special relationship with" WeedMD; and

d. that Carr communicated the material fact or material change other than in the necessary course of business.

[27] As noted above, the first element is established. Carr admits, and we find, that the board-authorized planned expansion was a material fact about WeedMD.

[28] Carr also admits each of the other elements. Specifically, as a WeedMD employee he was a person "in a special relationship with" WeedMD, pursuant to s. 76(5)(c)(i) of the Act. He told Rosborough about the planned expansion before that information had been generally disclosed. His communication was not in the necessary course of business.

[29] Accordingly, we accept Carr's admission that he breached s. 76(2) of the Act by communicating the material fact to Rosborough, and we so find.

3.2.3 Carr illegally traded shares of WeedMD with knowledge of a material undisclosed fact

[30] Staff alleges that with knowledge of the undisclosed planned expansion, Carr and Graham illegally traded shares of WeedMD. We begin with Carr.

[31] Subsection 76(1) of the Act prohibits any person in a special relationship with an issuer from purchasing or selling securities of the issuer while in possession of an undisclosed material fact about the issuer.

[32] We have already found that Carr was in a special relationship with WeedMD, and that he knew of the undisclosed planned expansion. The remaining element is that Carr purchased or sold WeedMD shares at that time, which Carr admits having done.

[33] Before November 2017, Carr owned 900 shares of WeedMD. On November 14, after Carr knew of the material fact but before it had been generally disclosed, Carr:

a. purchased an additional 1,500 shares at $1.56 per share, for a total cost of $2,355.30;

b. sold his 2,400 shares at $1.50 per share, for proceeds of $3,581.65; and then

c. purchased 2,500 shares at $1.49 per share, for a total cost of $3,643.70.

[34] Carr did not purchase or sell any more WeedMD shares until after the expansion was announced. On November 22, following that announcement, Carr sold all 2,500 of his shares at $1.82 per share, for proceeds of $4,531.30 and a profit of $1,215.03.

[35] Carr admits, and we find, that his November 14 transactions in WeedMD shares breached s. 76(1) of the Act.

3.2.4 Staff's allegation that Graham illegally traded shares of WeedMD with knowledge of a material undisclosed fact

3.2.4.a Introduction

[36] We turn now to Staff's allegation that Graham similarly breached s. 76(1) of the Act by purchasing WeedMD shares while he knew about the planned expansion and at a time when that planned expansion had not been generally disclosed.

[37] Staff's allegations against Graham relate to the following transactions:

a. a November 15 purchase of 3,185 shares at $1.57 per share, for a total cost of $5,010.44; and

b. a November 21 purchase of 1,300 shares at $1.52 per share, for a total cost of $1,985.99.

[38] On November 22, after WeedMD issued the news release, Graham sold all 4,485 shares at $1.77 per share, for proceeds of $7,928.46 and a profit of $932.03.

[39] Graham does not dispute these transactions. It is also undisputed that the purchases on November 15 and 21 were at a time when news of the planned expansion had not been generally disclosed. Accordingly, to prove that in completing those purchases, Graham breached s. 76(1) of the Act, Staff must show that at the time of the purchases, Graham:

a. had knowledge of the planned expansion; and

b. if so, was in a special relationship with WeedMD.

[40] We begin with whether he had knowledge of the planned expansion.

2.3.4.b Did Graham know about the planned expansion before it was generally disclosed?

3.2.4.b.i Staff relies on circumstantial evidence

[41] Graham denies Staff's allegation that he knew about the planned expansion before it was generally disclosed. There is no direct evidence that he did. Instead, Staff relies on circumstantial evidence in support of its allegation.

[42] We start by reviewing that circumstantial evidence. We then consider whether the evidence is sufficient to conclude that it is more likely than not that Staff's allegation about Graham's knowledge is correct.

[43] The circumstantial evidence on which Staff relies relates primarily to:

a. Graham's opportunities to learn the material fact;

b. the allegedly uncharacteristic nature of Graham's purchases, given Graham's financial circumstances and trading history; and

c. the timeliness of Graham's purchases.

[44] As a general matter, each of these factors, if supported by the evidence, can reasonably support an inference that a respondent engaged in illegal insider trading.[2]

4.3.4.b.ii Graham's opportunities to learn the material fact

[45] The first category of circumstantial evidence relied on by Staff is Graham's opportunities to acquire knowledge of the material fact from Rosborough.

[46] It is undisputed that the two knew each other, and that they communicated a number of times in the weeks leading up to the announcement, including by telephone and text message, and in person. Graham and Rosborough differ about exactly when they first spoke in 2017, although the difference is between October and early November, and is immaterial for our purposes.

[47] Graham and Rosborough also differ somewhat in their descriptions of the communications, although both agree that they discussed trading as well as Rosborough's efforts to move to a different firm following his October 31 termination from Quadrus. Once again, the difference in their testimony is immaterial.

[48] Rosborough testified that during that time, he and Graham talked about individual stocks, but that those discussions were "minimal". He said he believed they discussed WeedMD once or twice because its operations were in Rosborough's home town, but he testified that he did not specifically recall a particular discussion.

[49] Rosborough testified that he didn't "think" he had a discussion with Graham before November 22, in which Rosborough told Graham that WeedMD would be announcing "a huge new facility".[3] Rosborough did recall a text from Graham in which Graham emphatically urged Rosborough to buy WeedMD shares. Rosborough did not recall when he received the text, but believes that it was before the November 22 announcement.

[50] We attach little weight to the fact that Graham had opportunities to learn of the material fact from Rosborough. Graham and Rosborough had legitimate reasons to communicate with each other in that time period, including about trading in securities. They freely admit that they did so. In this case, the existence of those opportunities, by itself, is neutral as to whether or not Graham acquired knowledge of the material fact from Rosborough.

3.2.4.b.iii Allegedly uncharacteristic nature of the purchases

[51] The second category of circumstantial evidence relates to Graham's trading history and the allegedly uncharacteristic nature of his purchases of WeedMD shares.

[52] Graham was an irregular trader. In the first three months and the last four months of 2017, he traded actively. However, he did not conduct any trades between March 22 and August 29.

[53] Graham preferred to trade active sectors. He entered the cannabis sector in early 2017 because it was active. He had never owned WeedMD shares before his impugned purchase on November 15, although in February 2017 he had purchased shares of another issuer in the sector. He sold those shares in March 2017. WeedMD was his first investment in a cannabis cultivation company, although we do not accept Staff's submission that we should attach any importance to the distinction between a cannabis cultivation company and companies in the sector more generally.

[54] Staff also highlights that WeedMD's price per share was well above $1.00, unlike the vast majority of shares that Graham purchased of other issuers in 2017. Before his November 15 purchase of WeedMD, Graham had purchased shares in 2017 with a per share price of more than $1.00 only four times out of the approximately 70 purchases he made. Graham agreed with Staff's suggestion that there were cheaper cannabis stocks available.

[55] Staff also submits that Graham's purchases of WeedMD shares were uncharacteristic and risky for Graham in that their size (totaling $6,996.43) was significant relative to his income and assets.

[56] Graham's annual income in 2017 was $44,855.60. His only asset at the end of October 2017 was approximately $8,200 in cash held in his brokerage account. He had approximately $10,700 before his November 15 purchase of $5,010.44 worth of WeedMD shares, and approximately $4,470 before his November 21 purchase of $1,985.99 worth of WeedMD shares.

[57] Staff concedes that Graham had made other significant securities purchases earlier in 2017. Indeed, Graham made at least 20 individual share purchases throughout 2017 with total amounts greater than his November 15 WeedMD purchase for $5,010.44. He made almost 30 more purchases with total amounts between $3,000 and $5,000 during 2017. The WeedMD purchases were therefore well within a normal range for Graham from an absolute value perspective.

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2 *Suman (Re)*, 2012 ONSEC 7, (2012) 35 OSCB 809 at para 307; *Azeff (Re)*, 2015 ONSEC 11, (2015) 38 OSCB 2983 at para 45

3 Hearing Transcript, *Rosborough (Re)*, November 8, 2021, at 65 line 28

[58] In any event, while Staff acknowledges these purchases, Staff submits that the fact that the WeedMD purchases were significant relative to Graham's assets and income at the time, combined with the fact that WeedMD was his first investment in a cannabis cultivation company, should lead us to conclude that Graham knew about the planned expansion and upcoming announcement when he bought the WeedMD shares.

[59] We cannot accept this submission. When viewed as a percentage of his total assets, the WeedMD purchases were at the higher end, but they were not uncharacteristic. Graham traded actively in November 2017, and in that month he made similarly large purchases of other unrelated securities. On each occasion when Graham purchased WeedMD, his cost represented approximately 50% of the market value of his account. Other unrelated purchases in that month were riskier as a percentage of assets, since they cost him the full market value of his account at the time.

[60] Further, and as we noted above, we do not attach significance to the fact that WeedMD was Graham's first purchase of securities in a cannabis cultivation company. He was following the sector, an emerging and active sector at the time, and he had previously invested in a cannabis issuer.

[61] Similarly, we do not find the absolute price of WeedMD shares to be significant. In general, we place more weight on the total cost of an investment, and the relationship between that cost and a purchaser's financial circumstances, including their assets and income. It is much more important that a purchase costs the investor $5,000 than whether that is made up of 10,000 shares at $0.50 each, or 100 shares at $50 each. Most of Graham's purchases in 2017 had been of shares at a price less than $1.00 per share, but some were not. His WeedMD purchase was not unprecedented in this regard.

[62] In summary, Staff has failed to persuade us that the impugned trades were suspiciously uncharacteristic in any of: (i) the type of issuer; (ii) the price of the shares; or (iii) the ratio of the purchase cost to Graham's assets, as compared to other purchases he had made in 2017, and in particular in November 2017.

3.2.4.b.iv Timeliness of the purchases

[63] The third category of circumstantial evidence relates to the timeliness of Graham's trades. He did not purchase WeedMD shares until November 15, which was:

a. after the price of WeedMD shares had climbed steadily through the first half of November, from a closing price of $1.12 per share on November 1, suggesting according to Staff that Graham's purchase was not a result of his following the stock;

b. after Rosborough already knew the non-public material fact;

c. one day after Carr purchased WeedMD shares; and

d. one day before the originally planned date for the announcement.

[64] Graham held the shares he purchased on November 15 and made his second purchase one day before the revised announcement date.

[65] Immediately following the announcement, Graham sold all his shares, which Staff submits helps to demonstrate that Graham acquired the shares with the intention of selling them once the expansion plan was publicly disclosed.

[66] We accept Staff's submission that for all these reasons, the timing of Graham's purchases is suspicious. We consider this fact together with the other relevant facts below, to determine whether they combine to lead to an appropriate inference that Graham was in possession of the material fact when he traded.

3.2.4.b.v Graham's testimony

[67] In his testimony, Graham was adamant that he would not jeopardize his career for the sake of the small profit he realized on the WeedMD trades. Further, he said that he would never buy shares based on what someone else tells him, whether or not they were privy to information about the issuer. He asserted that he would most certainly not do anything that would contravene securities law.

[68] He specifically denied being tipped by Rosborough or acting on inside information. He says that no one influenced his decision to buy the WeedMD shares. He had been following it for some time before he bought the shares, because it had been in the news.

[69] When asked on cross-examination what, if anything, Rosborough told Graham about Rosborough knowing people within WeedMD, Graham gave answers that evolved:

> Q. Now, Mr. Rosborough had told you that he knew people within WeedMD, isn't that the case?
>
> A. I never knew anything about him knowing anyone specifically.
>
> Q. But Mr. Rosborough told you he knew someone within WeedMD.
>
> A. He never told me who he knew in WeedMD, no.
>
> Q. Just to be clear, I'm not asking you about the specific identify of the person but you knew that he knew somebody at WeedMD, correct?
>
> A. I have no idea.
>
> […]
>
> CHAIR: Sorry, Mr. Graham, I want you to answer the question directly. Did Mr. Rosborough tell you he knew someone at WeedMD?
>
> MR. GRAHAM: No.[4]

[70] In his interview with Staff in April 2020, Graham was less definitive. He stated that he may have been told that Rosborough knew people within WeedMD.

[71] We find Graham's answer on his April 2020 examination to be the most reliable. It was closer in time to the events in question, and it came before he had further opportunity to consider his position and his answers. We find his answers above to be internally inconsistent, with the first two being carefully framed, before he gave an answer ("I have no idea") close to his April 2020 answer, and before he then finally made a definitive assertion. We find that by Graham's own admission, Rosborough may have told him that he knew someone within WeedMD.

[72] As for Graham selling his shares on November 22, Graham testified that when he sold he was not aware that WeedMD had announced that it was expanding. He says that he sold the shares because the price moved up and this triggered an automated filter on a trading-related website he used. The alert was caused by a greater than 15% increase in the share price from when he purchased on November 21 ($1.52 per share) to just before he sold on November 22 ($1.77 per share). He asserts that had he been aware of the announcement, he would have held on to the shares, since the entire sector was moving up.

[73] As we noted above, WeedMD's closing price on November 22 was $2.08 per share. The fact that Graham sold at $1.77 per share is consistent with his testimony that he was unaware of the announcement before he sold, and that his sale was prompted by his automated filter.

3.2.4.b.vi Rosborough's testimony

[74] Each of Rosborough's and Graham's testimony aligns with the other's in denying that Rosborough tipped Graham.

[75] Graham has a possible incentive to lie, as would any respondent who had engaged in the alleged misconduct.

[76] Significantly, though, we are aware of no similar incentive for Rosborough to lie about this point, and Staff offered no persuasive basis for us to conclude that he did. Staff relies on Rosborough's testimony for much of its case, but the finding Staff asks us to make with respect to Graham necessarily requires that we disbelieve Rosborough's testimony that he didn't think he told Graham about "a huge new facility" before November 22. Staff's requested conclusion is not an impossibility, since witnesses may be credible about some parts of their testimony and not credible about others.[5]

[77] However, in its submissions, Staff does not address that specific and pivotal element of Rosborough's testimony. Staff asks us to discount Rosborough's testimony about opportunities for Rosborough and Graham to have communicated generally, due to Rosborough's general lack of capacity to remember communications with Graham. We do not accept the implication that Rosborough has any greater difficulty than the average witness with remembering the dates and details of telephone conversations or coffee meetings that took place four years earlier. Staff does not, though, explain why we should reject Rosborough's denial that he tipped Graham.

[78] We note that in Rosborough's settlement, he implicated Graham with respect to Staff's "stealth advising" allegation, but not with respect to insider trading. Further, it was clear from the testimony before us that there is some acrimony in the

[4] Hearing Transcript, *Rosborough (Re)*, November 8, 2021, at p 45 line 27 - p 46 line 14
[5] *Hutchinson (Re)*, 2019 ONSEC 36, (2019) 42 OSCB 8543 (***Hutchinson***) at para 78

relationship between Rosborough and Graham, so if Rosborough had any motivation to shade the truth on this point, that motivation would likely operate in the direction opposite from what Staff asks us to conclude.

[79] We have no principled reason to disbelieve Rosborough's testimony. We accept it.

3.2.4.b.vii Analysis and conclusion about whether Graham knew about the planned expansion

[80] We now tie together the above circumstantial evidence, some of which points toward Graham having engaged in insider trading, and some of which does not support our making that finding.

[81] For us to conclude that Graham knew about the planned expansion before he traded, we need not necessarily find that his trading was "highly uncharacteristic, risky and highly profitable".[6] Each of those considerations, as well as others cited by Staff (*e.g.*, opportunities to learn of the material fact), can by itself contribute to a finding of trading while in possession of an undisclosed material fact.

[82] However, the law does not require, and Tribunal decisions have not previously found, that Staff must prove all these factors as opposed to some of them. As Staff correctly submits, the more facts that support an inference, the more compelling that inference will be. It is still an inference, and by its nature it is not the same as direct evidence. That gap, though, does not preclude the making of the inference.

[83] Having said that, the requested inference must flow logically and reasonably from the facts cited in support of it.[7] Speculation cannot be a step along the path to the requested inference. We must take all the facts together and examine the larger picture, but it does not necessarily follow that because the outcome may be consistent with the proposed inference, we should draw that inference. Instead, we must find that it is more likely than not that the inference actually flows from the facts.

[84] In this case, Staff was reasonable in its suspicion that Graham traded while in possession of the material fact about the planned expansion. The circumstances, and particularly the timing of Graham's trading, are consistent with that conclusion.

[85] However, those circumstances are not sufficiently compelling for us to find that it is more likely than not that the suggested fact is true. There was nothing suspicious about the timing or length of communications between Graham and Rosborough, given all the circumstances. The timeliness of the purchases could be seen as suspicious, although they may also be explained by Graham's method of trading securities generally and by market movement in the WeedMD shares combined with his automated filter. We cannot accept Staff's submission that Graham's purchases of WeedMD were uncharacteristically risky either in their amount or in their proportion of Graham's assets. Finally, and significantly, we accept Rosborough's testimony that he did not tip Graham.

[86] Accordingly, we are unable to conclude, on a balance of probabilities, that at the time of his WeedMD purchases, Graham was in possession of the material non-public information.

[87] Because Staff has failed to prove that Graham knew of the planned expansion at the time he purchased, the allegation of insider trading is dismissed. We now turn to the allegation that Graham misled Staff during the investigation.

3.3. Did Graham make materially misleading statements to Staff?

3.3.1 Introduction

[88] That brings us to Staff's second principal allegation, which is that Graham misled Staff during his April and May 2020 examinations.

[89] Staff points to s. 122(1)(a) of the Act, which provides that it is an offence to make a statement to any person appointed to make an investigation under the Act that, in a material respect and at the time and in light of the circumstances under which it is made, is misleading or untrue, including by omission. An allegation about such a statement may be the subject of a proceeding before this tribunal.[8]

[90] Graham's examinations were conducted pursuant to a summons issued under s. 13 of the Act by a person appointed under s. 11 of the Act to conduct the investigation. Staff must therefore prove the remaining element, *i.e.*, that Graham made one or more misleading or untrue statements during the examination.

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6 *Agueci (Re)*, 2015 ONSEC 2, (2015) 38 OSCB 1573 (***Agueci***) at para 68
7 *Hutchinson* at para 62
8 *Wilder v Ontario (Securities Commission)*, 2001 CanLII 24072 (ON CA) at para 23; *Agueci* at para 635

[91] To succeed in establishing an alleged misstatement, Staff need not prove a specific mental element, *e.g.*, intention, wilful blindness or recklessness.[9] However, in deciding whether a misstatement rises to the level contemplated by s. 122(1)(a) of the Act, we must be mindful of the words "in a material respect". We should give those words meaning consistent with the remedial nature of the section, but we should also distinguish between, on the one hand, misstatements that are evasive or designed to obfuscate, and on the other hand, inadvertent errors that are the product of confusion or poor recollection.

[92] Staff alleges that Graham made misstatements in three areas, each of which we address separately. For all three, Staff contends that Graham was attempting to minimize his relationship with Rosborough.

3.3.2 Timing of Graham working with Rosborough

[93] The first of the three alleged areas of misstatement is about when Graham began working with Rosborough. Staff contends that on his examination, Graham stated that he started doing so in or around March 2018, when in fact the two began working together in November 2017.

[94] Consideration of this allegation requires close scrutiny of the answers that Graham gave on his examination. Before we quote the first relevant passage, we note that earlier in the examination, Staff had shown Graham an excerpt of the registration database, which showed that Graham was employed by Sterling from November 2017 (not March 2018) to August 2018. We also observe that in the following passage, Graham gives answers but qualifies them with some uncertainty about dates:

> Q. How long did you work under Masterpiece [Rosborough's business name] or with Trevor Rosborough?
>
> A. That would have been from when -- from the period that you currently have that showed from Leede Jones Gable from Quadrus, that would have been that period. I believe that would have been in the new year of 2018, I believe I received my license. I believe it was March. I can't remember exactly, March 2018 there when it was issued back over. You have to remember, there was a lapse between Quadrus, London Life, and going to Sterling Mutuals.
>
> […]
>
> Q. Okay. When did you start working for [Masterpiece]? Was it 2016 or 2017?
>
> A. It would have been Sterling Mutuals, that is when I was working with Sterling Mutuals, and that would have been March, sometime in March when my licensing came over and I was licensed to resume what I was doing formerly at London Life, Quadrus.
>
> Q. I am trying to clarify when you worked with Trevor Rosborough. Was it in November 2017 or March 2018 that you started with him?
>
> A. It would have been March 2018. I don't know the date it might have been. It is when the licensing came over, so it could have been March, could have been a month prior. I know it was in 2018.[10]

[95] Staff focuses on Graham's repeated reference to March 2018. We think it is fairer to Graham to focus on his repeated and unqualified statement that he started working for Masterpiece (*i.e.*, with Rosborough) "when [his] licensing came over" to Sterling from Quadrus.

[96] Three times in the passage quoted above, Graham links the timing of his starting work with Rosborough to when he was "licensed" to resume work with Sterling Mutuals. His definitive connection of those two events is natural and credible, and it shows no signs of being evasive. We have no reason to conclude that Graham thought he could persuade Staff that he became registered on a date other than the one Staff had in its records.

[97] In our view, Graham's answers are inconsistent with an attempt to mislead or obfuscate. He was clear that two events happened approximately at the same time – his beginning to work with Rosborough, and his becoming registered with Sterling. His answers are more consistent with a faulty recollection as to when that happened. He did not suggest that Staff's records were incorrect, and he did not suggest that he only began to work with Rosborough some months after Graham had already been working at Sterling. We do not conclude from the above answers that Graham misstated events in a material respect. Rather, Staff's submission is overly selective about which portion of Graham's answer should form the basis for this allegation.

[98] We are no more persuaded by the above exchange than we are by a later exchange:

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9 *Black Panther (Re)*, 2017 ONSEC 1, (2017) 40 OSCB 1115 at para 154

10 Exhibit 2, Affidavit of Stuart Mills sworn October 5, 2021 (**Mills Affidavit**), Graham Interview Transcript dated April 24, 2020, at p 21 line 25 – p 23 line 8

> Q. Dmitri, just to circle back, on the summary it shows that you finished at Quadrus in October 2017, and then there is a space between October 2017 and March 2018. What was happening in that period?
>
> A. I don't recall. All I remember is the period from London Life. There was a lag point. I finished in London Life. It is hard recollecting these dates. I don't keep them in my head, and I haven't written them down in advance because I wasn't aware I was going to be asked these questions. The lag is – I was doing nothing in between. I was in search of a new firm, and Sterling Mutuals was the opportunity.[11]

[99] We do not know what "the summary" is that is referred to in the question as having a space between October 2017 and March 2018. The portion of the examination transcript that was put into evidence does not specify or assist. We do not know whether it was a document prepared by Staff, or by Graham, or otherwise. We have trouble reconciling the dates in Staff's question with the fact that earlier in the examination, Staff showed Graham the registration database excerpt that disclosed Graham's November 2017 start date with Sterling.

[100] In any event, what comes through for us in Graham's answer quoted above is that he had great difficulty recalling specific dates, and that he did not come to the examination prepared to give the requested information. It is more likely than not that the difference is attributable to Graham's inability to recall the specific date.

[101] Finally on this point, we do not accept Staff's contention that by giving this testimony about dates, Graham was attempting to distance himself from Rosborough because of the insider trading allegations. However, given that Rosborough and Graham both freely admitted that they were communicating with each other in October and November of 2017, including about trading securities, we see no advantage to Graham in trying to mislead Staff on this point, again especially given that to Graham's knowledge, Staff had records of the relevant dates.

3.3.3 Whose idea it was for Graham to move to Sterling

[102] The second area in which Staff says Graham made misstatements relates to whether it was Rosborough's or Graham's idea for Graham to move to Sterling. We preface our analysis by rejecting the binary premise of the allegation. The idea for Graham to move to Sterling might have been Graham's alone, or Rosborough's alone, or both of theirs, in equal or unequal proportions.

[103] In his April 2020 examination, Graham said that it was his own idea to join the firm. Staff contends that this answer is contradicted by Rosborough's testimony, although Rosborough did concede some uncertainty, saying that he "believed" he contacted Graham first about the idea.

[104] Staff also contends that Graham himself gave inconsistent answers. His testimony before us included the following:

> Q. And Mr. Stanley did not introduce you to Sterling Mutuals, isn't that the case?
>
> A. Trevor did.
>
> Q. That's Trevor Rosborough?
>
> A. Yes.
>
> Q. So, when you said it was your own idea to join Sterling Mutual, that was false, wasn't it?
>
> A. No, because it was my own idea as well…
>
> Q. Wasn't it the case that Mr. Rosborough brought the opportunity of Sterling Mutuals to you?
>
> A. I've already said yes.[12]

[105] Staff also refers us to Graham's May 2020 examination, in which Graham testified that Rosborough filled Graham in about what Rosborough was doing with Sterling, and that it was an opportunity for Graham to come over to Sterling.

[106] There is imprecision and inconsistency in Graham's various answers on this topic. Can these answers properly be said to include misstatements of the kind envisioned by s. 122(1)(a)? We think not. The materiality of the answer is not evident, and to sustain an allegation of misleading Staff, there should be clarity in the question and answer to a degree that makes Staff's proposed conclusion compelling. We do not see that degree of clarity here, and we are not persuaded by Staff's submission that we ought to give weight to the fact that Rosborough took some steps to get Graham registered. We see

[11] Exhibit 2, Mills Affidavit, Graham Interview Transcript dated April 24, 2020, at p 23 line 17 – p 24 line 6
[12] Hearing Transcript, *Rosborough (Re)*, November 11, 2021, at 69 lines 15-28

no correlation between Rosborough's natural and understandable efforts regarding Graham's registration, and the question of whose idea it was for Graham to move.

3.3.4 Graham engaging in "stealth advising activities" with Rosborough

[107] The third area of Graham's alleged misstatements relates to whether Graham engaged in what Staff describes as "stealth advising" on Rosborough's behalf.

[108] Staff relies on the following excerpt from Graham's April 2020 examination:

> Q. Did you have much interaction with Mr. Rosborough during this time?
>
> A. What kind of levels?
>
> Q. Let's start with work?
>
> A. On a business level, not too much. It was just talking about mutual funds, talking about the business. There wasn't really any much discussion, as I said, because he was never a close friend. He is really like an acquaintance.
>
> Q. You never assisted him with anything for work?
>
> A. No, just besides his advice on what I was putting together.[13]

[109] Our ability to assess the importance of this passage is impaired by uncertainty about what time period is referred to in the first question. The excerpt from the examination transcript that was filed with us does not disclose the answer. In particular, it is unclear whether Graham is referring to preparatory work ("what I was putting together") before November 2017 or after.

[110] Staff then selects one question and answer from Graham's May 2020 examination:

> Q. So in your first interview you told us that you never assisted Mr. Rosborough with anything at work. But that wasn't necessarily true?
>
> A. Correct.[14]

[111] The excerpt tendered does not show what precedes or follows that question and answer. Without context, we are not prepared to rely on that question and answer to conclude that Graham's initial answers were misstatements.

[112] However, in his testimony before us, Graham agreed with the accuracy of the following statement contained in Rosborough's first settlement, *i.e.*, with staff of the Commission's Compliance and Registration Regulation branch:

> Rosborough stealth-advised approximately 16 to 18 individuals through [Graham]... Rosborough would provide investment advice to former clients or receive unsolicited directions from them to process mutual fund transactions, and would supply the former clients with Sterling investment documents bearing [Graham]'s name as the responsible registrant and his representative code. Once these documents had been signed by the client, Rosborough gave them to [Graham] to sign, and they were then sent by one of Rosborough's assistants to Sterling for processing.[15]

[113] Graham also agreed that:

a. he had Masterpiece business cards with his name on them, at the time he became registered with Sterling; and

b. he was helping Rosborough process applications for his former clients.

[114] We find that Graham's own evidence on this point, as set out in the previous two paragraphs, supports Staff's allegation. It is inconsistent with the answer he gave on his examination during the investigation, when he said that he never assisted Rosborough with work. The inconsistency is material, in that his answer was the direct opposite of the truth and directly related to whether Rosborough and/or Graham may have violated Ontario securities law. In giving his answer, Graham contravened s. 122(1)(a) of the Act.

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13 Exhibit 2, Mills Affidavit, Graham Interview Transcript dated April 24, 2020, at 26 lines 11-24

14 Exhibit 2, Mills Affidavit, Graham Interview Transcript dated May 15, 2020, at 122 lines 19-23

15 Exhibit 2, Mills Affidavit, In the Matter of an Opportunity to be Heard Requested by Trevor Rosborough, Decision of the Director dated May 4, 2020, at Appendix "A", para 25

4. CONCLUSION

[115] For the above reasons, we find that:

a. Carr contravened s. 76(2) of the Act by communicating the material information to Rosborough, and contravened s. 76(1) of the Act by trading in shares of WeedMD while in possession of the undisclosed material information; and

b. Graham contravened s. 122(1)(a) of the Act by misleading Staff as to whether he had ever assisted Rosborough.

[116] We therefore require that the parties contact the Registrar by 4:30pm on June 17, 2022, to arrange an attendance, the purpose of which is to schedule a hearing regarding sanctions and costs, and the delivery of materials in advance of that hearing. The attendance is to take place on a mutually convenient date that is fixed by the Governance & Tribunal Secretariat, and that is no later than July 8, 2022.

[117] If the parties are unable to present a mutually convenient date to the Registrar, each party may submit to the Registrar, for consideration by a panel of the Tribunal, a one-page written submission regarding a date for the attendance. Any such submission shall be submitted by 4:30pm on June 17, 2022.

Dated at Toronto this 25th day of May, 2022.

“Timothy Moseley”

“Frances Kordyback”

“Cathy Singer”

A.4.2 Majd Kitmitto et al. – s. 127(1)

Citation: *Kitmitto (Re)*, 2022 ONCMT 12
Date: 2022-05-26
File No. 2018-70

IN THE MATTER OF
MAJD KITMITTO,
STEVEN VANNATTA,
CHRISTOPHER CANDUSSO,
CLAUDIO CANDUSSO,
DONALD ALEXANDER (SANDY) GOSS,
JOHN FIELDING AND
FRANK FAKHRY

REASONS AND DECISION
(Subsection 127(1) of the *Securities Act*, RSO 1990, c S.5)

Adjudicators:	M. Cecilia Williams (chair of the panel) Heather Zordel Craig Hayman	
Hearing:	By videoconference, October 5, 7, 9, 13, 14, 15, 16, 19, 21, 22, 23, 26, 27, 28, 29, 2020, November 2, 4, 5, 6, 12, 13, 16, 18, 19, 23, 25, 26, 27, 30, 2020, December 1, 2, 4, 7, 2020, February 24, 25 and 26, 2021; final written submissions received May 13, 2021	
Appearances:	Katrina Gustafson Christina Galbraith	For Staff of the Ontario Securities Commission
	Ian Smith Andrew Guaglio	For Majd Kitmitto
	Christopher Kostopoulos	For Steven Vannatta
	Alistair Crawley Alexandra Grishanova	For Christopher Candusso and Claudio Candusso
	John Picone Lara Jackson Stephanie Voudouris	For Donald Alexander (Sandy) Goss
	Frank Addario Lynda Morgan	For John Fielding
	Janice Wright Greg Temelini	For Frank Fakhry

REASONS AND DECISION OF THE MAJORITY
(M. CECILIA WILLIAMS AND CRAIG HAYMAN)

I. OVERVIEW

[1] This proceeding involves allegations of insider tipping and trading in securities of Amaya Gaming Group Inc. (**Amaya**) based on material non-public information (**MNPI**) relating to Amaya's acquisition of Oldford Group Limited (the **Acquisition**). Oldford Group Limited is a private company that was the parent company of the owner and operator of the PokerStars brand (**PokerStars**).

[2] Our analysis covers whether information about the Acquisition was MNPI. The Securities Act (the **Act**)[1] prohibits certain individuals with MNPI (who are in a special relationship with the issuer the subject of the MNPI) from telling others about that information (tipping). Individuals with MNPI are also prohibited by the Act from trading shares with the informational advantage of knowing the MNPI.

[1] RSO 1990, c S.5 (the **Act**)

[3] Staff alleges that beginning on April 25, 2014, Majd Kitmitto (**Kitmitto**) became aware of MNPI about Amaya. Staff further alleges that between April 25 and June 12, 2014 (the **Relevant Period**) MNPI was shared and insider tipping and trading occurred, namely:

a. Kitmitto, while in a special relationship, informed Steven Vannatta (**Vannatta**), Christopher Candusso (**Christopher**) and Donald Alexander (Sandy) Goss (**Goss**) about the Amaya MNPI;

b. Vannatta, while in a special relationship and in possession of Amaya MNPI, bought Amaya shares and, in turn, communicated the Amaya MNPI to certain family members who also bought Amaya shares;

c. Christopher, while in a special relationship and in possession of Amaya MNPI, bought Amaya shares and, in turn, communicated the Amaya MNPI to his father, Claudio Candusso (**Claudio**) (Claudio and Christopher are on occasion referred to as the **Candussos**), who also bought Amaya shares while in a special relationship and in possession of Amaya MNPI;

d. Goss, while in a special relationship and in possession of Amaya MNPI, bought Amaya shares and, in turn, communicated the Amaya MNPI to his clients John Fielding (**Fielding**) and FH[2], and his assistant Frank Fakhry (**Fakhry**);

e. Fielding bought Amaya shares while in a special relationship and in possession of Amaya MNPI;

f. Fakhry, while in a special relationship and in possession of Amaya MNPI, bought Amaya shares and, in turn, communicated the Amaya MNPI to his relatives, CG and NG, and a client, CB; and

g. Goss and Fakhry, while in a special relationship and in possession of Amaya MNPI, recommended Amaya to certain of their clients.

[4] Staff also alleges that Vannatta concealed his trading in Amaya from his employer and misled Staff, and that Christopher misled Staff.

[5] For the reasons set out below we find that Staff has established that:

a. Kitmitto tipped Vannatta, Christopher and Goss with the Amaya MNPI in breach of s. 76(2) of the Act;

b. Vannatta:

i. traded Amaya shares while in possession of the Amaya MNPI contrary to s. 76(1) of the Act;

ii. tipped certain family members with the Amaya MNPI in breach of s. 76(2) of the Act;

iii. misled Staff contrary to s. 122(1)(a) of the Act; and

iv. concealed his trading from his employer, which conduct engages an animating principle of the Act and is abusive;

c. Christopher traded Amaya shares while in possession of the Amaya MNPI contrary to s. 76(1) of the Act;

d. Goss:

i. traded Amaya shares while in possession of the Amaya MNPI contrary to s. 76(1) of the Act;

ii. tipped Fakhry with the Amaya MNPI in breach of s. 76(2) of the Act; and

iii. recommended Amaya to fifteen of his clients, while in possession of the Amaya MNPI, which behaviour engages an animating principle of the Act and is abusive;

e. Fakhry:

i. traded Amaya shares while in possession of the Amaya MNPI contrary to s. 76(1) of the Act;

ii. tipped his relative NG and his client CB with the Amaya MNPI in breach of s. 76(2) of the Act; and

iii. recommended Amaya to five of his clients, while in possession of the Amaya MNPI, which behaviour engages an animating principle of the Act and is abusive.

[2] In order to protect the privacy of investors, their names and personal information have been anonymized in these reasons.

[6] We find, for the reasons set out below, that Staff has not established that:

a. Christopher:

i. tipped Claudio with the Amaya MNPI contrary to s. 76(2) of the Act; or

ii. misled Staff contrary to s. 122(1)(a) of the Act;

b. Claudio traded Amaya shares while in possession of the Amaya MNPI contrary to s. 76(1) of the Act;

c. Goss tipped:

i. Fielding with the Amaya MNPI contrary to s. 76(2) of the Act; or

ii. his client FH with the Amaya MNPI contrary to s. 76(2) of the Act;

d. Fielding traded Amaya shares while in possession of the Amaya MNPI contrary to s. 76(1) of the Act; or

e. Fakhry tipped his relative CG with the Amaya MNPI contrary to s. 76(2) of the Act.

II. BACKGROUND

[7] The insider tipping and trading allegations relate to a group of individuals most of whom knew each other and had close relationships. A description of the individuals and their relationships during the Relevant Period are set out below.

A. Kitmitto

[8] Kitmitto was a senior analyst at Aston Hill Asset Management Inc. (**Aston Asset Management**). He covered securities in the technology and gaming sectors. Aston Asset Management's parent company was Aston Hill Financial Inc. (**Aston Financial**).

[9] Kitmitto was an access person at Aston Asset Management. Aston Financial's personal trading policy, which applied to all employees, officers and directors of Aston Financial and its affiliates and subsidiaries, defined "access person" as someone who has regular access to non-public information regarding transactions and compositions of the funds managed by Aston Asset Management or one of its affiliates.

B. Vannatta

[10] Vannatta, during the Relevant Period, was a portfolio manager at Aston Asset Management who managed a global resource and infrastructure fund. He shared an office with Kitmitto. Vannatta was also an access person. Vannatta was registered with the Ontario Securities Commission (the **Commission**) as an Advising Representative, Portfolio Manager, Investment Fund Manager and Exempt Market Dealer.

C. Christopher Candusso

[11] During the Relevant Period Christopher and Kitmitto were roommates, living in a condominium owned by Claudio. They had met as university students in 2004. Christopher knew that Kitmitto was an analyst at Aston Asset Management who covered the gaming sector.

D. Claudio Candusso

[12] Claudio is Christopher's father. During the Relevant Period, Claudio practiced dentistry in Sudbury, Ontario. Claudio and Christopher have a close relationship and during the Relevant Period were in regular contact. Claudio and Kitmitto were friends during the Relevant Period, and Claudio knew that Kitmitto worked at Aston Asset Management.

E. Goss

[13] Goss has been registered with the Commission since 1993. Goss, during the Relevant Period, was an investment advisor at Aston Hill Securities (**Aston Securities**), an affiliate of Aston Financial whose office was located next to Aston Asset Management. Aston Securities and Aston Asset Management shared a common reception.

F. Fielding

[14] Fielding was a significant client of Goss at Aston Securities in 2014. He had been Goss's client at two previous brokerage firms since 2001. His investment company is Dark Bay International Ltd. (**Dark Bay**). Fielding was a director of Aston Financial from February 2014 to August 2016. Fielding was introduced to Aston Financial through Goss.

G. Fakhry

[15] Fakhry was Goss's assistant at Aston Securities and at their previous employer. Fakhry joined Aston Securities as an investment advisor in September 2013, two weeks after Goss. In April 2014, Fakhry had a small book of business with a total of eight clients. He has been registered with the Commission since 1999.

III. PROCEDURAL AND EVIDENTIARY ISSUES

[16] During the hearing the parties raised a variety of procedural and evidentiary issues. Our reasons for our rulings on those issues are set out below.

A. Motion to strike references to transcripts of compelled testimony of certain respondents in the George Affidavit

[17] The parties agreed that the bulk of the evidence from Staff's investigator witnesses would be by affidavit. After Staff served the affidavits, the respondents, Goss, Fielding, Kitmitto and Fakhry (the **Moving Respondents**) brought motions to strike portions of two affidavits on the basis that those portions referred to compelled evidence. The relief sought by these respondents includes striking references to compelled evidence from Vannatta, Christopher and Claudio. Staff subsequently advised that it was no longer relying on one of the affidavits, so the only affidavit at issue is the affidavit of Christine George. We refer to these motions, collectively, as the **Compelled Evidence Motion**.

[18] The central issue on the Compelled Evidence Motion was when Staff may tender the compelled evidence. Staff sought to tender the compelled evidence through the affidavits. In essence, at the beginning of Staff's case. The Moving Respondents submit that Staff may only tender the compelled evidence at the end of Staff's case. Further, Staff may only do so if the respondent whose compelled evidence Staff intends to tender has chosen not to testify, which choice, they submit, the respondent should not be forced to make until the end of Staff's case.

[19] We granted the Compelled Evidence Motion to strike out the parts of the George affidavit that refer to the compelled evidence of the respondents, without prejudice to Staff to use the compelled evidence as follows:

a. the compelled evidence of a respondent may be used to cross-examine that same respondent; and

b. if a respondent does not testify, then Staff may tender portions of that respondent's compelled evidence as part of Staff's case in-chief before the close of Staff's case.

[20] The Moving Respondents submit that Staff cannot rely on compelled evidence given by a respondent who will testify (or has yet to make a decision to testify) and who does not face an allegation of misleading Staff. However, the Moving Respondents acknowledge that Staff may rely on compelled evidence in the following circumstances: (1) if the respondent testifies at the hearing, to impeach that respondent on cross-examination, or (2) if the respondent does not testify, to tender that testimony as against that respondent at the conclusion of its case, if permitted to do so by the Panel.

[21] The Commission has the power under the Act to compel evidence. Section 11 allows the Commission by order to appoint one or more persons to investigate and, under s. 13, an investigator has the power to summon and enforce the attendance of any person and to compel him or her to testify under oath or otherwise and produce documents and other things. Investigation interviews conducted under s. 13 are transcribed. The transcripts are referred to as compelled evidence. Compelled evidence may be produced at a proceeding under the Act (s. 17(6)(a)). Compelled evidence is a form of hearsay, which is admissible in Commission proceedings.[3]

[22] The Moving Respondents submit that the Panel has discretion whether to admit a respondent's compelled evidence,[4] but that it may only be admitted in a manner that is not unfair to that respondent.[5] The Moving Respondents submit that the principles of natural justice and procedural fairness require that, as they are not alleged to have misled Staff, they have the right to know the case against them and the right to have an adequate opportunity to present their respective cases.[6] If Staff is permitted to rely on their compelled evidence as part of its case in-chief, the Moving Respondents submit, they will be unfairly deprived of that opportunity.

[23] Staff submits that allowing the compelled evidence to be included in the George Affidavit does not create any unfairness to the Moving Respondents; both a respondent's oral evidence and compelled evidence have been part of the evidentiary record in other Commission proceedings. In addition, having the compelled evidence as part of the evidentiary record neither deprives a respondent of the right to decide whether to testify nor forces a respondent to testify.

[24] The Moving Respondents can wait to decide whether to give oral evidence until Staff's case against them is complete. We agree in these circumstances that including information from the compelled evidence in the George Affidavit may

3 *Agueci (Re)*, 2013 ONSEC 45, (2013) 36 OSCB 12133 (***Agueci CT)*** at para 113
4 *Agueci CT* at para 130; *Donald (Re),* 2012 ONSEC 26, (2012) 35 OSCB 7383 (***Donald***) at para 33
5 *Agueci CT* at para 127
6 *Northern Securities Inc. (Re)*, 2013 ONSEC 48, (2014) 37 OSCB 161 at para 71

give rise to a situation where a Moving Respondent feels their own oral evidence is required to provide context or clarity, pre-empting their right to decide at the end of Staff's case whether to testify.

[25] The Moving Respondents submit that Staff's proposal to refer to compelled evidence in the George Affidavit is contrary to previous decisions of the Commission and the Divisional Court,[7] and contrary to common practice before the Commission. The Moving Respondents submit that the "*Agueci* procedure" is the established practice for the Commission. In *Agueci CT* the Commission decided that a respondent's compelled evidence could only be used to cross-examine that respondent and, where a respondent declines to testify, Staff could enter portions of that respondent's compelled evidence at the end of Staff's case.[8]

[26] In addition, the Moving Respondents submit that *Agueci CT* determined Staff may only tender portions of the compelled evidence at the end of Staff's case in order to avoid unfairness that might come from Staff splitting its case.[9]

[27] Staff submits that the "*Agueci* procedure" is not the only approach for admitting compelled evidence, as the Commission has adopted other procedures, both before and after the *Agueci CT* decision. Staff cited two post-*Agueci CT* decisions supporting the premise that compelled evidence can be provided in affidavit evidence as part of Staff's case in-chief. In our view, these cases can be distinguished from the present case.

[28] In *Meharchand*[10], the Panel admitted into evidence portions of the compelled evidence that were contained in the affidavits filed by Staff and referred to otherwise in the course of the hearing.[11] The respondent objected to the use of compelled evidence on the basis that the testimony was compelled, and the respondent had thought that the purpose of the testimony was only to determine whether enforcement proceedings should be brought, not for use as evidence. In *Meharchand*, the Commission heard different arguments than those brought forth in the present case and found it appropriate to admit the compelled evidence.

[29] In addition, the process leading up to the use of affidavit evidence and compelled evidence was different in *Meharchand.* Originally, the *Meharchand* merits hearing was to proceed as a written hearing and the expectation was that this case would be based on affidavit evidence. Oral evidence was not contemplated until later in the process after the affidavit evidence was already prepared and when the written hearing was converted back to an oral hearing.

[30] In *Bradon Technologies Ltd.*[12], the parties all agreed that the compelled evidence of the respondents would be exhibits even though one of the respondents also testified.[13] In the present case, there was no agreement between the parties on marking the compelled evidence as exhibits as part of Staff's case in-chief.

[31] *Agueci CT*, Staff submits, does not stand for the proposition that compelled evidence may only be entered at the end of Staff's case; rather it supports the proposition that all of Staff's case be in before a respondent's case begins. In Staff's submission, this is exactly what they are doing.

[32] There is no one procedure under which compelled evidence may be admitted. We have discretion to determine how and when compelled evidence may be admitted in order to ensure a fair and efficient hearing.[14]

[33] We do not accept the Moving Respondents's position that the type of allegations in a proceeding should play a significant factor in our decision about when and how compelled evidence may be used in a hearing and admitted by a Panel. We do not find that it is appropriate to restrict the Commission's discretion in that manner. How and when compelled evidence should be used at a hearing is the discretion of each panel based on their determination of what is appropriate in the circumstances to achieve a fair and efficient hearing.

[34] Staff states that the compelled evidence included in the George Affidavit is "relevant background information" and introducing it at the beginning will lead to an orderly and efficient presentation of Staff's case. While it may be convenient for Staff to introduce background information through references to the compelled evidence in the George Affidavit it is not necessary. That evidence is otherwise available to Staff in documentary evidence gathered during the investigation, which can be referred to in the George Affidavit without any reference to the compelled evidence.

[35] To conclude, consistent with the Commission's decision in *Agueci CT,* our decision to strike references to the compelled evidence from the George Affidavit was without prejudice to Staff's ability to use the compelled evidence of a respondent

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7 *Donald* at para 34; *Agueci CT* at paras 131 and 139; *Fiorillo v. Ontario Securities Commission,* 2016 ONSC 6559 (Div. Ct.) at para 114; *Hutchinson (Re),* 2019 ONSEC 36, (2019) 42 OSCB 8543 (***Hutchinson***) at para 43

8 *Agueci CT* at paras 131 and 139

9 *Agueci CT* at para 131

10 2018 ONSEC 51, (2018) 41 OSCB 8434 (***Meharchand***)

11 *Meharchand* at para 55

12 2015 ONSEC 26, (2015) 38 OSCB 6763 (***Bradon Technologies***)

13 *Bradon Technologies* at para 50

14 *Agueci CT* at paras 130-131

to cross-examine that same respondent and to tender portions of the compelled evidence of a respondent that chooses not to testify.

[36] We also did not permit Staff to use the compelled evidence of one respondent against a different respondent. Specifically, during Staff's cross-examination of Kitmitto, Staff sought to use Fakhry's compelled evidence to highlight a difference in understanding between Kitmitto and Fakhry regarding Kitmitto's role at Aston Asset Management. Staff was aware that Fakhry intended to testify.

[37] We ruled that Staff's proposal to put Fakhry's compelled evidence to Kitmitto was inconsistent with our earlier ruling that the compelled evidence of a respondent could only be used to cross-examine that same respondent.

B. Request to include entire compelled evidence of the Candussos and Vannatta

[38] Our ruling on the Compelled Evidence Motion provided that, should a respondent choose not to testify, Staff may tender portions of that respondent's compelled evidence as part of Staff's case in-chief before the close of Staff's case.

[39] Just prior to Staff closing its case and upon reviewing the excerpts of the compelled evidence that Staff intended to tender as part of their case should the respondents not testify, the Candussos and Vannatta advised that they did not intend to testify and asked that their entire compelled evidence, rather than excerpts of them, be included as evidence. The Candussos and Vannatta submit that their entire compelled evidence is required to ensure that we are not missing any potentially probative evidence and context.

[40] We ruled that the Candussos's and Vannatta's full compelled evidence may not be entered into evidence. With respect to providing context, we recognized that other excerpts may be relevant in addition to the excerpts referred to by Staff, and we encouraged the parties to come to an agreement about any additional contextual excerpts.

[41] Following this ruling, Christopher and Claudio decided to give oral testimony and Vannatta decided not to testify.

[42] Staff submits that the Panel's ruling on the Compelled Evidence Motion applied to all of the respondents. Therefore, what the Candussos and Vannatta are seeking is a revocation or variation of the Panel's previous ruling under s. 144 of the Act.

[43] A s. 144 order is only granted when it is not prejudicial to the public interest. Staff submits that such an order should not be granted to cater to the respondents's shifting positions. Staff submits that the Candussos and Vannatta benefited from the arguments made by the Moving Respondents on the Compelled Evidence Motion and from the Panel's resulting decision and should not now be allowed to change their position to achieve a different outcome.

[44] According to the Candussos and Vannatta, the original Compelled Evidence Motion was about the timing of the introduction of the transcripts and not the content. The new issue raised is whether the Panel receives either the entire transcript or enough of it such that the Panel is not missing any potentially probative evidence and context. In addition, they submit, the appropriate time for this issue to be addressed is when the respondents must make their election whether to testify. They are not, therefore, foreclosed from making this request at a later stage in the hearing by virtue of not having identified this as an issue at the time the Compelled Evidence Motion was argued.

[45] The Candussos and Vannatta are not foreclosed from raising this issue because they did not identify it at the time of the Compelled Evidence Motion. The issue before us on the Compelled Evidence Motion was Staff's use of excerpts or paraphrases from the transcripts in the George Affidavit filed at the opening of Staff's case. We accept that Christopher, Claudio or Vannatta would not have turned their minds at that stage of the merits hearing, without having heard Staff's case against them, to whether they would choose to testify, and if they were to elect not to testify, what excerpts from their transcripts might be entered as part of Staff's case.[15]

[46] We do not agree that a s. 144 order is required in this instance. We do not consider this request to constitute a variation of our ruling on the Compelled Evidence Motion. A panel may hear submissions on a different issue related to the same evidence or category of evidence that had been the subject of an earlier ruling by the panel during the same merits hearing.

[47] The Candussos and Vannatta submit that including their entire compelled evidence in Staff's evidence is a matter of procedural fairness. Including only excerpts could result in an incomplete record, which could result in an unfair outcome. The Candussos and Vannatta argue that Staff's proposed excerpts do not include material evidentiary points, background information that is necessary to support proper inferences and that Staff has excluded certain denial statements made by the Candussos and Vannatta.

[15] It was only at the end of the day on October 30, 2020 that Staff provided the respondents with the excerpts of the compelled transcripts that they intended to rely on if a respondent decided not to testify.

[48] By excluding such information, the Candussos and Vannatta argue that Staff has usurped the Panel's discretion by preventing the Panel from considering the totality of the compelled evidence. Failure to include the entire compelled evidence could, therefore, force one or all of Christopher, Claudio or Vannatta to testify to clarify an incomplete record, contrary to their best interests.

[49] Staff submits that the rationale for admitting inculpatory portions of hearsay statements is that, unlike self-serving hearsay statements, inculpatory statements are inherently reliable. In addition, Staff submits that allowing the entire compelled evidence to be introduced would result in a violation of Staff's procedural rights. Our ruling on the Compelled Evidence Motion had, Staff argues, a significant impact on how Staff prepared and presented their case.

[50] The Candussos and Vannatta submit that the Commission has allowed a respondent's entire compelled evidence to be introduced as part of Staff's case in other cases, including in *Agueci CT, Hutchinson* and *Azeff Merits*.

[51] We do not find the Commission's decisions referred to by the Candussos and Vannatta of assistance in our analysis. In *Agueci CT,* the panel did not hear submissions on the issue of whether the whole compelled evidence should be introduced by Staff as opposed to excerpts. In *Hutchinson*, the entire compelled evidence of an absent respondent was introduced into evidence because the Panel found that in the specific circumstances the compelled evidence of the absent respondent was potentially relevant to matters in issue for the respondents that were present.[16] This is not the situation before us. In *Azeff Merits*, excerpts of compelled evidence were admitted for two of the respondents, and the compelled evidence for another respondent was read into evidence.[17] The decision does not specify if, in the latter case, the entire compelled evidence was admitted in full or just excerpts were read in. As such this case was of limited assistance in our analysis.

[52] In addition, the Candussos and Vannatta submit that Staff's intent to file only inculpatory excerpts of their transcripts is contrary to the "whole statement" rule. In the criminal context, the "whole statement" rule is that if the Crown plans to introduce an accused's statement the entire statement must be introduced as evidence, the good and the bad being admitted for their truth. Once introduced the "whole statement" is admissible for any purpose.[18]

[53] There is no reason, the Candussos and Vannatta submit, to depart from the criminal law context approach in an administrative law setting. The approach is particularly apt in the securities law context, they submit, where respondents are compelled to attend an interview with limited notice of the issues and no documentary disclosure.

[54] Staff submits that the position of the Moving Respondents on the Compelled Evidence Motion was that the "*Agueci* procedure" was the proper procedure to be followed, and only midway through the hearing did Staff become aware, for the first time, that the Candussos and Vannatta take the position that a criminal law principle, the whole statement principle, applies to the Commission. Staff submits that different considerations apply in a criminal law context, i.e. the right to remain silent and the right against self-incrimination, that are not applicable in an administrative law setting. Staff submits that the *Mallory* decision, relied on by the Candussos and Vannatta, is rooted in the right to remain silent, whereas under the *Statutory Powers Procedure Act*[19] (**SPPA**) a respondent has no such right.

[55] Commission proceedings, Staff submits, are more akin to civil litigation. The *Rules of Civil Procedure*[20] specifically provide for a party to lead portions of statements by adverse parties that favour their case.[21] In that instance, an adverse party may request, under Rule 31.11(3), that the judge direct the introduction of other evidence that qualifies or explains the part that had been introduced.[22] Staff submits that these rules make clear that the "whole statement" rule is not applicable in civil litigation and, similarly, should not be incorporated into administrative law proceedings.

[56] Also, Staff submits that case law has clarified that there are limits to the evidence that an opposing party may introduce that "qualifies or explains" the portions of statements being proffered. In *Anderson v St. Jude Medical, Inc.,*[23] the Court determined that Rule 31.11(3) permits the opposing party to request that additional evidence be read in. However, neither party has an unqualified right to read in evidence and the opposing party does not have the right to control the content of the adverse party's evidence. The Court explained that if the evidence read in fairly represents an answer to the question asked, no qualification or explanation will be necessary or permitted.[24]

16 *Hutchinson* at para 53
17 *Azeff (Re),* 2015 ONSEC 11, (2015) 38 OSCB 2983 (***Azeff Merits***) at paras 26 and 30
18 *R v Mallory,* 2007 ONCA 46 at paras 203-205
19 RSO 1990, c S.22
20 RRO 1990, Reg 194 (the **Civil Rules**)
21 Civil Rules, r 31.11
22 Civil Rules, r 31.11(3)
23 2010 ONSC 1824, [2010] O.J. No. 6028 (***Anderson***)
24 *Anderson* at paras 14, 19 and 20

[57] Staff also refers to the decision in *Graat v Adibfar*[25] where the court cautioned about being aware of attempts to misuse Rule 31.11(3), "including seeking to use the qualifying read-in provision to avoid taking the stand to testify at trial".[26]

[58] Lastly, Staff submits that including the Candussos and Vannatta's entire compelled evidence effectively turns these respondents into "witnesses" that aren't actually testifying in person and would deny Staff their right to cross-examine these respondents under s. 10.1 of the SPPA. Whereas if the Candussos and Vannatta provided affidavit evidence, Staff would be able to cross-examine them. The Candussos and Vannatta are the key and only witnesses for their own cases and their evidence goes to central issues in the case against each of them. Staff submits that the credibility and veracity of the evidence of the Candussos and Vannatta are squarely at issue and if they have evidence they wish to lead (even if it's in their compelled evidence), then cross-examination is "required for a full and fair disclosure of all matters relevant to the issues".

[59] While we note in a few rare instances compelled evidence in its entirety has been admitted as evidence at the Commission either on consent or due to the specific circumstances of that case, the "whole statement" rule from the criminal law context is not, in our view, generally applicable to Commission proceedings. The criminal law principles of the right to remain silent and the right against self-incrimination are not applicable in an administrative proceeding setting.[27] As recognized by the Supreme Court of Canada, a securities commission proceeding is regulatory in nature and not criminal.[28]

[60] The risk of an incomplete record and an unfair outcome as a result are appropriately addressed through the adverse party's ability to identify other excerpts that explain or qualify those excerpts put forward by Staff for inclusion in the record. This is exactly the process that Staff proposed to follow. If, after reviewing the excerpts Staff proposed to introduce, any of the Candussos and Vannatta had any concerns about insufficient inclusion of explanatory or qualifying excerpts they would have been able to raise those concerns with the Panel.

[61] While a compelled interview under s. 13 of the Act involves questioning of the interviewee by a Commission investigator, it is not the equivalent of cross-examination of a respondent by Staff during a merits hearing or by other parties adverse in interest who are not present at that interview. We agree that in these circumstances requiring Staff to include the Candussos's and Vannatta's entire compelled evidence would go beyond providing context and clarification to statements relied on by Staff and instead enable them to provide evidence that could not be tested on cross-examination.

C. Objection to the admissibility of certain phone records as evidence

[62] Goss challenged the admissibility of certain phone records tendered by Staff as evidence on the basis that their authenticity was not established and they are not the best evidence of what Staff seeks to prove (the **Contested Records**).[29] Kitmitto, Fielding and Fakhry adopted Goss's position and submissions on the challenge.

[63] The central issue is whether the requirements of the Ontario *Evidence Act*[30] (**OEA**) in s. 34.1 as to authentication and best evidence must be met for the Contested Records to be admissible in this proceeding. We decided, for the reasons below, that the Contested Records were admissible.

[64] Goss submits that s. 34.1 of the OEA is a mandatory prerequisite to the admission of electronic records and governs admissibility of these records in a Commission proceeding. Goss submits that Staff has failed to meet those requirements as Staff did not file any evidence from the creators of the Contested Records or anyone else who had custody of them before they were provided to Staff, despite the opportunity to do so. Therefore, Goss submits that the Contested Records are inadmissible.

[65] The statutory scheme created by s. 34.1 of the OEA for the admission of electronic records applies, in Goss's submission, by virtue of s. 15(3) of the SPPA which addresses conflicts between the SPPA and other statutes.

[66] Subsection 15(3) of the SPPA provides that nothing in s. 15(1) of the SPPA, which grants broad discretionary power to the Commission to admit relevant documentary evidence, "overrides the provisions of any Act expressly limiting the extent to or purposes for which any … documents or things may be admitted or used in evidence in any proceeding." Goss submits that the OEA is such an Act.

[67] Staff submits that the admissibility of evidence, including electronic records, in Commission proceedings is governed by s. 15(1) of the SPPA, which is designed to avoid the technical rules of evidence that would apply in a court proceeding.

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25 2013 ONSC 1690, [2013] O.J. No. 1336 (***Graat***)
26 *Graat* at para 10
27 *Agueci CT* at paras 118-120
28 *British Columbia (Securities Commission) v Branch*, [1995] 2 SCR 3 at para 34, citing *Pezim v. British Columbia (Superintendent of Brokers),* [1994] 2 SCR 557 at 589
29 The specific Document IDs for these phone records are OSC0002141; BLA1000699; BLA1000700; BLA1000701; BLA1000702; BLA1000703; BLA1000704; BEL0000007; ROG0000031; ROG0000032; ROG0000050; and ROG0000217.
30 RSO 1990, c E.23

[68] By analogy, Staff refers to the Ontario Court of Appeal decision in *EllisDon Corp v Ontario Sheet Metal Workers' and Roofers' Conference*[31] on the issue of whether the parties in an administrative proceeding before the Ontario Labour Relations Board had to comply with the technical requirements of the business records rule in s. 35 of the OEA. The Court of Appeal held that the rules for admitting evidence in the Ontario *Labour Relations Act, 1995*[32] applied, not the OEA Rules.

[69] The wording in the Ontario *Labour Relations Act, 1995*, Staff submits, closely resembles that in s. 15(1) of the SPPA in that it allows the Ontario Labour Relations Board to "accept such oral or written evidence as it in its discretion considers proper, whether admissible in a court of law or not."[33] The Court of Appeal adopted the Divisional Court's interpretation of this provision in the same matter: "these provisions mean exactly what they say. Boards and arbitrators are not bound by the rules of evidence and thus have a broad discretion regarding the admissibility of evidence".[34]

[70] Further, Staff submits, s. 15(3) of the SPPA should not be interpreted to mean that s. 34.1 of the OEA applies to the Contested Records. Subsection 15(3) of the SPPA operates to preserve limitations on admissibility that are contained in other legislation. Section 34.1 of the OEA is not a limitation. Rather it is an enabling provision which provides a means to authenticate electronic records despite common law rules of evidence which might otherwise be a bar to admission of such records in a court. Subsections 34.1(5) and (5.1) of the OEA, Staff submits, modify the best evidence rule to clarify and streamline the process for admitting these records and s. 34.1(7) creates a presumption of integrity where certain evidence is established.

[71] In addition, Staff submits, s. 34.1(2) of the OEA provides that s. 34.1 does not displace the SPPA framework. Subsection 34.1(2) states that the section does not modify any statutory rule relating to the admissibility of records, except the rules relating to authentication and best evidence. Staff submits that s. 15(1) of the SPPA is a statutory rule relating to the admissibility of records; it does not establish a protocol for authenticating records.

[72] Section 34.1 of the OEA does not apply to the Contested Records at issue in this proceeding. We adopt the conclusion of the Court of Appeal in *EllisDon* that s. 15 of the SPPA means what it says. The Commission, under s. 15 of the SPPA, may admit any document, whether admissible as evidence in court, that is relevant to the subject matter of the proceeding.

[73] The Contested Records are relevant to this proceeding. Staff's allegations are that certain of the respondents tipped other respondents about the Amaya MNPI and that certain of the respondents also advised clients to trade Amaya while in possession of the Amaya MNPI. Therefore, communications, including records of telephone conversations, among the respondents and between certain of the respondents and their clients are relevant to this proceeding.

[74] Staff's evidence, that the Contested Records were provided in response to Staff's requests made to identified providers (Rogers, Bell and Aston Securities), relating to identified individuals (Kitmitto, Goss, Fielding and Fakhry), covering identified time periods within the Relevant Period, was not challenged in cross-examination. We, therefore, exercise our broad discretion under s. 15 of the SPPA to admit the Contested Records into evidence.

[75] Goss submits that the Contested Records are unreliable because of some discrepancies between the Contested Records. Those discrepancies include a call appearing on an account summary but not on an account invoice, a call between Fakhry and Goss on a specific date that is reflected as lasting a different period of time on their respective records, two calls from Fielding to Goss that overlap in time. We conclude that the identified discrepancies do not make the entire records unreliable. None of the issues highlighted by Goss involved a record that was material to any of our findings.

D. Confidentiality order

[76] During the hearing, confidentiality issues were raised with respect to certain exhibits. We noted that exhibits 209 and 210 contained Fakhry's medical information and we asked the parties to consider whether those exhibits should be confidential and whether there were other confidentiality concerns that had to be addressed. The parties were instructed to identify any exhibits over which they sought a confidentiality order, provide copies of any proposed redacted exhibits and provide further written submissions in support of the confidentiality order sought. Staff consented to the reductions sought.

[77] Kitmitto, the Candussos, Goss and Fielding sought the redaction of personal information for themselves, their families and their clients in exhibits including home addresses, personal phone numbers, bank account and trading account numbers, bank branch addresses, social insurance numbers, driver's license numbers, dates of birth and signatures on the basis that this information exposed them and their families and/or their clients to the risk of identity theft and/or fraud. These respondents submitted that redacting this personal information and using overlay text describing generally the

31 2014 ONCA 801 (***EllisDon***)
32 SO 1995, c 1, Sch A
33 *EllisDon* at para 32
34 *EllisDon* at para 33

redacted content allows the reader to understand the nature of the redacted content, while balancing the competing interests of the open court principle and the respondents's privacy interests.

[78] In addition to the confidentiality request relating to the two exhibits containing Fakhry's medical information, Fakhry also sought the redaction of social insurance numbers, addresses, telephone numbers, and bank account and trading account numbers of individuals who were not parties to this proceeding in seven different exhibits. These documents were adduced as part of Fakhry's case and did not relate at all to the other respondents.

[79] In our view, the relief sought was appropriate and we issued our order on June 7, 2021.[35]

[80] Under Rule 22(4) of the Rules and subsection 2(2) of the *Tribunal Adjudicative Records Act, 2019*[36], a Panel may order an adjudicative record to be kept confidential, if it determines that "intimate financial or personal matters or other matters contained in the record are of such a nature that the public interest or the interest of a person served by avoiding disclosure outweighs the desirability of adhering to the principle that the record be available to the public."[37]

[81] With respect to the medical information, the Commission has previously acknowledged that disclosure of medical information may infringe on privacy and avoiding the disclosure of those medical specifics which are not relevant to the proceeding outweighs the desirability that the medical information be made available to the public.[38] Therefore we ordered that exhibits 209 and 210 be marked as confidential.

[82] We also find that the redactions requested were appropriate. The redactions balanced the principle of transparency and risk of harm, avoiding the disclosure of intimate financial and personal matters for both non-parties and certain of the respondents.

[83] With respect to the redactions relating to non-parties, the redactions were consistent with the approach set out in s. 3 of the Commission's *Practice Guideline* which requires parties to use reasonable efforts to limit the disclosure of personal information. We also note that Staff had already redacted much of this information beforehand, but some respondents identified instances where redactions were missed.

[84] With respect to redactions relating to the personal information of Kitmitto, Christopher, Claudio, Goss and Fielding, in this specific case we were persuaded by the concerns raised with respect to the risk of identity theft and/or fraud and we find that the objective of transparency is adequately served by having the personal information redacted with overlay text to explain the nature of the redaction. We note that Fakhry did not request redactions related to his own personal information. The redactions requested by Fakhry related only to personal information of non-respondents and Staff consented to the redactions not having overlay text as the redactions were not relevant to the allegations.

[85] Therefore, we ordered that the exhibits and document IDs listed in Appendix A of our June 7, 2021 Order be marked as confidential and only redacted versions are available to the public.

E. Breach of the witness exclusion order

[86] At the outset of the hearing we made an oral order excluding all witnesses, including Staff's witnesses, from attending the hearing. We also issued a caution to all witnesses that, after testifying, they were not to speak with any other witnesses about their testimony. Vannatta takes the position that Staff breached the witness exclusion order and this prejudiced him.

[87] The purpose of a witness exclusion order is to preserve a witness's testimony in its original state and prevent a witness from tailoring their evidence.[39] Such orders ensure that the witness does not hear the evidence of other witnesses before it is their turn to testify. This in turn ensures that a witness does not change their story or is better able to anticipate, and thereby reduce the effectiveness of, the cross-examination based on hearing what was discussed at the hearing with other witnesses.[40]

[88] Vannatta submits that Staff breached the witness exclusion order when conducting a pre-hearing preparation of Aston Asset Management's Compliance Officer, Rnjak, on October 20, 2020. Prior to that date Staff's lead investigator, George, had testified and had been cross-examined by Vannatta. Vannatta alleges that some of George's testimony was communicated to Rnjak.

[89] At the hearing, Staff had initially taken the position that the handwriting at the top of the transaction histories for Vannatta's TFSA and RRSP accounts was Vannatta's. During George's cross-examination, Vannatta raised the issue of whose

35 (2021) 44 OSCB 4953
36 SO 2019, c 7, Sch 60 (**TARA**)
37 TARA, s 2(2)(b)
38 *Debus (Re),* 2020 ONSEC 20, (2020) 43 OSCB 6577 at para 13
39 Sopinka, Lederman & Bryant, *The Law of Evidence in Canada,* 5th ed (Toronto: LexisNexis Canada, 2018) at §16.34; Fuerst, Sanderson & Firestone, *Ontario Courtroom Procedure*, 5th ed (Toronto: LexisNexis Canada, 2020) at 850-851
40 Sopinka, Lederman & Bryant at §16.34

handwriting was on the transaction histories. George testified that she acknowledged that the handwriting looked different from Vannatta's handwriting on other documents and that this could be clarified with Rnjak when he testifies as it was possible that he may have printed Vannatta's name on the top of the document.

[90] Subsequent to George's cross-examination, on October 20, 2020, Staff held a preparation meeting with Rnjak. After this meeting, on October 20, 2020, Staff emailed Vannatta to inform him that Rnjak would testify that the handwriting on Vannatta's TFSA and RRSP transaction histories was Rnjak's. This was a new fact.

[91] Vannatta raises the issue that Rnjak's anticipated evidence had changed to include this new fact only after George's testimony. Vannatta submits that the notes of the October 20 meeting should be disclosed to get to the bottom of the new information and to assess whether there had been a breach of the witness exclusion order.

[92] We ordered disclosure of the October 20 notes pursuant to Staff's continuing disclosure obligation. In response to our order, Staff disclosed notes from both an initial preparation session with Rnjak on September 30, 2020 and the October 20, 2020 preparation session.

[93] Upon reviewing the content of the preparation sessions's notes, Vannatta argues that Staff breached the witness exclusion order by:

a. telling Rnjak that there were pre-clearance forms with no associated approval email from Rnjak and it might come up in the hearing;

b. asking Rnjak about the handwriting on Vannatta's transaction histories which appears different from other writing by Vannatta on other documents; and

c. with respect to the Slemko review (an internal review at Aston Asset Management in 2016 lead by their then president, Slemko), advising Rnjak of questions asked of George in cross-examination relating to gaps in Rnjak's record keeping and Vannatta's defence being that Rnjak lost documents that Vannatta had provided.

[94] Vannatta submits that these breaches were serious, the information provided to Rnjak during the October 20, 2020 preparation meeting allowed Rnjak to tailor his evidence and therefore we should give no weight to Rnjak's evidence, draw an adverse inference against Staff regarding their case against Vannatta and dismiss the allegations against Vannatta.

[95] We find that Staff did not breach the witness exclusion order. While counsel are prohibited from telling a witness what evidence has been given, they are permitted to discuss documents and issues that have been covered in the hearing to date. We conclude that Staff did not provide Rnjak with any of George's evidence.

[96] On the first alleged breach of the witness exclusion order relating to the approval emails for the pre-clearance forms, Staff appears to have covered this issue with Rnjak at both the September 30 and October 20 sessions. The notes from September 30 state that Staff reviewed with Rnjak what he had said during his compelled interview and informed Rnjak that he said "… he sent email [sic] every single time but process later in his evidence says something different about paper pre-clearance."[41] In the October 20 preparation session Staff notes that they told Rnjak "I want to make sure you're aware there are docs where preclearance form and no associated email and that might come up".[42] This statement by Staff does not communicate any evidence given by George.

[97] With respect to the second alleged breach relating to whether the handwriting on the Scotia transaction histories differed from other samples of Vannatta's handwriting, the October 20 preparation session notes clearly indicate that Staff told Rnjak that Staff noticed the handwriting appeared to be different.

[98] The issue of the apparently different handwriting was part of Vannatta's cross-examination of George prior to the October 20 preparation session. George's acknowledged that the handwriting looked different and that this should be clarified with Rnjak. She speculated that Rnjak might have written Vannatta's name on the one document.

[99] Staff did not share this speculation with Rnjak. They pointed out to him that the handwriting, which was demonstrably different, appeared to be different. Rnjak then volunteered to Staff that he wrote Vannatta's name on the one document to remember from whom he'd received it. As no evidence was shared by Staff with Rnjak, we find no breach of the witness exclusion order in this instance.

[100] With respect to the third alleged breach, the October 20 preparation notes show that Staff shared with Rnjak information about questions from George's cross-examination so that Rnjak knew what to expect on his cross-examination. The questions related to gaps in Rnjak's record keeping and Vannatta's defence being that Rnjak lost documents Vannatta had provided. In the October 20 meeting Staff tells Rnjak he is "[p]robably going to get questions designed to say your

41 Exhibit 96, Amaya Witness Notes, Sept 30 at 2

42 Exhibit 97, Proofing Session with Sasha Rnjak on Oct 20, 2020 (**Rnjak Oct 20 Witness Prep Session**) at 3

record keeping had gaps or was vague"[43] and that "…its likely that [V]annattas [*sic*] defense is that he gave you docs and lost them, might be suggested, [*sic*] might be suggested procedures confusing or you didn't enforce properly"[44].

[101] In *R v Singh*[45] the Court agreed that sharing with an excluded witness a question that was asked in Court was a breach of the witness exclusion order, albeit a less significant breach than disclosing the answer given in response.

[102] Staff submits that we should distinguish *R v Singh* from the present case because the witness exclusion order in that case expressly stated that questions asked were not to be shared with excluded witnesses.

[103] We agree with Staff that *R v Singh* may be distinguished on that basis. More fundamentally, however, the purpose of a witness exclusion order is to prevent testimony from the hearing being shared with a pending witness so that the witness has an opportunity to alter or tailor their evidence. In none of the three instances cited by Vannatta did Staff share details of George's testimony. Therefore, we do not agree that the witness exclusion order has been breached.

F. Other evidentiary issues

1. Adverse inferences

(a) Adverse inference against Vannatta

[104] Staff asks that we draw an adverse inference against Vannatta for his failure to testify. Staff takes the position that it is established law that the Panel may draw an adverse inference against a respondent who fails to testify, as it amounts to an implied admission that their evidence would not have been helpful to their case. Staff submits that the threshold for a panel to draw such an inference is low and that Staff need only establish a *prima facie* case against the respondent who did not testify.

[105] In prior cases, the Commission has drawn an adverse inference in respect of a respondent who failed to testify.[46]

[106] We find that the combined evidence regarding the allegations that Vannatta tipped his relatives about the Amaya MNPI, traded Amaya shares while in possession of the MNPI, concealed his trading from Aston Asset Management Compliance and misled Staff is sufficient for us to draw conclusions without drawing an adverse inference against him for not testifying. For the reasons more particularly set out in our analysis of the allegations against Vannatta, we therefore decline to draw such an inference.

(b) Adverse inference against Staff

[107] Certain of the respondents submit that we should draw an adverse inference against Staff.

[108] Vannatta submits that an adverse inference (among other remedies) ought to be drawn against Staff's case with respect to Vannatta as a result of Staff's breach of the witness exclusion order. We dealt with the witness exclusion order argument in Section III.E. above.

[109] Goss and Kitmitto take the position that adverse inferences should be drawn because Staff did not call numerous third parties to testify on various issues.

[110] Goss submits that an adverse inference should be drawn against Staff, as Staff did not call FH, Goss's client, as a witness. Goss takes the position that Kitmitto did not pass MNPI on to Goss and that it was his client FH that came across the information (which was not MNPI) and passed it on to Goss. In addition, Goss asserts that Staff could have called other individuals that they interviewed during the investigation to testify, and the fact that Staff did not call them reflects that their evidence would not have been supportive of Staff's case.

[111] Kitmitto submits that an adverse inference should be drawn against Staff for not calling certain Aston Asset Management employees including Ben Cheng (President of Ashton Financial and the Co-Chief Investment Officer of Aston Financial and Aston Asset Management), AH, SR or LQ to testify. Specifically, Staff did not call Cheng as a witness, however Staff does seek to rely on Cheng's settlement agreement with respect to certain facts. Kitmitto submits that the fact that Staff is seeking to use the settlement agreement without calling the individual who entered into it shows that Staff was afraid of what would come with calling this witness. Further, Kitmitto submits that this supports the inference that calling any of the other Aston Asset Management employees who possessed MNPI, and especially Cheng, would have resulted in evidence that was unfavourable to Staff.

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43 Rnjak Oct 20 Witness Prep Session at 7

44 Rnjak Oct 20 Witness Prep Session at 7

45 2018 ONSC 5230 at paras 34-37

46 *Sextant Capital Management Inc.,* 2011 ONSEC 15, (2011) 34 OSCB 5829 at paras 245-246*; Hutchinson* at paras 64-65, 215, 268, and 388*; Money Gate Mortgage Investment Corporation (Re),* 2019 ONSEC 40, (2020) 43 OSCB 35 at paras 71 and 77*; Mega–C Power Corporation,* 2010 ONSEC 19, (2010) 33 OSCB 8290 at paras 275-276

[112] It is settled law that a respondent is not entitled to dictate the nature and scope of an investigation.[47] Staff has prosecutorial discretion to put forward the case they deem appropriate. It is the panel's responsibility to determine if the evidence tendered by Staff establishes the allegations against the respondents. We draw no adverse inference against Staff for their decisions about what witnesses to call in this proceeding.

[113] With respect to the Cheng settlement agreement, we recognize that a settlement is a negotiated document, not based on evidence, and we put no weight on it.

2. Similar fact and character evidence

[114] Kitmitto and Fielding take the position that Staff is improperly relying on similar fact evidence or evidence of disposition or character.

[115] There is a general rule excluding admission of evidence of disposition or character. Similar fact evidence is an exception to that general exclusionary rule. With respect to similar fact evidence, the onus is on the party seeking to rely on it to establish on a balance of probabilities that the probative value of the evidence on a particular issue outweighs its potential prejudice.[48]

[116] Kitmitto submits that Staff has relied on the following similar fact and bad character evidence**:**

a. Kitmitto's email to Christopher regarding Blackbook Technologies;

b. alleged communications between Kitmitto and Fielding about Amaya;

c. the noise complaint at Kitmitto's and Christopher's apartment;

d. the July 4 Patient Home Monitoring email chain with Goss;

e. the alleged "culture of non-compliance" at Aston Financial; and

f. Kitmitto's alleged "cavalier approach to confidentiality and compliance".

[117] In addition, Kitmitto submits that he never opened the door to an attack on his character by putting it in issue. He simply denied the allegations.

[118] Fielding submits that Staff is legally wrong to ask the Panel to consider the acts of all respondents collectively in deciding whether Staff met the burden of proof against him. Fielding also emphasizes that it is unclear what portion of the evidence Staff is proposing to use against Fielding and how it meets the test in *R v Handy.* In the absence of an articulated position by Staff, Fielding asserts that the Panel should not accept Staff's invitation to take a "kitchen sink" approach to the evidence and to reason backwards that something happened.

[119] Staff's position is that the evidence in question is not similar fact or character evidence. The evidence in question is, Staff argues, either part of the pleadings in this proceeding or part of the circumstantial evidence of their case against the respondents.

[120] In the alternative, Staff argues that, should the Panel decide that the evidence in question is similar fact and/or character evidence, it should be admitted because its probative value outweighs its potential prejudicial effect.

[121] We address each of Kitmitto's and Fielding's submissions in turn.

(a) Kitmitto

i. Kitmitto email to Christopher about Blackbook Technologies

[122] Kitmitto's email to Christopher regarding Blackbook Technologies contained no confidential or inside information and we give it no weight.

ii. Kitmitto and Christopher noise complaint

[123] We also give no weight to the evidence about the noise complaint regarding Kitmitto's and Christopher's condominium. In our view the potential prejudice of the noise complaint evidence outweighs any probative value it may have.

47 *Azeff (Re)*, 2012 ONSEC 16, (2012) 35 OSCB 5159 at para 284
48 *R v Handy* 2002 SCC 56 at para 55

iii. Kitmitto's July 4 Patient Home Monitoring email with Goss

[124] As regards the July 4 email chain with Goss about Patient Home Monitoring, Kitmitto did not add Goss to the email chain and, therefore, it is irrelevant and we give it no weight in our analysis about the allegations against Kitmitto.

iv. Alleged communications between Kitmitto and Fielding about Amaya

[125] With respect to the alleged communications between Kitmitto and Fielding we consider this to be neither similar fact nor character evidence. We address this new allegation by Staff in our analysis of the rule in *Browne v Dunn* below.

v. Alleged "culture of non-compliance" at Aston Financial

[126] Regarding Staff's evidence about the alleged weak culture of compliance in the offices of the Aston Financial companies, we do not consider this to be similar fact evidence. Rather, in our view, it is part of the circumstantial evidence that we must consider and weigh in this case. We make specific reference in our analysis to this evidence where it has factored into our analysis and decisions.

vi. Kitmitto's alleged "cavalier approach to confidentiality and compliance"

[127] As regards Kitmitto's alleged "cavalier approach to confidentiality and compliance", we also do not consider this similar fact or bad character evidence. We consider such evidence part of the fabric of circumstantial evidence we need to consider and weigh in arriving at our decision and include reference to that evidence in our analysis where appropriate.

vii. Whether Kitmitto opened the door to a character attack

[128] Given that we have determined that the evidence by Kitmitto is not similar fact or character evidence, we do not need to address whether Kitmitto opened the door to a character attack.

(b) Fielding

[129] Fielding argues that the Commission's decisions in *Hutchinson, Azeff Merits* and *Agueci Merits* support his position that we should not, when considering the allegations against him, consider the trading in Amaya during the Relevant Period by the other respondents.

[130] We disagree. In each of *Hutchinson, Azeff Merits* and *Agueci Merits*, the panel was dealing with alleged insider tipping and trading in a number of different securities. Staff, in those cases, argued that the panel should consider the alleged activity with respect to all of the transactions when determining if a respondent had engaged in the alleged tipping or trading.

[131] The panels in each of those cases declined to do so, because there were sufficient dissimilarities between transactions that the prejudicial effect would outweigh the probative value.[49] In *Hutchinson*, to take just one example, three of the respondents were not alleged to have traded in the same subset of transactions as any other respondent, and the timing of two of the respondents's impugned trading was inconsistent.[50]

[132] This is not the case here. In the circumstances of this case, the pattern of trading by each of the respondents in Amaya shares during the Relevant Period supports an inference that any one of them may have engaged in insider trading and we find this more probative than prejudicial.

[133] Regarding Fielding's submission that it is not clear what portion of the evidence Staff is proposing to use in its case against Fielding we find no lack of clarity on this point. Staff's position is that the trading in Amaya by this group of individuals, including Fielding, during the Relevant Period was more likely than not insider trading as a result of insider tips. All of the respondents had a connection to Kitmitto, who possessed MNPI about Amaya. The respondents's trading in Amaya, the culture at Aston Financial and the pattern of communications amongst the respondents, including Fielding and his advisor Goss, are, Staff submits, part of a mosaic of circumstantial evidence. Staff submits that circumstantial evidence supports a conclusion it was more likely than not that Kitmitto tipped Goss about the Amaya MNPI, and Goss then shared it with Fielding, who in turn bought shares of Amaya.

[134] While we find no lack of clarity in what evidence in Staff's case applies to Fielding, for the reasons set out in our analysis of the allegations against Fielding in Section IV.B.8, we do not find such evidence sufficient to draw the inferences that Goss tipped Fielding about the Amaya MNPI and that Fielding bought Amaya shares while he had that information.

[49] *Hutchinson* at paras 152-154; *Azeff Merits* at paras 8-10; *Agueci (Re),* 2015 ONSEC 2, (2015) 38 OSCB 1573 (***Agueci Merits***) at paras 71-75
[50] *Hutchinson* at para 153

3. Breach of the rule in *Browne v Dunn*

[135] The rule in *Browne v Dunn*[51] requires that if a party is going to rely on evidence that contradicts a witness, then, in fairness, that evidence needs to be put to the witness during cross-examination to allow that witness the opportunity to explain the contradiction.

[136] Kitmitto submits that Staff did not ask Kitmitto about certain aspects or theories of its case during Kitmitto's cross-examination, specifically, that:

a. Kitmitto provided information about his planned Amaya meeting to Goss prior to April 29, 2014;

b. the April 29 meeting of Aston Asset Management and Amaya management ended before 1:54 pm and whether the President of Canaccord, the dealer acting for Amaya, sent his 1:51 pm email to Kitmitto while they were still in the meeting;

c. Kitmitto tipped Goss or Fielding about the May 8 delay of the May 12 target announcement date for the Acquisition. Kitmitto testified that he did not tell anyone other than Cheng and certain other Aston Asset Management employees about the delay of the initial target date for the announcement of the transaction;

d. Kitmitto tipped Fielding by keeping him updated on the progress of the Acquisition;

e. Kitmitto updated Goss about the Acquisition on June 4 and that Goss then passed that information along to Goss's client AE; and

f. the sequence of calls involving Kitmitto, Goss and Fielding on June 5 indicate that Kitmitto must have passed information about the Acquisition to Goss despite evidence that these individuals were working on other potential investment opportunities at the same time.

[137] At the hearing, we asked whether Kitmitto was alleging a breach of the *Browne v Dunn* rule. Kitmitto explained that this was more of a general fairness point about the weight that could be attributed to the evidence and whether Kitmitto had a fair opportunity to respond to Staff's theory.

[138] Fielding submits that Staff breached the *Browne v Dunn* rule because Staff's theory that Goss transferred MNPI about Amaya to Fielding either in person at the AHF offices on the afternoon of April 29, 2014, or over the phone at 1:54 p.m. or 1:56 p.m. was never put to Fielding during cross-examination. Fielding also points out that the July 22, 2014 email which was said to contain confidential information was never put to Kitmitto or to someone from Canaccord, the dealer representing Amaya regarding the Acquisition, where the email originated.

[139] Staff submits that there is no issue of fairness as Kitmitto and Fielding were aware of the allegations against them and they denied those allegations. In addition, Staff submits there is no breach of the rule in *Browne v Dunn* when Staff does not put every aspect of Staff's theory to a respondent.[52]

[140] We find that Staff did not breach the rule in *Browne v Dunn*.

[141] Given that Kitmitto was not alleging a breach of the rule in *Browne v Dunn*, there is no need for us to address all of the points in paragraph 136 above or to conduct a full analysis of the principle established by *Browne v Dunn* for those points. On the issue of whether Kitmitto had a fair opportunity to address Staff's theory of the case against him, subject to the exception we address in paragraph 142, we agree with Staff that Kitmitto had notice of the allegations against him and he denied those allegations. Therefore, there was no unfairness to Kitmitto.

[142] However, while not a breach of *Browne v Dunn,* we address here Staff's new allegation raised at the hearing that Kitmitto updated Fielding about the announcement delays. The Statement of Allegations states that Fielding received updates about the Acquisition "from Goss and others". This vague language is insufficient, in our view, to support the conclusion that Staff intended this as a reference to Kitmitto. We, therefore, decline to consider Staff's new allegation raised at the hearing about communications relating to updates about the Acquisition from Kitmitto to Fielding because it was not clearly articulated in the Statement of Allegations.

[143] With respect to Fielding, we accept his evidence that he was not in the Aston Financial office on April 29, 2014 and that Goss had not tipped him about the Acquisition. Therefore, there is no need to address whether Staff breached the rule in *Browne v Dunn* by not putting these aspects of their case to Fielding during cross-examination. We give no weight in our analysis to the July 22, 2014 email as this was outside of the Relevant Period.

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51 1893 CanLII 65, (1893) 6 R 67 (UK HL)

52 *R v McCarthy*, 2015 NWTSC 18, [2015] N.W.T.J. No. 24 at paras 34-41

IV. ISSUES AND ANALYSIS

[144] We turn now to our analysis of Staff's allegations against the respondents. We begin by reviewing issues potentially relevant to all, or to specific groups of respondents. The issues we need to decide specific to each Respondent are set out in their respective sections below.

A. General issues

[145] We address in turn below the following issues that are potentially relevant to all, or to specific groups of respondents:

a. circumstantial evidence;

b. the Act's prohibition against tipping;

c. the Act's prohibition against insider trading;

d. the definition of "material fact";

e. special relationships;

f. credibility; and

g. "conduct contrary to the public interest".

1. Circumstantial evidence

[146] In many cases the elements of insider trading and tipping must be proven by circumstantial evidence rather than direct evidence, because "the only persons who have direct knowledge of relevant communications are the wrongdoers themselves."[53] Circumstantial evidence can "fill an evidentiary gap" created by the absence of direct evidence.[54]

[147] As explained in *Hutchinson*, a panel may draw inferences from circumstantial evidence but those inferences "must be reasonably and logically drawn from a fact or group of facts established by the evidence, should be drawn from the combined weight of the evidence and cannot be drawn from speculated facts."[55]

[148] Also as explained in *Hutchinson,* for an inference to be drawn it does not need to be the only possible, the most obvious or the most easily drawn inference. Staff will not have met its burden of proof "if the circumstantial evidence equally supports two opposing inferences, one in favour of Staff and one in favour of a respondent."[56]

[149] Insider trading and tipping cases are "established by a mosaic of circumstantial evidence which, when considered as a whole, leads to the inference that it is more likely than not that the trader, tipper or tippee possessed or communicated material non-public information."[57] This requires the panel to "assess each piece of evidence on its own, to determine whether the evidence deserves weight, whether it supports a finding of fact, and if so, whether that fact alone or together with other facts then supports a suggested inference".[58]

2. The Act's prohibition against tipping

[150] Staff alleges that all of the respondents except Claudio and Fielding engaged in tipping contrary to s. 76(2) of the Act.

[151] Subsection 76(2) of the Act prohibits a person in a special relationship with an issuer from informing another person, other than in the necessary course of business, of a material fact or material change with respect to the issuer that has not been generally disclosed.

[152] The respondents alleged to have engaged in tipping do not argue that the alleged tip was in the ordinary course of business.

[153] Therefore, in order to establish each of its tipping allegations, Staff must prove all of the following:

a. the alleged tipper informed the other party of a material fact or change about Amaya;

53 *Hutchinson* at para 60, citing *Azeff Merits* at para 43
54 *Hutchinson* at para 60, citing *Finkelstein v Ontario Securities Commission*, 2016 ONSC 7508 (Div Ct) (***FinkelsteinDiv***) at para 19
55 *Hutchinson* at para 61
56 *Hutchinson* at para 62
57 *Azeff Merits* at para 47
58 *Hutchinson* at para 63

b. at the time the material information was communicated, the material fact or change had not been generally disclosed; and

c. the tipper was in a special relationship with Amaya.

3. The Act's prohibition against insider trading

[154] Staff alleges that all of the respondents except Kitmitto engaged in prohibited insider trading.

[155] The Act's prohibition against insider trading aligns with two of the four fundamental purposes of the Act; namely, to provide protection to investors from unfair, improper or fraudulent practices, and to foster fair, efficient and competitive capital markets and confidence in the capital markets. As set out in *Hutchinson,* the prohibition exists for three principal reasons:

a. fairness requires that all investors have equal access to information about an issuer that would likely affect the market value of the issuer's securities;

b. insider trading may undermine investor confidence in the capital markets; and

c. capital markets operate efficiently on the basis of timely and full disclosure of all material information.[59]

[156] Subsection 76(1) of the Act prohibits a person in a special relationship with an issuer from purchasing or selling securities of the issuer with knowledge of a material fact or material change that has not been generally disclosed.

[157] In order to establish its allegation that a respondent engaged in prohibited insider trading, Staff must therefore prove each of the following elements:

a. the respondent purchased or sold securities of the issuer;

b. at the time of the purchase or sale, the respondent had knowledge of a material fact or material change about the issuer;

c. the material fact or material change had not been generally disclosed; and

d. at the time of the purchase or sale, the respondent was in a special relationship with the issuer.

[158] With respect to the second element, proof of knowledge of the information is sufficient. Staff does not have to prove that a respondent made use of the information when trading shares.[60]

[159] Knowledge may be inferred based on circumstantial evidence of the person's ability and opportunity to acquire the information and the characteristics of the person's trading.

[160] Prior Commission decisions have set out a non-exhaustive list of characteristics that may suggest knowledge of material facts:

a. timely trades;

b. unusual trading patterns;

c. unusually risky trades, including because they represent a significant percentage of the portfolio;

d. highly profitable trades; or

e. a first-time purchase of the security.[61]

4. Definition of a "material fact"

[161] None of Staff's allegations in this case relates to a material change, as opposed to a material fact. For convenience, the balance of these reasons will omit any reference to material change.

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59 *Hutchinson* at para 97; Act, s 1.1
60 *Hutchinson* at para 101, citing *Donald* at para 261
61 *Hutchinson* at para 121; *Suman (Re),* 2012 ONSEC 7, (2012) 35 OSCB 809 at para 307; *Azeff Merits* at para 45

[162] To establish a contravention of the insider tipping prohibition, Staff must prove that the tipper communicated a "material fact". Similarly, to establish a contravention of the insider trading prohibition, Staff must establish that a person traded with knowledge of a "material fact".

[163] "Material fact" is defined, in s. 1(1) of the Act, as a fact that significantly affects or would reasonably be expected to have a significant effect on, the market price or value of such securities.

[164] Materiality is to be determined objectively, accounting for all the relevant circumstances. Several facts may be material when considered together, even when one or more of the facts do not appear to be material when considered alone.[62]

5. Special relationship in general

[165] The prohibitions against insider trading and tipping both require the determination of whether a person was "in a special relationship" with an issuer. The definition of special relationship in s. 76(5) of the Act specifies the various relationships that would qualify. The relationships relevant to this case are those set out in s. 76(5)(b) for Kitmitto and s. 76(5)(e) for the other respondents.

[166] A person is in a special relationship within the meaning of s. 76(5)(b) if the person is engaging, considering or evaluating engaging, or proposes to engage in any business or professional activity with or on behalf of an issuer.

[167] Under s. 76(5)(e), a person is in a special relationship if the person learns about a material fact regarding an issuer from another person in a special relationship and knows or ought reasonably to know that the other person is in a special relationship. Subsection 76(5)(e) provides that successive tippees may also be in a special relationship and it does not require proof that the alleged tippee was aware of the identity of the initial tipper.[63]

[168] The special relationship definition requires that Staff establish both an "information connection" (i.e. that the tippee learned of a material fact from a person in a special relationship) and a "person connection" (i.e. that the tippee knew or ought reasonably to have known that the tipper was in a special relationship).[64]

[169] With respect to the person connection, and the question of whether a tippee ought reasonably to have known that the tipper was in a special relationship, the Commission has identified several factors to be considered:

a. the relationship between the tipper and the tippee;

b. the professional qualifications of the tipper and of the tippee;

c. the specificity of the MNPI that is conveyed;

d. the time elapsed between the communication of the MNPI and the trading by the tippee;

e. intermediate steps taken by the tippee before trading, to verify the information received;

f. whether the tippee has traded the issuer's securities before; and

g. whether the tippee's trade was significant in the context of the tippee's portfolio.[65]

[170] Depending on the factual context and the actors involved, some factors may be more persuasive than others and the weight to be accorded to each factor will also vary. What is important is that the overall weight given to the aggregate of all the factual criteria compels the decision maker to conclude that it is more probable than not that the tippee ought to reasonably have known that the MNPI received originated from a knowledgeable person, i.e. one who was in a special relationship.[66]

[171] We address whether each of the respondents, for which such a determination is necessary, was in a special relationship in our analysis of each respondent.

6. Credibility

[172] It is a well-established principle that credibility is best tested by the consistency of the evidence with the preponderance of probabilities presented in the case.[67]

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62 *Hutchinson* at para 119
63 *Finkelstein v Ontario Securities Commission,* 2018 ONCA 61 (***FinkelsteinCA***) at para 49
64 *FinkelsteinCA* at paras 44-49
65 *FinkelsteinCA* at para 48
66 *Azeff Merits* at para 65
67 *Springer v Aird & Berlis LLP*, (2009) 96 OR (3d) 325 at para 14

[173] It is not necessary for us to come to an overarching decision about any one witness's credibility. It is possible to find a witness credible in some respects but not in others. We address the credibility of the respondents in their respective sections of our analysis.

7. "Conduct contrary to the public interest"

[174] The phrase "conduct contrary to the public interest" does not appear in the Act. The concept arises from the opening words of s. 127 of the Act, which gives the Commission authority to make "orders if in its opinion it is in the public interest to make the….orders". The Commission has, on occasion, found it in the public interest to issue an order in the public interest even in the absence of finding a contravention of Ontario securities law.[68]

[175] In the Statement of Allegations, Staff makes two types of public interest allegations. The first is when there is an alleged breach of the Act and it is also alleged that this same conduct is not in the public interest. The second is when there is a stand-alone allegation that conduct is not in the public interest absent a breach of Ontario securities law.

[176] With respect to the first type of public interest allegation, in our view it is necessary for the Statement of Allegations to establish some basis for why the alleged conduct relating to a breach of the Act also justifies a separate finding that the conduct engages an animating principle of the Act and / or is abusive at the same time.[69] In the absence of any such basis, where we find that the alleged conduct contravened Ontario securities law, we need not go further to consider the alleged public interest allegation.[70]

[177] For the reasons set out in our analysis below we find that Staff has established their allegations that:

a. each of Kitmitto, Vannatta, Goss and Fakhry tipped others with the Amaya MNPI contrary to s. 76(2);

b. each of Vannatta, Christopher, Goss and Fakhry traded Amaya while in possession of the Amaya MNPI contrary to s. 76(1); and

c. Vannatta mislead Staff contrary s. 122(1)(a).

However, in the absence of any basis in the Statement of Allegations as to how this conduct also engages an animating principle of the Act and / or is abusive, we find that Staff has not established that this conduct, in addition to being a breach of Ontario securities law also supports a public interest allegation.

[178] For the reasons set out in our analysis below we find that Staff did not establish their allegations that:

a. Fielding traded Amaya shares while in possession of the Amaya MNPI contrary to s. 76(1) (because we found that Goss did not tip Fielding);

b. Christopher tipped Claudio with the Amaya MNPI contrary to s. 76(2);

c. Christopher misled Staff contrary to s. 122(1)(a); or

d. Claudio traded Amaya shares while in possession of the Amaya MNPI contrary to s. 76(1) (because we found that Christopher did not tip Claudio).

Staff has also alleged that this conduct engages an animating principle of the Act and / or is abusive.

[179] Similar to our finding above, the Statement of Allegations is also deficient with respect to this group of alleged conduct as it does not lay out any basis in support of the public interest allegations. Therefore, we find that Staff has not established these public interest allegations.

[180] As regards the second type of public interest allegation, stand-alone public interest allegations absent any breach of Ontario securities law, Staff alleges that Vannatta's concealing his trading in Amaya shares from Aston Asset Management Compliance, and Goss's and Fakhry's recommending Amaya to their clients while in a special relationship with Amaya and in possession of Amaya MNPI is conduct that engages an animating principle of the Act and / or is abusive. We address these specific allegations in the sections below applicable to each of these respondents.

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68 *Donald* at paras 323-325*; Agueci Merits* at paras 174-175 and 715-717 ; *Rowan (Re),* 2008 ONSEC 12, (2008) 31 OSCB 6515 (***Rowan***) at paras 158-160

69 See for example *Donald* at paras 323 and 324 where the panel justified separate findings when the conduct engages an animating principle of the Act and / or is abusive.

70 *MOAG Copper Gold Resources Inc (Re)*, 2020 ONSEC 3, (2020) 43 OSCB 907 (***MOAG***) at para 57

B. Analysis specific to each Respondent

1. Kitmitto

(a) Did Kitmitto receive Amaya MNPI and, if so, on what date?

[181] Staff submits that Kitmitto received MNPI about Amaya beginning on April 25, 2014. We do not agree. While the information Kitmitto received on April 25 and April 28, 2014 was confidential, it did not, in our view, meet the definition of a "material fact".

[182] However, we find that Kitmitto did receive MNPI about Amaya at the April 29, 2014 meeting with Amaya management.

i. Period prior to April 29, 2014 meeting

[183] On April 25, 2014, Kitmitto was told by SA of Canaccord, who was representing Amaya, that Kitmitto could meet Amaya management and be brought over the wall about a potential transaction if he signed a non-disclosure agreement. Kitmitto agreed that afternoon to meet with Amaya management on April 29, 2014. The following Monday, April 28, 2014, Kitmitto received the non-disclosure agreement, which referred to Amaya's "consideration of a strategic transaction". At this point the only information Kitmitto had was that Amaya was considering a strategic transaction. The non-disclosure agreement was marked "privileged and confidential" and Kitmitto agreed, on cross-examination, that the information about Amaya's potential transaction was confidential.

[184] Information that there was a "potential transaction" (April 25) or that Amaya was "considering a strategic transaction" (April 28), in our view, could not reasonably be expected to have a material effect on Amaya's share price because there was still uncertainty and a lack of specificity about the potential transaction. This is also consistent with the approach taken by the British Columbia Securities Commission in *Jin*[71], where it was found that a non-disclosure agreement did not constitute material non-public information.

ii. Period after the April 29, 2014 meeting

[185] At the meeting with Amaya management at 1 pm on April 29, 2014, Kitmitto learned that Amaya had negotiated the Acquisition of PokerStars. Kitmitto also learned the details of the Acquisition, including through a slide deck he received at the meeting. Those details included:

a. the US $4.3 billion purchase price with a breakdown of funding sources;

b. Amaya would fund the Acquisition with $100 million in cash, $2.9 billion in debt financing, $800 million through offering convertible preferred shares, and $600 million through an equity offering;

c. the involvement of Deutsche Bank, Barclays, Macquarie, Blackstone and GSO Capital Partners LP;

d. US $150 million of indicated demand for the equity offering had been made at $20 per share;

e. New Jersey had given a "green light" for PokerStars to operate there after the transaction; and

f. a timeline, which indicated an anticipated announcement date of May 12, 2014.

[186] Looking objectively at the relevant facts above, the information Kitmitto received at the April 29, 2014 meeting about the Acquisition was material. Amaya's purchase of PokerStars had been negotiated and included the purchase price, financing details and a target announcement date. PokerStars was seven or eight times larger than Amaya. The $20 equity financing price was triple Amaya's trading high of $6.87 on that day. Knowledge of the Acquisition could, we find, have been reasonably expected to have a material effect on Amaya's share price.

[187] Therefore, we conclude that the Acquisition was a material fact. While some of these facts were not 100% certain at the time and the transaction was contingent on certain steps and financing being put in place and finalized, we note that the Commission has in the past acknowledged that it is important to consider indicia of interest in certain transactions at issue, particularly in instances where there were contingent or speculative developments in potential transactions.[72] Considering the players involved and the magnitude of the transaction, in our view there was a considerable indicia of interest in this transaction at the time and the information about the potential Acquisition was material.

[188] Staff alleges that the material information about the Acquisition, that Kitmitto learned on April 29, had not been generally disclosed. This was not disputed by any of the respondents. There was no evidence before us to suggest otherwise.

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71 *Jin (Re),* 2014 BCSECCOM 194 (***Jin***) at paras 49-52

72 *Agueci Merits* at para 112. See also *Donald* at para 205, citing the Divisional Court in *Donnini* (2003), 177 OAC 59 (Div Ct) at para 17 that recognized that material facts can include speculative or contingent events.

Therefore, we find that the material information about Amaya that Kitmitto learned on April 29 had not been generally disclosed and was, therefore, MNPI.

(b) Was Kitmitto in a special relationship with Amaya?

[189] Kitmitto was an analyst covering the gaming sector for Aston Asset Management. He was responsible for assessing investment opportunities for the Aston Asset Management funds and making recommendations about investments to the fund managers.

[190] The purpose of the April 29, 2014 meeting with Amaya management and representatives of Canaccord, the dealer marketing the Acquisition for Amaya, was to present Aston Asset Management with the opportunity to participate in financing the Acquisition.

[191] Once Kitmitto learned about the Acquisition at that meeting, Kitmitto was considering, on behalf of Aston Asset Management, whether to engage in business with Amaya. This meeting took place starting at 1:00 pm however the end time is not clear. In any event, we find that as of April 29, 2014 when the meeting ended Kitmitto was in a special relationship with Amaya under s. 76(5)(b) of the Act.

(c) Conclusion regarding whether and when Kitmitto received MNPI and if he was in a special relationship at that time

[192] Therefore, as of April 29, 2014 once the 1:00 pm meeting with Canaccord ended, Kitmitto was in possession of MNPI while in a special relationship with Amaya. We must now determine whether Kitmitto tipped others with this MNPI about the potential Acquisition.

[193] We address whether Kitmitto tipped Vannatta, Christopher and Goss in the sections about each of those other respondents.

2. Vannatta

(a) Did Kitmitto tip Vannatta with the Amaya MNPI and did Vannatta trade Amaya shares while in possession of that information?

[194] Vannatta bought shares of Amaya on April 29, 2014 at 12:23 pm, prior to Kitmitto's 1:00 pm meeting with Amaya management, and on May 6, and May 14, 2014. Given our finding that Kitmitto did not have Amaya MNPI until his meeting on April 29, 2014, we find that Vannatta's April 29, 2014 trade was not insider trading and did not breach s. 76(1) of the Act. Therefore, we have not included Vannatta's April 29th trading in our insider trading analysis.

[195] We find that Staff has established that it is more likely than not that Kitmitto tipped Vannatta about the Amaya MNPI and that Vannatta bought Amaya shares on May 6 and 14, 2014 while he had that information from Kitmitto.

[196] Kitmitto testified that he did not tip Vannatta about the Amaya MNPI. We do not accept this evidence. We find that Kitmitto's cavalier attitude towards the handling of confidential information during the Relevant Period, which we describe below, combined with the other circumstantial evidence about Vannatta described in this section, establishes on a balance of probabilities that Kitmitto told Vannatta about the Amaya MNPI.

[197] Kitmitto participated in a Bloomberg persistent chat[73] with Vannatta and SA, the dealer employee from Canaccord, who brought Kitmitto into the Amaya Acquisition discussions. It was through this persistent chat that Kitmitto was invited by SA to participate in a meeting with Amaya management, advised he could sign a non-disclosure agreement and be brought over the wall on a transaction, confirmed the date and time of the meeting with Amaya management, and confirmed the signed non-disclosure agreement would be delivered to Amaya at the meeting on April 29, 2014.

[198] Kitmitto agreed that this information was confidential. Yet all of it was shared in the Bloomberg discussion group that included his office mate and friend, Vannatta, with no apparent attempt by Kitmitto to ensure the information was not visible or available to Vannatta.

[199] Vannatta was more likely than not aware of Kitmitto's and SA's discussion on the persistent chat about Kitmitto potentially going over the wall regarding Amaya because shortly after Kitmitto wrote in the chat that he would take the meeting (April 25, 2014 at 1:37 pm), Vannatta responded (April 25, 2014 at 1:42 pm) to an earlier Kitmitto post about Vannatta receiving a golf invitation.

[200] On April 25 at 1:36 pm, Kitmitto knew he could sign a non-disclosure agreement with Amaya to be brought over the wall and he confirmed with SA that he would take the meeting with Amaya management on April 29. At 1:47 pm on April 29, 2014, Kitmitto sent an email to one of Aston Asset Management's equity traders instructing the trader to buy 200,000

[73] This is a feature of Bloomberg that lets one or more users maintain ongoing forums for sharing information. It serves as an ongoing chat room.

Amaya shares for two of the Aston Asset Management funds. Kitmitto's evidence was that it was Cheng who decided what the funds bought and sold, it was an immaterial trade, the trade was likely based on instructions Kitmitto had received the previous day from Cheng, and that it was possibly to replace an earlier sale of 200,000 Amaya shares from the funds.

[201] Staff does not allege that this trade was an illegal insider trade. We mention it here only as it relates to our assessment of the allegations that it is more likely than not that Kitmitto shared MNPI about Amaya with his colleague and friend, Vannatta.

[202] Even if we were to believe, which we do not, that Kitmitto would wait until the middle of the following day to execute trading instructions from Cheng, the fact that Kitmitto, once he had received confidential information about Amaya, would instruct the Aston Asset Management funds to buy Amaya shares, supports in our view an inference that Kitmitto's attitude towards compliance lacked rigour. Combined with the other circumstantial evidence discussed below relating to Vannatta, Christopher and Goss, Kitmitto's instructing the funds to buy Amaya after he had received confidential information supports the further inference that it is more likely than not that Kitmitto tipped these respondents.

[203] The evidence on which we base our finding that it is more likely than not that Kitmitto tipped Vannatta after Kitmitto's meeting with Amaya management on April 29 is:

a. Vannatta shared a small office with Kitmitto, they could occasionally hear each other's conversations and Vannatta had to go around Kitmitto's desk to leave the office;

b. Vannatta socialized with Kitmitto, at and after work, and they also went to the gym together and spoke every day;

c. Vannatta knew that Kitmitto was an analyst covering technology and gaming, including Amaya;

d. Vannatta's phone and chat records show that he was in the Aston Asset Management office the afternoon of April 29, 2014, the date Kitmitto learned about the Acquisition. Vannatta made calls from his cell phone on April 29 from Toronto. In addition, on April 29 Vannatta responded to a chat invitation to go for drinks by saying that he had to attend the internal education session at 4:00 pm that afternoon;

e. Vannatta had the opportunity to learn about the Acquisition from Kitmitto by virtue of their professional and social relationships, and their physical proximity at Aston Asset Management;

f. Vannatta's Amaya trading was uncharacteristic:

    i. he managed a resource fund and most of his personal trading between January 1, 2012 and June 30, 2014 was in the energy and resource sectors; and

    ii. Amaya was the only gaming stock Vannatta purchased during the Relevant Period and the only stock he traded between April and May 2014;

g. Vannatta's trading was risky:

    i. he spent more money buying Amaya than he did on any other issuer between January 1, 2012 and June 30, 2014;

    ii. the $31,616 he spent on Amaya was half the amount he invested in stocks in 2013 and represented a significant amount relative to his salary of $90,000 and bonus of $45,000 in 2014;

    iii. Vannatta was experiencing financial issues at the time of his trading. Vannatta owed $20,878 on his line of credit, was at his limit on his credit card, had car payments and student and other loan payments; and

    iv. Vannatta used $8,000 of borrowed funds to buy Amaya;

h. Vannatta's trading was timely:

    i. he only bought Amaya shares during the Relevant Period and did not sell until after the June 12, 2014 announcement, despite the increase in Amaya's share price during the period creating opportunities to realize a profit;

    ii. Kitmitto's understanding was the Acquisition would be announced on May 12, 2014. On May 8, Kitmitto was informed the announcement was being delayed to May 21. We find it was more likely than not that

Vannatta was aware of these dates from Kitmitto when he traded in Amaya on May 6 and May 14 as in both cases trades were made a few days prior to the expected announcement date; and

iii. there is no evidence before us about any alternative basis for Vannatta's interest in buying Amaya; and

i. Vannatta's trading was profitable:

i. Because we have found that Vannatta's April 29 purchase of Amaya was not made with the benefit of MNPI, we have deducted that trade from Staff's profit calculation for Vannatta. By our calculation, Vannatta made a profit of $54,435, a 277% return, on his two Amaya purchases in May 2014. This was his second largest profit on the 13 securities Vannatta bought between January 1, 2012 and June 30, 2014 and sold before December 31, 2015.

[204] We find that Vannatta had an opportunity to learn about the Acquisition because of his personal and professional relationship with Kitmitto and the circumstances of how and when Kitmitto learned of the Amaya MNPI. While opportunity to acquire knowledge of MNPI is not, in and of itself, sufficient to establish that tipping occurred, knowledge can be inferred based on "circumstantial evidence of opportunity to acquire knowledge of a material undisclosed fact, combined with evidence of well-timed and profitable trades".[74]

[205] We conclude that Vannatta's opportunity to learn about the Acquisition, combined with our findings that Vannatta's trading in Amaya was timely, uncharacteristic and profitable, and that he concealed his trading from Aston Asset Management Compliance (see Section IV.B.2(g)) and misled Staff (see Section IV.B.2(d)), supports the inference that it is more likely than not that Kitmitto tipped Vannatta about the Acquisition and Vannatta bought Amaya shares while he had that information.

(b) Was Vannatta in a special relationship with Amaya?

[206] We also find, based on the above evidence, that Vannatta was in a special relationship with Amaya. We conclude that Staff has established both the "information connection" (Vannatta learned about the Amaya MNPI from Kitmitto who was in a special relationship with Amaya) and the "person connection" (Vannatta knew or ought reasonably to have known that Kitmitto was in a special relationship with Amaya), given:

a. Vannatta's and Kitmitto's personal and professional relationship;

b. the timeliness, uncharacteristic nature, and riskiness of Vannatta's trading;

c. the steps Vannatta took to conceal his trading from Aston Asset Management Compliance (see Section IV.B.2(g)); and

d. Vannatta's misleading statements to Staff (see Section IV.B.2(d)).

(c) Conclusions on tipping and trading

[207] For the reasons given above, we find that it is more likely than not that Kitmitto tipped Vannatta in breach of s. 76(2) of the Act and Vannatta engaged in insider trading for the trades of May 6, and May 14, 2014 in breach of s. 76(1) of the Act.

(d) Did Vannatta mislead Staff?

[208] Vannatta was interviewed under oath by Enforcement Staff on October 19, 2016 and August 16, 2017. Staff alleges that, in these interviews, Vannatta misled Staff, contrary to s. 122(1)(a) of the Act, by claiming he:

a. did not know he traded Amaya securities on May 14, 2014;

b. had pre-cleared his April 29, May 6, and May 14, 2014 trades in Amaya with Aston Asset Management Compliance;

c. had submitted brokerage statements for each of his three Scotia accounts to Aston Asset Management Compliance for the period of April to June 2014;

d. did not intentionally select a 45-day range on the transaction histories for his Scotia RRSP and TFSA accounts that he provided to Aston Asset Management Compliance; and

[74] *Agueci Merits* at para 68

e. had provided Aston Asset Management Compliance with a transaction history for his Scotia Regular account for April and May 2014.

We deal with each of these statements in turn below.

[209] Subsection 122(1)(a) of the Act makes it an offense for any person to make a statement to a person appointed to make an investigation or examination under the Act that, in a material respect is misleading or untrue or does not state a fact that is necessary to make the statement not misleading.

[210] In *Agueci Merits*, the panel cites two decisions that are particularly helpful in interpreting what constitutes an offence under s. 122(1)(a). First, the Court of Appeal decision in *Wilder* where the court noted that "[i]t is difficult to imagine anything that could be more important to protecting the integrity of capital markets than ensuring that those involved in those markets, whether as direct participants or as advisors, provide full and accurate information to the OSC".[75] Second, the Commission in *Da Silva* stated that "[e]vasion, obfuscation, and untruth in responding to Staff inquiries serves to hinder Staff's performance of their responsibilities to monitor and enforce compliance with Ontario securities law; such conduct is an obstacle to effective regulation of the capital markets."[76]

[211] We also note that in *Wilder* the Court of Appeal considered an allegation under s. 122(1)(a) of the Act and acknowledged that the Act gives the Commission a number of options on how to proceed and that s. 122(1) does not create an area of exclusive jurisdiction for the courts and may also be addressed before the Commission.[77]

i. Vannatta did not remember trading on May 14

[212] Vannatta told Staff that he did not remember he had traded Amaya shares on May 14, 2014 in his Scotia Regular account. We find that it is more likely than not that this statement was untrue, consistent with our finding that Vannatta concealed his May 14 trade from Aston Asset Management Compliance.

[213] Aston Asset Management Compliance had transaction histories for only two of Vannatta's three trading accounts at Scotia, the TFSA and RRSP accounts but not the Regular account. Vannatta admitted during his compelled interview that Aston Asset Management Compliance could only have obtained copies of the transaction histories for his trading accounts from Vannatta.

[214] Vannatta could not explain during his compelled interview how he failed to include his Scotia Regular account, where he executed his May 14 Amaya trade, in his certified list of accounts he provided to Aston Asset Management Compliance in July 2014.

[215] We conclude that Vannatta intentionally failed to provide a transaction history for his Scotia Regular account and to list that account on his certificate and then attempted to evade Staff's questions about the May 14 trade by claiming not to recall it.

ii. Vannatta had pre-cleared all of his Amaya trades

[216] Vannatta told Staff that he had pre-cleared his trades on April 29, May 6, and May 14, 2014. There were no pre-clearance forms for these trades and no evidence of approvals from Rnjak for these trades. Vannatta's position is that Rnjak lost or disposed of the pre-clearance forms and that Rnjak's procedures were lax resulting in Rnjak not always approving requested trades by email. Given our conclusion that Vannatta intentionally concealed his trading from Aston Asset Management Compliance, we conclude that it is more likely than not that Vannatta also did not attempt to pre-clear any of this trading in Amaya shares. We therefore do not accept Vannatta's statement that he did pre-clear the trades.

iii. Vannatta had provided brokerage statements to Aston Asset Management Compliance

[217] Vannatta's position is that he provided brokerage statements to Aston Asset Management Compliance but that they must have been lost or disposed of. There were no brokerage statements for Vannatta in evidence. Rnjak was unable to remember if he provided original documents to the earlier internal review and what then happened to those records. Vannatta suggests it is as likely that Vannatta provided the statements and they were collected as part of that review and then lost.

[218] We find that, given our finding that Vannatta concealed his trading from Aston Asset Management Compliance, it is more likely than not that Vannatta failed to give his brokerage statements to Aston Asset Management Compliance as part of that concealment. We therefore find that Vannatta did mislead Staff on this point.

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75 *Agueci Merits* at para 636, citing *Wilder v Ontario (Securities Commission)* (2001), 53 OR (3d) 519, [2001] O.J. No. 1017 (ON CA) (***Wilder***) at para 22

76 *Agueci Merits* at para 636, citing *Da Silva (Re),* 2012 ONSEC 32, (2012), 35 OSCB 8822 at para 7, citing *Hennig (Re)*, 2008 ABASC 363 at para 1296

77 *Agueci Merits* at para 635 citing *Wilder* at para 22

iv. Vannatta did not choose the 45-day range for his Scotia transaction histories and had provided Aston Asset Management Compliance with a transaction history for his Scotia Regular account

[219] Vannatta told Staff that he did not intentionally set a 45-day range for the transaction histories for his Scotia RRSP and TFSA accounts that he provided to Aston Asset Management Compliance and that he had given Aston Asset Management Compliance a transaction history for his Scotia Regular account. We find the confluence of the following factors leads us to find that these statements are more likely than not untrue:

a. Aston Asset Management Compliance only had transaction histories for two of the three accounts, which Vannatta admitted could only have come from him;

b. the only accounts Vannatta listed in the certificate he provided to Aston Asset Management Compliance were the same two accounts for which transaction histories were provided;

c. When Vannatta accessed his Scotia account to print transaction histories to give to Aston Asset Management Compliance all three of his accounts were listed, and Vannatta had no explanation for why he would not have seen his Scotia Regular account; and

d. In response to Rnjak's request for brokerage statements in late June 2014, Vannatta provided transaction histories for his RRSP and TFSA accounts dated June 26, 2014 with a 45-day range that effectively resulted in his April 29 and May 6 trades not being included in the histories and failed to provide a transaction history for his Regular account where, even if he had selected the 45-day his May 14 trade would have been evident.

[220] We conclude that it is more likely than not that Vannatta misled Staff about his trading during Staff's investigation.

[221] We find that each of these statements was material to Staff's investigation of potential insider trading and tipping in Amaya shares during the Relevant Period and, at the time, and in light of the circumstances, were misleading, contrary to subsection 122(1)(a) of the Act.

(e) Did Vannatta tip his relatives with the Amaya MNPI?

[222] Staff alleges that Vannatta tipped his brother CV, his cousin DU and DU's wife NU, and another cousin KU. We have determined that the Acquisition was MNPI about Amaya, and that Vannatta was in a special relationship with Amaya. To find that Vannatta tipped his relatives, the sole remaining factor Staff must establish is that Vannatta informed his relatives of the Amaya MNPI. We find, for the reasons below, that Vannatta did inform his relatives because their trading was timely, profitable and either uncharacteristic or opportunistic.

[223] Staff did not lead any evidence of telephone calls or emails between Vannatta and any of his relatives. However, given the other circumstantial evidence in support of Vannatta having tipped his relatives, the lack of direct evidence is overcome by the significant circumstantial evidence.

[224] In addition to the individual factors listed below for each of Vannatta's relatives, we consider the fact that all four of them traded in Amaya during the Relevant Period starting on April 30, 2014, the day after we found Vannatta to have learned about the Amaya MNPI, a significant factor in arriving at our conclusion on this point.

i. CV

[225] CV had previously bought shares of Amaya in August 2013 and sold them in October of that year. He did not buy any other gaming stock and, in 2014, did not invest in Amaya until the Relevant Period. CV bought 380 Amaya shares on April 30, 2014, one day after Vannatta learned of the Acquisition. CV held onto his Amaya shares until after the announcement on June 12, 2014. We find CV's trading to be opportunistic.

[226] The amount CV invested in his Amaya shares was more than he spent to purchase any other security in the January 1, 2012 to June 30, 2014 time period. In addition, CV's significant profit from his Amaya trade was the highest from any trading he did during this two-year period.

ii. DU and NU

[227] DU is Vannatta's cousin. NU is DU's wife. DU had not previously owned Amaya or any other gaming security. Similar to CV, NU had previously invested in Amaya, buying in November 2013 and selling in February 2014. NU did not buy the securities of any other gaming industry company. Nor did she buy Amaya prior to the Relevant Period when Amaya's share price dropped, post the release of their 2013 results, or in response to an April 24 article in the Globe and Mail that provided a favourable view of Amaya, stating it was "not quite the gamble it was just over a month ago".

[228] The day after Vannatta learned about the Acquisition, April 30, 2014, DU and NU began buying Amaya shares. Between April 30 and June 10, DU acquired 9,002 Amaya shares. DU sold 150 Amaya shares on June 10 and then sold the

remainder of his shares between June 16 and July 7, following the June 12 announcement. DU bought 480 Amaya shares on June 23 and sold them on July 8 for a small profit. NU started buying Amaya shares on April 30 and by May 23 had acquired 4,401 shares. NU sold all of her Amaya shares on July 8.

[229] The amount DU spent on his Amaya purchases during the Relevant Period was the highest amount he spent on any security during the January 1, 2012 to June 30, 2014 time period. The amount that NU spent on her 2014 purchases of Amaya was the highest that she spent on any security in that same time period. The profits each of DU and NU made on their trading in Amaya shares were the largest profits each of them earned on trading any other security in the January 2012 to December 2014 period.

iii. KU

[230] KU is another of Vannatta's cousins. He had not purchased shares of Amaya, or any other gaming industry security, prior to the Relevant Period. KU made one purchase of 900 Amaya shares on May 28, 2014. He sold all of his shares after the June 12 announcement, earning a significant profit. The amount KU spent on his Amaya shares was the largest investment he made in the securities market in the January 1, 2012 to June 30, 2014 time period.

(f) Conclusion on tipping

[231] Based on the circumstantial evidence relating to the timing of the trades, the uncharacteristic and/or opportunistic nature of the trades and the profit made, we infer that it is more likely than not that Vannatta tipped CV, DU, NU and KU.

(g) Was Vannatta's concealment of his Amaya trading from Aston Asset Management abusive and / or does it engage an animating principle of the Act

[232] Staff alleges that Vannatta's engaged in conduct that was both abusive of the capital markets and a failure to adhere to high standards of conduct expected of him as a registrant, thereby engaging an animating principle of the Act, because he concealed his trading in Amaya securities from Aston Asset Management Compliance.

[233] The specific components of Staff's allegations on this point are that Vannatta:

a. failed to pre-clear his April 29, May 6, and May 14, 2014 Amaya trades with Aston Asset Management Compliance, contrary to Aston Financial's Personal Trading Policy;

b. failed to submit monthly or quarterly brokerage statements for his three Scotia accounts to Aston Asset Management Compliance, contrary to Aston Financial's policy;

c. in response to Aston Asset Management's June 2014 internal review into employee and fund trading in Amaya securities, Vannatta:

   i. failed to provide Aston Asset Management Compliance with brokerage statements for his three Scotia accounts, saying they were unavailable;

   ii. provided transaction histories to Aston Asset Management Compliance for his Scotia RRSP and Scotia TFSA accounts, which purportedly covered the period of March 25, 2014 to June 25, 2014 but, as a result of Vannatta's manipulation only showed trading for the 45-day period prior to June 26, 2014 (thereby concealing his April 29, 2014 purchase of Amaya securities in his Scotia RRSP Account, and his May 6, 2014 purchase of Amaya securities in his Scotia TFSA Account); and

   iii. failed to provide to Aston Asset Management Compliance with a transaction history for his Scotia Regular account, the account he used for his May 14, 2014 purchase of Amaya; and

d. with respect to the July 2014 Aston Asset Management Compliance request to provide a certificate listing all of his brokerage or trading accounts, Vannatta signed and submitted a false and incomplete certificate. Vannatta listed his Scotia RRSP and TFSA Accounts but made no mention of his Scotia Regular Account on the certificate.

[234] Vannatta's evidence, read in from his compelled interview by Staff, was that he did fill out pre-clearance forms and leave them on Rnjak's desk, he did not recall providing transaction histories to Rnjak and he did not recall selecting the 45-day period for his two account transaction histories.

[235] Vannatta argues that Aston Asset Management Compliance either lost or destroyed his pre-clearance forms and the brokerage statements for all of his Scotia accounts. He submits this argument is supported by Rnjak's inability to independently recall the events of 2014 without being shown documents to refresh his memory, Rnjak's inability to remember the details of the Slemko review in 2016 (including what documents were provided to external counsel and

what became of those documents), and Staff's alleged breach of the witness exclusion order that allowed Rnjak to tailor his evidence about Vannatta.

[236] Vannatta further submits that the 45-day range for the transaction histories that were provided to Aston Asset Management Compliance were just as likely to be the result of human error as an intent to conceal. Bawden, Senior Compliance Officer for Scotia iTrade, gave evidence that the 45-day range was a default setting that would result regardless of whether any other period was selected by the user. According to Bawden, there is a button to override the default setting, however when asked about it Bawden was unable to locate it during his testimony based on the materials put before him.

[237] We do not accept Vannatta's arguments. We find that it is more likely than not that Vannatta concealed his trading from Aston Asset Management Compliance based on the following evidence, that includes the same confluence of factors that led us to conclude that Vannatta misled Staff:

a. Aston Asset Management's internal review of trading in Amaya occurred in July 2014 and included the July 8, 2014 email and memorandum to all access persons to provide brokerage statements for all of their brokerage/trading accounts for April through June 2014 and to sign a certificate identifying all of their brokerage/trading accounts;

b. in response to that request Vannatta provided a signed and dated certificate that excluded his Scotia Regular account, which he had used for the May 14, 2014 Amaya trade;

c. in his compelled interview Vannatta confirmed that transaction histories for his Scotia accounts were accessed online through his account and conceded that Rnjak could only have received copies of transaction histories for Vannatta's Scotia RRSP and TFSA accounts from Vannatta. Whether Rnjak wrote Vannatta's name on the top of the transaction histories is irrelevant in our view; the evidence before us was there was no way Rnjak could have obtained these documents other than from Vannatta and Vannatta admitted this during his compelled interview with Staff;

d. Vannatta also stated in his compelled interview that despite being able to see a list of all of his accounts when he logged into his Scotia account, he could not remember why he provided Aston Asset Management Compliance with a certificate that did not include his Scotia Regular account;

e. Aston Asset Management Compliance requested brokerage statements on July 8, 2014. Aston Asset Management did not provide brokerage statements for any of Vannatta's three Scotia accounts to Staff during the investigation. The transaction histories in Aston Asset Management's possession for Vannatta's Scotia RRSP and TFSA accounts are dated June 26, 2014. Vannatta's April 29, 2014 Amaya trade was in his Scotia RRSP account. His May 6, 2014 Amaya trade was in his Scotia TFSA account. By requesting transaction histories for these accounts on June 26 with the 45-day default period (May 12) the reports would not include the April 29 and May 6 trades. While we have found that Vannatta's April 29, 2014 trade was not an insider trade, we refer to it here as it is relevant to the analysis of whether Vannatta concealed his trading from Aston Asset Management Compliance;

f. had Vannatta provided a transaction history for his Scotia Regular account dated June 26, 2014, as the other transaction histories were dated, it would have shown the May 16, 2014 Amaya trade. We infer this is why Vannatta did not provide Aston Asset Management Compliance with a transaction history for the Scotia Regular account or include the account in his certified list of accounts; and

g. in Rnjak's June 17, 2014 email to Killeen about Aston Asset Management's internal review of Amaya trading, Rnjak refers to Kitmitto's and SR's request for pre-clearance to trade Amaya on April 25, 2014, the placing and lifting of the restriction on Amaya and one Aston Asset Management fund's trade in Amaya on June 13 after the restriction was lifted. There was no reference in this contemporaneous document to any other request for pre-clearance to trade Amaya or trades in Amaya during this period.

[238] While we do not consider Vannatta's April 29 Amaya share purchase in our analysis of the insider trading allegation against him, Vannatta's apparent efforts to conceal his April 29, 2014 Amaya purchase from Aston Asset Management Compliance indicates that he was aware his friend and office mate, Kitmitto, was being brought over the wall on a strategic transaction involving Amaya and that Vannatta thought trading on that information was inappropriate and had to be concealed.

[239] We find that the combination of Vannatta's signed certificate that does not list the account where he conducted the May 14, 2014 trade, the lack of a transaction history for that account, and Aston Asset Management's possession of transaction histories (which they could only have obtained from Vannatta) for his two other Scotia accounts, printed on a date with a date range that effectively excludes his April 29 and May 6, 2014 Amaya trades, establishes it is more likely than not that Vannatta concealed his trading in Amaya from Aston Asset Management Compliance.

[240] The Commission has previously found that the integrity of the regulatory framework for registrant firms depends upon the adherence to appropriate compliance structures and that circumventing one's employer's compliance function is conduct contrary to the public interest.[78] The Commission has highlighted the public interest in registrants being honest and of good reputation and in registrants acting in accordance with the concepts of honesty, integrity and fair dealing among classes of investors.[79]

[241] We find that Vannatta's circumvention of Aston Asset Management's compliance function to conceal his trading in Amaya directly engages the fundamental principles of securities regulation, specifically s. 2.1, paragraph 2. iii. that requires the maintenance of high standards of fitness and business conduct to ensure honest and responsible conduct by market participants. This includes registrants such as Vannatta. As a registrant and an access person with a registrant, Vannatta ought to be held to a higher standard of conduct and his conduct fell below the high standard expected of him.

[242] We also find that Vannatta's conduct was abusive of the capital markets. In *Agueci Merits,* the Commission found an employee of a registered firm to have engaged in abusive conduct when she placed trades in a secret account she hid from the firm and impersonated her mother when making trades.[80] We find Vannatta's hiding his trading in Amaya from his employer to be equally abusive.

[243] Although we find that Vannatta's conduct is both abusive and engages an animating principle of the Act, either finding is a sufficient basis for our conclusion that Staff has established this public interest allegation against Vannatta.

3. Christopher

[244] We found that Kitmitto was in a special relationship with Amaya and that the Acquisition was MNPI about Amaya. Therefore, the issues we need to decide regarding Christopher are:

a. did Kitmitto tip him about the Amaya MNPI and did he trade Amaya securities while he had that information;

b. was he in a special relationship with Amaya as defined in s. 76(5)(e);

c. did he tip Claudio about the Amaya MNPI; and

d. did he mislead Commission staff?

(a) Did Kitmitto tip Christopher with the Amaya MNPI and did Christopher trade Amaya shares while in possession of that information?

[245] Christopher and Kitmitto were close friends with a relationship originating in university. They were roommates from 2011 and in 2014 they lived together in a condominium owned by Claudio. The two spoke daily and socialized regularly. Christopher and Kitmitto knew each other's families and Kitmitto had visited Christopher and Claudio at Claudio's home.

[246] Both Christopher and Kitmitto testified that they did not regularly discuss stocks that Kitmitto was covering. Kitmitto did, however, occasionally mention stocks to Christopher that he thought might be of interest to Christopher. Both Kitmitto and Christopher testified that Kitmitto brought Amaya to Christopher's attention in 2013 because of Christopher's interest in gaming and sports betting.

[247] Christopher testified that he tended to rely on his own research for investment decisions, including Stockhouse posts and BNN.

[248] Christopher had a business degree. In 2014 he operated two businesses, a cosmetics business and a walk-in bathtub distribution business, from which he earned an annual income of $85,000. Christopher had never worked in the securities industry nor acquired any securities industry qualifications.

[249] Christopher knew that Kitmitto worked as an analyst for Aston Asset Management, which he understood to mean that Kitmitto researched different companies in the gaming and tech industry and provided recommendations to fund managers.

[250] Christopher had a history of trading. Starting in 2009, Christopher used an annual dividend from Claudio's professional dentistry corporation to buy shares. Claudio testified that he set up the dividends to support Christopher's trading in a Tax-Free Savings Account. The annual dividend was based on the maximum allowable TFSA contribution of $5,000 to $5,500.

78 *Agueci Merits* at para 175; *Rowan* at para 160
79 *Agueci Merits* at para 126 citing *Danuke (Re),* (1981) 2 OSCB 31c at 43c
80 *Agueci Merits* at para 716

[251] Christopher invested almost all of the dividends he received in one or two stocks which he held for several months before selling all his holdings and making a new investment. Prior to 2014, Christopher invested in small cap mining and resource stocks. He and Claudio shared investment ideas and typically invested in the same stocks. In 2012, both Christopher and Claudio suffered significant losses in their portfolios associated with some investments in the mining / resource sector recommended by Christopher.

[252] Claudio did not pay a dividend to Christopher in 2012 or 2013. Claudio and Christopher both testified that the gap in dividend payments was in part due to the general market downturn's impact on Claudio's professional finances and in response to their investment losses. Christopher did not trade any securities during this same period because he had no funds to invest.

[253] Christopher testified that he was interested in Amaya because it was one of the few gaming companies listed on the TSX and he thought it had a lot of potential because of its strategy of seeking a global audience and obtaining regulatory approvals for online gaming in the United States.

[254] According to Christopher, by the time he invested in Amaya on May 8, 2014 he knew that Amaya:

a. was one of the few gaming companies listed on a Canadian stock exchange;

b. had won the stock of the year award in January 2014;

c. had made several significant acquisitions, through which it had entered into lucrative supply agreements and obtained contracts with US state governments that started to legalize online gambling;

d. was being rumoured on Stockhouse to continue to grow through acquisition;

e. was discussed in the April 24, 2014 Globe and Mail feature article;

f. was mentioned in the Calvinayre.com article of April 29, 2014 which was also commented on in a Stockhouse post on May 3, 2014;

g. was mentioned as one of the three gambling stock picks in a Motley Fool article posted on Stockhouse on May 2, 2014; and

h. was discussed on several occasions on BNN market calls.

[255] Christopher testified that, based on all his research over the preceding 6 months, and watching the price movements in Amaya in April 2014, he decided to buy Amaya on May 8, 2014. At that time, according to Christopher, he knew a dividend was coming at any time from Claudio (though he did not know specifically when). He, therefore, transferred $5,000 from a joint line of credit he held with Claudio and purchased $5,404 of Amaya shares.

[256] On May 16, 2014, Christopher received a $10,500 dividend from Claudio's corporation. On May 20, 2014, Christopher repaid the $5,000 advance from the joint line of credit. On May 21, 2014, Christopher purchased a further $5,386 of Amaya shares with his remaining dividend funds.

[257] Between his May 8 and May 21 purchases, Christopher testified that he saw more positive news and commentary about Amaya. He made note of a May 9 post on Stockhouse and Amaya's May 15 first quarter results press release. Christopher also testified that Amaya's new debt arrangements "jumped at him", particularly the warrants giving the lenders the right to buy Amaya common shares at $15. Christopher also referred to a Stockhouse poster who commented that the warrants meant there was real potential upside above $15 and another acquisition was quite possible in the middle of the year.

[258] We do not find Christopher's evidence about why he bought Amaya shares when he bought them credible due to the factors indicated below and combined with his timely, risky, uncharacteristic, and profitable trading in Amaya. We find this supports an inference that it was more likely than not that Kitmitto tipped Christopher:

a. Christopher's evidence is that Kitmitto had mentioned Amaya to him in 2013 yet, after a two and one-half year hiatus from trading, he did not discuss making a sizeable investment in Amaya with borrowed funds with his friend and roommate, Kitmitto, who he knew covered the stock.

b. During his compelled interview in 2016 Christopher had only a cursory memory of the details of articles, blog posts and posters who covered Amaya. During his testimony, however, Christopher had an implausibly detailed recollection of many specific articles, posts and BNN coverage of Amaya.

c. Christopher bought Amaya on May 8, 2014. His evidence is that he was watching Amaya closely for 6 months, however he did not buy Amaya before the Relevant Period when the stock price was lower. When Christopher bought Amaya, the stock price was up significantly from the dip it had taken after the release of Amaya's 4th

quarter results. The price had increased from between a range of $5.80 to $6.11 on April 15, 2014 to a range of $7.92 and $8.11 on May 8th. At the time of the CalvinAyre article on April 29th, that Christopher testified he had read, the stock price ranged between $6.76 and $6.87.

d. Since Christopher had not received a dividend from Claudio's company and although he anticipated receiving funds from his father it was uncertain of when they would arrive, he used a line of credit to buy Amaya shares. It is more likely than not that someone closely following a stock and willing to use borrowed funds to make an investment in a stock they are closely following and assessing would have purchased during a dip in the market price rather than when the price was steadily rising.

[259] May 8 was the last business day prior to what Kitmitto then understood to be the Acquisition announcement date, May 12. We find it more likely than not that Christopher knew of this timing from Kitmitto and purchased on May 8 to ensure he had shares in advance of the announcement.

[260] We find it more likely than not that Christopher traded while in possession of Amaya MNPI. We make these conclusions based on the following findings:

a. Christopher's close personal relationship with Kitmitto, including their living arrangements, provided Kitmitto with an opportunity to communicate news about the Acquisition to Christopher;

b. Christopher's trading was timely:

i. his first trade after a two-and-a-half-year hiatus was Amaya, a security about which Kitmitto, his friend and roommate, had recently acquired MNPI;

ii. as discussed in paragraph 258 c., Christopher could have bought Amaya shares at a more opportune time regarding the price of the stock he was apparently watching closely, yet he purchased the shares on the last trading day before the then currently scheduled announcement date. We find it is more likely than not that, knowing from Kitmitto that the Acquisition would be announced on May 12, Christopher could wait no longer for the dividend and therefore took an advance of $5,000 from the joint line of credit on May 8 to acquire shares in advance of the announcement;

iii. even though Christopher had access to $10,000 on his joint line of credit, we find it more likely than not that he only advanced $5,000 to buy Amaya on May 8, 2014 because he did not know if the dividend he was expecting would be $5,000 or $10,000;

iv. as of Thursday, May 16, 2014, Kitmitto's information was that the announcement would occur on May 21. Christopher received a $10,500 dividend from Claudio's corporation that same day. On May 21, the first business day following the Victoria Day long weekend, Christopher repaid the advance on his joint line of credit and acquired more shares of Amaya. We find it more likely than not that Christopher was aware from Kitmitto that the announcement was scheduled to occur at some point that day; and

v. Christopher did not sell his Amaya shares prior to the June 12, 2014 announcement despite the stock price increasing to the $11-$12 range during that period;

c. Christopher's trading in Amaya was uncharacteristic and risky:

i. Christopher typically invested in only one, or two, stocks at a time. However, prior to 2014 all his investments had been in the mining and resource sector;

ii. prior to his May 8, 2014 purchase of Amaya shares Christopher had never used funds from his joint line of credit to purchase shares; he had always used his dividends; and

iii. Christopher's $10,782 Amaya investment was approximately half of Christopher's net worth at the time; and

d. Christopher's trading in Amaya was profitable:

i. Christopher's trading prior to his Amaya purchases during the Relevant Period resulted in significant losses;

ii. his $30,782 profit (285%) on the Amaya shares acquired during the Relevant Period was the largest investment profit he made during the January 2012 to December 2014 period and effectively doubled his net worth; and

iii. Christopher's post announcement trades in Amaya were significantly less profitable.

(b) Was Christopher in a special relationship with Amaya?

[261] We also find, based on the above evidence, that Christopher was in a special relationship with Amaya. We conclude that Staff has established both the "information connection" (Christopher learned about the Amaya MNPI from Kitmitto, who was in a special relationship with Amaya) and the "person connection" (Christopher knew or ought reasonably to have known that Kitmitto was in a special relationship with Amaya), given:

a. Christopher's close, personal relationship with Kitmitto;

b. the opportunities that resulted from their relationship and their living arrangements for Christopher to learn about the Acquisition from Kitmitto; and

c. the timely, uncharacteristic, risky, and profitable nature of Christopher's trading in Amaya shares.

(c) Conclusions on insider trading and tipping

[262] Considering the above, we find that it is more likely than not that Kitmitto tipped Christopher and that Christopher engaged in insider trading.

(d) Did Christopher tip Claudio with the Amaya MNPI?

[263] We find that Staff has not established their allegation that Christopher tipped Claudio about the Amaya MNPI. The evidence on which we base that our conclusion is:

a. we found Claudio to be a credible witness. He denied that Christopher told him the Amaya MNPI and this testimony was not shaken during cross-examination;

b. Claudio and Christopher had a very close relationship, they described each other as best friends, they spoke daily;

c. Claudio and Christopher shared investment ideas and Claudio frequently traded the same stocks as Christopher;

d. Claudio testified that he learned about Amaya from Christopher and bought Amaya shares on May 16, 2014 because of a "progressive build up" and "constant references" from Christopher about Amaya; and

e. although Claudio bought Amaya for the first time on May 16, 2014, we do not find his trading in Amaya to be uncharacteristic, timely or risky, because:

    i. the fact that Claudio had not traded in his self-directed account for two years preceding his Amaya purchases is as consistent with his evidence that he experienced personal financial constraints during that time period and was hesitant to invest because of the market losses he experienced;

    ii. the account Claudio used to buy Amaya was a speculative trading account; and

    iii. Claudio's trading in his speculative accounts typically involved the purchase of 5-7 stocks a year in investment amounts ranging from $4,000 to $20,000, with several larger dollar value investments, which was consistent with his $9,818 Amaya investment.

[264] Claudio earned a $31,956 profit on his $9,818 Amaya investment, a 325% return. This was the highest profit Claudio had ever earned and was his highest return of an investment in the period from May 2014 to September 2016. However, we do not consider this one factor determinative given the lack of other supporting circumstantial evidence.

[265] While Claudio's and Christopher's close relationship and their practice of sharing investment ideas may have created an opportunity for Christopher to tip Claudio about the Amaya MNPI, we find in this instance that the opportunity alone without cogent evidence of timely, uncharacteristic or risky trading is insufficient to support a finding that it was more likely than not that Christopher tipped Claudio about the MNPI. In our view, it is as likely that Christopher encouraged Claudio to buy Amaya shares, without the sharing of specific MNPI, and Claudio followed Christopher's recommendation as he had in the past.

[266] The Statement of Allegations does not include an allegation that Christopher, while in a special relationship with Amaya and while he had Amaya MNPI, recommended Amaya to Claudio contrary to the public interest. Therefore, we do not draw any further conclusions from our finding that Christopher likely encouraged Claudio to buy shares of Amaya.

(e) Did Christopher mislead Staff?

[267] Staff allege that Christopher misled them, contrary to s. 122(1)(a) of the Act during his compelled interview on September 8, 2016 by:

a. denying he had a line of credit when he had a joint line of credit with Claudio; and

b. stating that his May 8, 2014 purchase of Amaya was with a dividend from Claudio's professional corporation, when Christopher had used funds drawn on his joint line of credit, which draw he subsequently repaid when he received a dividend from Claudio's corporation.

[268] Christopher submits that when questioned by Staff in 2016, two and one-half years after the events, he had forgotten the mechanics of how he paid for his May 8 Amaya purchase. During his cross-examination, Christopher continued to say that he did not have a line of credit. Also, Christopher submits that he understood the line of credit, despite being joint, was in fact Claudio's because of the structure and ownership of the debt, including: Claudio was the primary borrower and guarantor for the line of credit, statements for the joint line of credit were mailed to Claudio's Sudbury address, and Claudio testified that he had segmented $50,000 from his larger personal line of credit to support Christopher's cash flow management.

[269] We find that Christopher's explanations are at least as probable as Staff's. Therefore, we do not find that Christopher misled Staff contrary to s. 122(1)(a) of the Act.

4. Claudio

[270] Staff allege that Claudio traded Amaya while in possession of the Amaya MNPI. Given our finding that Christopher did not share the Amaya MNPI with Claudio, the tipping chain is broken and Staff's trading allegation against Claudio falls away.

5. Goss

(a) Did Kitmitto tip Goss with the Amaya MNPI and did Goss trade Amaya shares while in possession of that information?

[271] We discuss particular credibility findings regarding Goss in our analysis of the specific allegations below. However, as a general comment, we find that Goss's answers to questions, particularly on cross-examination by Staff, were intransigent and self-serving and often implausible. Where Goss's evidence is consistent with other evidence and with the probabilities, we accept it. Where his testimony is not supported by other evidence, we do not accept it.

[272] Aston Financial created Aston Securities to be able to "recapture" commissions that Aston Asset Management would typically pay to third party brokers on trades done for their funds. Goss was interested in participating in this recapture business and in being on the ground floor of Aston Financial's move into this business.

[273] Goss joined Aston Securities in October 2013. He brought his client book of approximately 200 family accounts with approximately $150 million assets to Aston Securities. His assistant at his previous employer (**Mackie**), Fakhry, also moved to Aston Securities.

[274] Goss and Kitmitto met in 2012 in connection with Aston Asset Management's investment in a private placement that Goss introduced to Aston Asset Management through their then CEO, Ben Cheng.

[275] Goss and Kitmitto worked together, along with Goss's client Fielding, on many private company investments. Goss and Kitmitto also socialized at work, going for juice or coffee during the day, and at work-related events.

[276] Goss knew that Kitmitto was an analyst with Aston Asset Management who focused on gaming and technology stocks. Based on their relationship and Goss's knowledge about Kitmitto's role at Aston Asset Management, including his coverage of gaming stocks, we infer that Goss was aware Kitmitto covered Amaya.

[277] While there was some evidence of email and telephone communications between Goss and Kitmitto it was not extensive. Neither Goss nor Kitmitto suggested that Staff had not obtained all of their relevant phone records. The exception, with respect to telephone communications, was the period from May 28 to June 6, 2014 when Kitmitto was out of the office studying for an examination and there were more frequent calls between the two. We find that it was more likely than not that Goss and Kitmitto communicated regularly in person.

[278] Aston Securities and Aston Asset Management had offices on the same floor, adjacent to each other. There was contradictory evidence from Goss and Michael Killeen (**Killeen**), the President of Aston Asset Management and Chief Operating Officer of Aston Financial, about whether there was a locked door between the two offices.

[279] Goss testified that the door in the glass wall separating the two offices was locked and that the Aston Securities's office manager had the key. The question and Goss's answer did not include any specific time period for when the door was locked. Goss also stated that he accessed Aston Asset Management's offices through their reception area.

[280] Killeen testified that, although he does not remember that the door between the two offices was locked, he believed that it was not. The basis for his belief was an email exchange he had with a firm named Arguson about moving the glass wall separating the two offices and installing a new rail lock with key.

[281] Killeen stated that he obtained the quote in December 2013, in part because of his concern about the flow of traffic between Aston Securities and Aston Asset Management and in part to accommodate growth on the asset management side. However, he did not receive approval to have the work done at that time because of the cost. An email exchange in July 2014 indicates Killeen authorized Arguson to proceed with the work at that time on the basis of the December 2013 quote, which was attached to the July email and included the installation of a new rail lock with key.

[282] This documentary evidence is inconsistent with Goss's evidence and we find that it is more likely than not that there was no lock on the door in the wall separating the Aston Securities and Aston Asset Management offices until sometime after July 2014.

[283] Regardless, Goss's evidence was that he was regularly on the Aston Asset Management side of the offices. He stated that this was particularly the case in 2013 and early 2014 when he was transferring his clients's accounts from Mackie and after the transfer was complete about twice a week Goss would come by to see if somebody wanted to go for lunch. Killeen also testified that he saw Goss regularly in the Aston Asset Management offices speaking with Killeen, Cheng, Kitmitto, and others. We conclude that there was opportunity for Kitmitto and Goss to speak regularly in person in the Aston Asset Management offices.

[284] The evidence from Kitmitto, Goss and Fielding was that they worked together on numerous private company investments during the 2013 – 2014 period. The private companies they were involved with included, Patient Home Monitoring, Park Lane, Park Lawn, Orthogonol, Ethoca, Synaptive, and Intertain. It was a common occurrence that Goss, Fielding and Kitmitto would personally invest in these private deals. Goss would introduce these investment opportunities to Aston Asset Management and to his other clients. Goss also testified that he saw the individuals connected with these private companies, who were not yet his clients, as potential clients to whom he would communicate investment ideas.

[285] We find it more likely than not that Kitmitto shared the Amaya MNPI with Goss based on the culture at Aston Asset Management and Aston Securities, apparent from the lack of separation between the two offices, Goss's regular movement between the offices, the close connection between Goss and Kitmitto created by working on and investing in private deals, and our earlier finding that Kitmitto had a lax attitude toward compliance.

[286] Goss was an experienced securities advisor as well as an active investor in both public and private companies. Goss's investment account statements indicated that he tended to trade sizeable positions in a small number of stocks. Goss testified that he had experienced large gains ($2 million in Uranerz and $1.5 million in Ethoca) and losses (more than $800,000 in Anderson Energy) in his portfolio.

[287] Goss testified that he had been following Amaya since October 2013 when he was "quite excited" about it as an investment opportunity. However, prior to April 2014 he only recommended Amaya to one client. Goss testified that he could not have recommended Amaya to other clients until the clients had moved their accounts from Mackie to Aston Securities. However, on cross-examination Goss agreed that two and possibly three of his clients to whom he recommended Amaya during the Relevant Period had open accounts at Aston Securities in November and December 2013. This was confirmed from Aston Securities account statements for three of Goss's clients.

[288] Goss bought Amaya for the first time on April 11, 2014. On April 10, 2014 Goss sent an email to four acquaintances, all senior executives of Synaptive or Ethoca, with the subject line "AYA Amaya Gaming" saying "Word has it we need to own this thing". This email and Goss's own purchase of Amaya on April 11 is consistent with Goss's explanation that the drop in Amaya's share price following the release of Amaya's quarterly results on March 31, 2014 represented a buying opportunity.

[289] Only two of Goss's clients bought Amaya in 2014 prior to April 25. Fielding bought Amaya shares on April 11, 2014. Goss's client, AE, one of the recipients of Goss's April 10 email, bought Amaya shares on April 15.

[290] We find that Goss's interest in Amaya at this time appeared to be as a short-term investment to take advantage of the buying opportunity presented by a drop in the share price following the announcement of its year-end results. On April 21 Goss emailed his client AE that AE "might want to sell this and move into [Intertain] soon?". Goss testified that "this" in the email was a reference to Amaya. On April 25, Goss sold two-thirds of his personal investment in Amaya. Goss recommended Amaya to one other client, CS, who bought Amaya shares on April 28.

[291] We find a marked difference between Goss's trading, for himself, his family and his clients, before and after April 29. On the afternoon of April 29, after Kitmitto's meeting with Amaya management, Goss began acquiring Amaya in his personal accounts and in family accounts over which he had trading authority. Goss continued to buy Amaya until June 4.

[292] During the Relevant Period, Goss purchased 95,400 Amaya shares for himself and an additional 14,040 in his family members's accounts. Goss's profit on the sale of his Amaya shares was $1,004,481. Combined with the profit from the sale of Amaya shares from his family members's accounts ($224,028), Goss's total profit from trading Amaya shares was $1,228,509. Also, during the Relevant Period Goss purchased 496,000 Amaya shares for clients. In comparison, in the six months prior to April 29 Goss had purchased 30,000 Amaya shares for himself, none for his family's accounts, and 48,000 Amaya shares for clients.

[293] On May 1 and May 2, 2014, Goss, his clients and Fakhry's clients represented 25% and 18% respectively, of the daily trading volume in Amaya.

[294] Goss also, on three occasions during the Relevant Period, sold shares of Amaya. One of these occasions appears to be in response to a margin call. We find that Goss's sale of Amaya on May 8 is more likely than not the result of Goss being advised by Kitmitto on May 8 that the announcement was being delayed to May 21, 2014.

[295] We find Goss's trading to be consistent with that of an experienced trader who would not, even while in possession of MNPI, necessarily buy and hold but would make opportunistic trades as circumstances warranted. While we do not find Goss's trading in Amaya shares during the Relevant Period uncharacteristic, we find it was opportunistic and therefore consistent with his having been tipped about the Amaya MNPI.

[296] We find that three conversations Goss had with two of his clients during the Relevant Period support the conclusion that Goss had knowledge of specific details about the Acquisition.

[297] The first conversation was on May 22, 2014 in an email exchange with client AE about a pharmaceutical company and Amaya, Goss states "all going to happen at the same time". Both the pharmaceutical company and Amaya were, at that time, expecting announcements on or about May 28, 2014; only the pharmaceutical company's pending announcement was public knowledge. The pharmaceutical company had issued a press release in February indicating they expected an announcement around May 28.

[298] After May 21 Kitmitto had been advised that the next anticipated Amaya announcement date was May 28 or May 29. On May 22 there were no rumours about an Amaya transaction or an announcement, yet it appears that Goss is aware of the new timing for the announcement. We infer that Goss learned of this new timing from Kitmitto, who had learned about updated to the timing of the announcement on May 27, 2014.

[299] The second conversation was on May 27, 2014. On that date, Amaya opened at $10.65. Goss's client TM (who had purchased 70,000 Amaya shares at $7.00 on May 1, 2014) asked Goss if he should sell half of his position. Goss's reply was no, that he was looking for $20 on the stock. This shows Goss had access to the Amaya MNPI because $20 was the target stock price in the slide deck provided to Kitmitto in the April 29 meeting with Amaya management.

[300] Goss had said previously, on May 22, that he was looking for $10 as a target. Goss's explanation was that he has different targets and the $10 was a short-term target; since the CalvinAyre article was published on May 24 he felt he should upgrade his target. He also said $20 was the target because: Fakhry's email re: CalvinAyre's article that "maybe 20 is not out of reach"; Amaya's issuance of $15, 10-year warrants; and some posts from 2013 that "had sort of thought that the stock could get to $20".

[301] We reject Goss's explanation. The CalvinAyre article did not refer to a $20 target. Nor could Goss explain how $15 warrants translated into a $20 price expectation. There were no contemporaneous blog posts suggesting a $20 target price for Amaya. There were several Stockhouse posts from October and November 2013 and one in April 2014 that mentioned $20 as a "takeout" price for Amaya in a one to two-year timeframe.[81] There was also a Stockhouse post on May 27 saying "They[Amaya] buy pokerstars and it may be a 20 dollar bill.". Goss's recommendation that a client with an approximate $127,750 profit not realize those profits based on a one to two-year target price or one blog speculating about Amaya buying PokerStars at $20 is not, in our view, plausible from an experienced advisor and is more consistent with Goss knowing the Amaya MNPI.

[302] The third conversation was on June 4, 2014 with Goss client AE. On June 4 at 9:34 am, AE bought 9,000 Amaya shares. At 1:30 pm that same day Goss asks AE if he wants to buy more. AE replies at 1:41 pm "Let's buy some of the other one…that's enough AMAYA". Goss then has a 10-minute call with Kitmitto at 1:43 pm. After the call Goss emails AE at 1:53 pm and asks him to call Goss "for an update". Goss and AE speak at 1:57 pm for three minutes during which call

[81] Goss Closing Submissions dated February 12, 2021 at para 34 - solarman2013 on October 24, 2013 (AYA is a "takeout at $20 by end of next year"), October 29, 2013 ("takeout …well into $20s in a couple of years"), November 29, 2013 ("agree with 20$ by end of next year") and April 1, 2014 ("I believe in $20 in two years").

Goss places a solicited order for AE for 4,500 more Amaya shares for a total of $46,528. Following that Goss sends AE an email at 2:09 pm "Never enough of a good thing". Kitmitto had been advised on June 1, 2014 that the Acquisition announcement would be on June 5, 2014.

[303] We find that it is more likely than not that Goss was aware from Kitmitto that the announcement was scheduled for the next day and that he encouraged his client AE to buy more Amaya in anticipation of the announcement.

[304] We find that Staff has established that it is more likely than not that Kitmitto tipped Goss about the Amaya MNPI and that Goss bought Amaya shares during the Relevant Period while in possession of that information from Kitmitto.

[305] The relevant evidence on which we base our finding is:

a. Goss's close relationship with Kitmitto and regular contact through involvement with numerous private transactions and their opportunity for in person contact at the Aston Asset Management office and through juice / coffee outings provided an opportunity for Kitmitto to share the MNPI, including updates about the timing of the announcement;

b. Goss was an experienced advisor and trader in the securities industry, he knew that Kitmitto was an analyst at Aston Asset Management and that Kitmitto was involved with private and public deals for Aston Asset Management and therefore we infer Goss knew that Kitmitto had access to MNPI on behalf of the Aston Asset Management funds;

c. the timing of Goss's telephone calls with Kitmitto between May 28 and June 6, 2014 (when Kitmitto was at home studying for an exam) coincided with Kitmitto receiving updates about the timing of the announcement and with Goss's continued purchases of Amaya shares;

d. the timely and opportunistic nature of Goss's trading in Amaya;

e. Goss's change in attitude towards Amaya as an investment for himself, his family, and his clients after April 29, 2014 and the significant portion of the market in Amaya represented by Goss and his clients;

f. the profitability of Goss's trading during the Relevant Period, $1,004,481 or 150%, was his highest profit during that period;

g. the profitability earned by Goss's family accounts ($224,028 or 166%) on trading Amaya shares during the Relevant Period;

h. the significant profits earned by Goss's clients who traded Amaya in their Aston Securities accounts and elsewhere on Goss's recommendation; and

i. Goss's communications that indicate he had specific details about the timing and price of the Acquisition.

[306] While opportunity to acquire knowledge of MNPI is not, in and of itself, sufficient to establish that tipping occurred, knowledge can be inferred based on "circumstantial evidence of opportunity to acquire knowledge of a material undisclosed fact, combined with evidence of well-timed and profitable trades".[82] We conclude that Goss's opportunity to learn about the Amaya MNPI (proximity to Kitmitto and opportunity of in person meetings), combined with our findings that Goss's trading in Amaya was timely and profitable, the timely and profitable trading by Goss's clients, and Goss's apparent knowledge of specific details about the Acquisition and its timing, support the inference that Kitmitto tipped Goss about the Amaya MNPI and Goss traded Amaya shares while he had that information.

(b) Was Goss in a special relationship with Amaya?

[307] We also find that, through the above evidence, Goss was in a special relationship with Amaya. We conclude that Staff has established both the "information connection" (Goss learned about the Amaya MNPI from Kitmitto) and the "person connection" (Goss knew or ought reasonably to have known that Kitmitto was in a special relationship with Amaya), given:

a. Goss's and Kitmitto's personal and professional relationship and Goss's knowledge of Kitmitto's role at Aston Asset Management;

b. the opportunities that Goss had to learn about the Amaya MNPI from Kitmitto; and

[82] *Agueci Merits* at para 68

c. the timely, profitable and extensive trading in Amaya by Goss, Goss's family, Fakhry and Goss's and Fakhry's clients.

(c) Did Goss tip Fakhry with the Amaya MNPI?

[308] Fakhry was a registered advisor who was employed as Goss's assistant at Mackie and then at Aston Securities. Fakhry moved to Aston Securities two weeks after Goss. He assisted Goss, both before and after the move to Aston Securities, with transitioning Goss's clients to his new employer. Of the approximately 60 clients Fakhry had at Mackie, only 8 moved with him to Aston Securities.

[309] Although they worked closely together and were friendly, Goss and Fakhry were not close friends and did not socialize outside of work. Both Goss and Fakhry testified that their working relationship included regular sharing of information about companies and stocks.

[310] Fakhry had successfully completed Canadian Securities Institute courses in chart formation and technical analysis. Fakhry testified that his focus for his personal trading and for his clients, was a technical analysis of stocks, including 8- and 13-day trading charts and support and break out levels. He stated that he regularly used stop loss orders, was sensitive to his cost base, risk / reward of investments and always had an exit strategy. Fakhry also tended not to trade before a company's earnings release and regularly reviewed a company's quarterly results, analyst reports and blogs about stocks he was following.

[311] We find Fakhry to be straightforward and generally credible. There were instances, however as we outline below, where we do not accept Fakhry's evidence as it was inconsistent with other evidence.

[312] Fakhry bought shares of Amaya during the Relevant Period – 4,000 shares on May 2, 3,000 shares on May 20, 2,000 shares on May 21, 500 shares on May 26 and 1,000 shares on May 28. He sold his entire position on June 13, 2014, the day after the announcement.

[313] Six of Fakhry's eight clients also bought Amaya shares during the Relevant Period and sold their positions on June 13, 2014, on Fakhry's recommendation.

[314] The evidence indicates that Fakhry gave different explanations for when he first became aware of Amaya, referring to different dates in response to Aston Securities's internal review of Amaya trading in July 2014, during each of his two compelled interviews by Staff and during his testimony. Fakhry's position is that there is a difference between being aware of and following and researching a security and this is the basis for his different answers. We accept this explanation. However, the timing of when Fakhry became aware of Amaya did not play a material role in our analysis of whether Goss provided the MNPI about Amaya to him and if he then traded Amaya with the benefit of that information.

[315] Goss sent his "Word has it we need to own this stock" email to four individuals on April 10, 2014 and purchased shares of Amaya on April 11, 2014. Fakhry testified that Goss asked him on April 11, 2014 "to dig something up" on Amaya for him. In response, Fakhry testified that he executed a google search and located two articles, one in German, each of which referred to both Amaya and PokerStars. Fakhry's position is that he assumed that Goss was asking him to find information that Goss would not already have access to. We do not find this explanation plausible for the following reasons:

a. Goss did not include this request to Fakhry in his testimony;

b. Goss testified that he had been following Amaya since the fall of 2013 and had made his first purchase the day before this request, making it unlikely in our view that Goss would need Fakhry to "dig something up" about Amaya;

c. Fakhry's stated focus and area of expertise was technical analysis yet he did not provide any such information to Goss in response to this request;

d. when interviewed as part of Aston Securities's internal investigation Fakhry did not mention this request from Goss; and

e. when Goss made his request there was a significant amount of information available about Amaya, including Amaya's March 31, 2014 announcement of their 2013 annual results, seven analyst reports and a Stockhouse post with a forecast based on nine polled analysts rating Amaya as a "buy", none of which Fakhry appears to have provided to Goss in response to Goss's request for information.

We find it more likely than not that Fakhry's explanation was contrived to explain, after the fact, why he provided two articles to Goss that specifically referred to Amaya and PokerStars.

[316] Fakhry testified that one of the factors contributing to his decision to start buying Amaya shares on May 2, 2014 was Amaya's May 2, 2014 press release about New Jersey approving the slot machines of Amaya's subsidiary, Cadillac Jack. We do not find this explanation credible.

[317] There are no contemporaneous comments by Fakhry about the May 2 press release. Fakhry also does not mention this press release during Aston Securities's internal review. Also, when asked on May 5 by Goss to send information about Amaya to Goss's client AJ, Fakhry did not provide this press release. Fakhry gave several different explanations for not sending this press release including that he might have sent it, he may have been out of the office, it was only commentary on the day's news (which it was not) and that his general practice was only to provide clients with reports from larger firms.

[318] In addition, Fakhry spoke with two clients, ST and CG, on May 1 about Amaya, prior to this press release, and they purchased shares of Amaya on May 2. We infer from this that Fakhry's interest in Amaya for his clients and himself preceded and was unrelated to the May 2 press release.

[319] We find that Staff has established that it is more likely than not that Goss tipped Fakhry about the Amaya MNPI on or after April 29, when we have found Goss to have learned the Amaya MNPI from Kitmitto, and that Fakhry bought shares of Amaya while he had that information from Goss.

[320] The relevant evidence on which we base our finding is:

a. Fakhry's trading was timely:

   i. Fakhry had not bought Amaya prior to the Relevant Period;

   ii. all of Fakhry's purchases of Amaya were during the Relevant Period; and

   iii. Fakhry's Amaya purchases represented the bulk of his trading account in May and June 2014 until his sale of those shares on June 13;

b. the majority of Fakhry's clients also bought shares of Amaya for the first time during the Relevant Period;

c. Fakhry's trading was risky:

   i. the amount of Fakhry's investment in Amaya was four times his net worth at the time and more than his entire 2013 income; and

   ii. $65,000 of his investment in Amaya (70%) was made on credit;

d. Fakhry's trading was profitable:

   i. the $126,546 (139%) profit Fakhry earned on his Amaya shares was twenty-eight times higher than his profit on any other investment during the 2012 to 2014 period;

e. Fakhry possessed specific information about the Acquisition:

   i. On May 24, 2014 at 7:31 pm Fakhry sent Goss an email with the May 24 CalvinAyre article. After Goss responded to this email, at 7:41 pm Fakhry sent another email saying, "Maybe 20 is not out of reach". Fakhry agreed that this was a reference to Amaya's share price and that there were no rumours at the time of a $20 price connected with the Acquisition in any blog posts he had seen at the time. Fakhry's explanation was that the holders of the $15 warrants would expect a 30% profit and that deals are usually priced at round numbers. We do not accept this explanation. Fakhry conceded that the warrant holders had 10 years to make a profit on the $15 warrants and they were not dependent on the Acquisition for their profit. Fakhry also conceded that there was only a minor market move ($0.10) when the warrants were announced and, therefore, there was unlikely to be a significant price movement from any discussion about the warrants. There was no evidence before us of any such practice to price deals at round numbers;

   ii. On May 26, 2014 at 11:59 am Fakhry emailed Goss with the subject line "Wynn!" linking a May 26 uspoker.com article. That article discussed the possible sale of PokerStars and potential acquirors, including Amaya, but concluded Wynn was the more likely candidate. Despite this conclusion, Fakhry did not sell Amaya, buy Wynn or recommend any such action to his clients. We find it more likely than not that Fakhry's email supports the inference that Fakhry knew it was PokerStars and not Wynn that would be merging with Amaya because he had been tipped by Goss. Fakhry also sent this email to Kitmitto, which we address in paragraph 320 f. i. below;

iii. On May 28, 2014 Goss emailed Fakhry saying "I hear AYA news is next week". Fakhry and Goss then exchanged messages about the "long wait". Fakhry agreed during cross-examination that they were speaking about the wait for Amaya news. On May 26, 2014, Kitmitto's information was that the announcement would be on May 27, 2014. On May 27, 2014, Kitmitto learned that the announcement had been delayed to the next day or after the weekend. Goss's and Fakhry's exchange, while incorrect about the timing, supports an inference that they were aware there was news coming about Amaya and that they had been waiting for that news since Goss was tipped by Kitmitto on April 29 and Goss tipped Fakhry thereafter. There was no publicly available information on May 28, 2014 suggesting that a transaction involving Amaya was imminent; and

iv. Fakhry stated that on June 11, 2014 he heard that Blackstone is rumoured to be involved in the Acquisition. Fakhry's evidence was that Aston Securities's office manager DT had stepped out of his office and made this statement, saying that he had seen this in a Bloomberg scroll. We do not accept this explanation. No party provided any evidence of such a Bloomberg statement. There was no evidence before us of any public reference to Blackstone's involvement in the Acquisition at this time. The only information about Blackstone's involvement at the time was in the slide deck provided to Kitmitto at the April 29 meeting and in an email from Kitmitto to Cheng on May 28; and

f. Fakhry knew the source of information about the Acquisition was Kitmitto because:

i. Fakhry also emailed the May 26 uspoker.com article speculating about possible PokerStars buyers and identifying Wynn as the likely buyer with the subject line "Wynn!!" to Kitmitto. Fakhry's explanation was that Goss asked him to send the article to Kitmitto. This explanation is not consistent with the evidence. Goss was out of the office for the bulk of the day, including at the time Fakhry sent the article to Kitmitto. There is no evidence that Goss and Fakhry spoke that day prior to Fakhry emailing the article to both Kitmitto and Goss at 11:59 am in separate emails; and

ii. Later that same day, Fakhry also sent Kitmitto a copy of Amaya's May 26 press release, prompted by trading activity that may have stemmed from rumours of a potential strategic acquisition, the language in which release caused commenters to refer to it as the "non-denial-denial" press release. Fakhry testified that he sent the press release because Goss had asked him to send the earlier article. As we do not accept Fakhry's testimony about the earlier release we do not accept this explanation. In his 2016 compelled interview with Staff Fakhry stated he could not recall why he sent the press release and could not provide any explanation.

[321] Fakhry testified that he did not know that Kitmitto covered the gaming industry. There was no evidence that Kitmitto and Fakhry had a professional or personal relationship. We find it more likely than not that these emails support the inference that Fakhry knew about the Acquisition from Goss and knew that Goss had heard about the Acquisition from Kitmitto.

[322] We recognize that Fakhry's trading was not uncharacteristic. He had used credit to finance previous trades and he had purchased gaming industry stocks in the past, albeit in a different sector of that industry, land-based casinos. However, we find this one factor is counterbalanced by the overwhelming circumstantial evidence listed above on which we base our finding that Goss tipped Fakhry.

(d) Did Goss tip his client Fielding with the Amaya MNPI?

[323] Staff alleges that Fielding, while in a special relationship with Amaya, traded in shares of Amaya, through his Dark Bay account at Aston Securities, with knowledge of the Amaya MNPI. We find on a balance of probabilities that Fielding was not in a special relationship with Amaya and that the evidence is as consistent with a conclusion that Goss recommended Amaya to Fielding prior to receiving MNPI as it is with a conclusion that Goss tipped Fielding about the Amaya MNPI and updated Fielding about delays in the announcement.

[324] Fielding was a long-standing client of Goss's, who moved his Dark Bay trading account from Mackie to Aston Securities with Goss when Goss left Mackie to join Aston Securities. They were also close, personal friends who dined, golfed and travelled together. Fielding and Goss spoke by phone frequently, multiple times a day and many days a week.

[325] Fielding was a successful businessman with an estimated net worth of $200 million. He had built and was running his own business, was active in a wide array of other businesses and acted as a director of several companies, including Aston Financial whose board he joined in February 2014.

[326] Fielding was also friends with Kitmitto. They had met in 2013 when Kitmitto was doing due diligence for Aston Asset Management regarding a potential investment in Ethoca. Kitmitto joined Ethoca's board in May 2013 and both Fielding and Kitmitto were on Ethoca's board during the Relevant Period. Fielding spoke with Kitmitto regularly, sometimes daily and sometimes twice a week.

[327] In early 2014, Fielding, Goss and Kitmitto were actively involved with private companies including, Ethoca, Intertain, Synaptive, Park Lane, Orthogonal, Patient Home Monitoring and World Gaming.

[328] Fielding testified that Goss did not provide him with MNPI about Amaya and that he did not receive updates about the announcement delays from either Goss or Kitmitto. This testimony was not effectively challenged or undermined during cross-examination. We found Fielding to be straightforward and credible.

[329] We conclude that Fielding was not in a special relationship with Amaya and that he had not been tipped or updated by Goss with the MNPI about Amaya or the announcement delays based on the following:

a. Fielding did buy shares of Amaya during the Relevant Period but we do not consider the trading to be "timely" because:

   i. Fielding had an interest in gaming stocks prior to the Relevant Period, having previously invested in Intertain, World Gaming, Cryptologic (Amaya's predecessor company), and Gaming Nation;

   ii. Fielding was aware of Amaya as early as 2011 but only considered it as a possible investment when Goss raised it with him in April 2014, at which point he decided to build up a position of 200,000 shares of Amaya and instructed Goss to "pick away" at acquiring the position;

   iii. consistent with that evidence, Fielding bought his first shares of Amaya on April 11, 2014;

   iv. Fielding's explanations for his decisions to buy and sell shares of Amaya during the Relevant Period were as likely as Staff's theory about him having been tipped about the Acquisition (e.g. Fielding sold his entire 30,000 Amaya position, acquired on April 11, on April 16 because he had a margin call and Amaya's price had taken a sharp downturn, one of Fielding's criteria for selling a position);

   v. on April 29, 2014, prior to Kitmitto's meeting with Amaya management, Fielding instructed Goss to sell another holding in his Dark Bay account to make room in his portfolio for Amaya;

   vi. on certain dates where Staff asks us to infer that Fielding's communications with Goss were about the Acquisition and/or the timing of the announcement there is evidence of active discussions among Goss, Kitmitto and Fielding about other matters. For example, Fielding bought 100,000 Amaya shares on May 14. Around the same time Kitmitto was being updated of delays in the announcement, from May 8 to May 12 and then a further delay. During that time period there were communications among Goss, Fielding and Kitmitto. However, over the course of May 7 through May 14 there were also active discussions about Aston Asset Management investing in Synaptive and the details of that agreement among Kitmitto, Goss, Synaptive executives and Fielding, whose evidence was he was acting as a go between for Synaptive and Aston Asset Management in these discussions; and

   vii. Fielding continued to buy shares of Amaya to the end of 2014. While we agree that purchases of a security after the Relevant Period are not of particular assistance in determining whether an individual purchased shares with the benefit of MNPI during the Relevant Period[83], in this instance we consider it of assistance as it shows a sustained interest in the gaming sector that preceded and continued after the Relevant Period;

b. Fielding's trading in shares of Amaya was neither uncharacteristic nor risky, because:

   i. Fielding's and Goss's evidence was that Fielding was an active, aggressive trader and his Aston Securities account was for speculation;

   ii. Fielding testified, and his Aston Securities account statements indicated, that he tended to invest in two to three stocks at any given time, he sometimes used smaller trades to build to a bigger position, he would sell out of a position he was building, if one of his criteria for doing so occurred, and would then buy back into the stock and keep building;

   iii. Fielding also previously did large, single day trades, similar to his May 9 sale of 70,000 Amaya shares and May 14 purchase of 100,000 Amaya shares (Sundridge, Difference);

   iv. Amaya was Fielding's third largest investment during the Relevant Period[84]. While he invested $1,403,280 in Amaya shares during the Relevant Period, Fielding also invested $3.3 million in a technology company; and

[83] *Agueci Merits* at para 458
[84] Exhibit 7, Trading Analysis Schedules A, B and C

v. Staff submits that we can infer that Fielding did not invest more in Amaya, despite having been tipped that there was certainty about the likelihood of those trades, because he was sophisticated enough to know that large trades would draw regulatory scrutiny. We consider it speculation to conclude that, by themselves, small trades were made deliberately to avoid detection;[85]

c. Fielding's trading in Amaya shares during the Relevant Period was profitable (287%), however it was commensurate with that earned by other Goss clients during the Relevant Period who received a recommendation from Goss: JU 282%, AE 202%, TM 254%, BB 202%, BP 165% and RP 180%[86]. Staff and Fielding submitted different profit calculations. We used Staff's profit calculation. We explain our rationale for doing so in paragraphs 330 and 331 below; and

d. we cannot conclude that the opportunities Goss had to communicate MNPI about Amaya to Fielding form a basis for the inference that Fielding did receive this information from Goss, as those opportunities are as consistent with there being discussions about other business and they are not combined with well-timed, uncharacteristic and profitable trades.

[330] Staff's investigator George testified that Fielding made a profit of 287% on his Amaya shares, using only the buy transactions during the Relevant Period and the sell transactions up until December 12, 2014. From April 25 to June 12, Fielding started off with zero Amaya shares on April 25 and accumulated 270,000 shares during the Relevant Period and sold all 270,000 shares by December 12, 2014. The approach Staff took was appropriate as it considered all sell transactions until the 270,000 shares which were bought during the period of April 25 to June 12 were sold. Fielding submitted an alternate profit calculation which included all of Fielding's trades in shares of Amaya from April 11, 2014 to November 8, 2016, resulting in a 45.56% profit. This included buys of shares from July 23, 2014 to November 13, 2014 along with the sells of these additional shares. In our view buys of shares that happened after June 12, 2014 and their corresponding sells should not be included in the profit calculation. Therefore, we rely on George's calculations.

[331] Fielding submits that we should consider as comparators of profitability Fielding's investment in his personal business (200% between 2013 and 2015), his interest in a racehorse (11,000% in 2020), his student housing project (233% in 2016) and Ethoca (900% in 2019). We do not accept these as relevant comparators as each of them is distinctly different from profits earned trading in shares of a public company.

[332] We find that Staff has not established on a balance of probabilities that Goss gave MNPI about Amaya to Fielding during the Relevant Period. We find, therefore, that Fielding was not in a special relationship with Amaya. It is more likely than not that Goss recommended Amaya to Fielding but this recommendation occurred prior to Goss receiving MNPI and, therefore, Staff has failed to establish that Goss recommended Amaya to Fielding while he was in possession of MNPI during the Relevant Period. We address this finding in Section IV.B.5(g), which deals with Staff's allegations that Goss recommended Amaya to his clients while he was in possession of MNPI.

(e) Did Goss tip his client FH with the Amaya MNPI?

[333] Staff allege that Goss tipped FH about the Acquisition on or before May 2, 2014. We find that Staff has failed to establish that Goss tipped FH.

[334] FH was a long-standing client of Goss and maintained multiple family and business accounts at Aston Securities. FH was a businessman and a sophisticated investor. FH did not testify in this proceeding.

[335] FH invested $566,471 in Amaya shares between May 2 and June 4, 2014. FH had not purchased any other gaming stock prior to May 2, 2014 or during the Relevant Period. FH and his family only started selling their Amaya shares on July 3, 2014, after the announcement, earning a significant profit, which was also much larger than his next highest profit from trading during the same period. FH's investment in Amaya was his second largest investment in shares of any company during the two years from January 1, 2012 to June 30, 2014.

[336] On June 3, 2014 FH faxed a copy of Amaya's May 26, 2014 non-denial-denial press release to Goss with a note asking Goss to call him. Similarly, on June 4, 2014 FH faxed Goss a copy of the May 29, 2014 article "Rumored Amaya-PokerStars Merger Might Not Happen", again asking Goss to call him. Goss and FH spoke twice on June 4, 2014, after which FH left Goss a voice message stating that if "Goss thinks they should buy the AYA that's what we should do". Goss bought Amaya for FH on June 4, 2014 after that message.

[337] Staff asks us to draw the inference that FH asking Goss to call him about these articles, which imply that the Acquisition was at risk of not proceeding, is evidence that Goss tipped FH about the Acquisition and FH was seeking reassurance from Goss, in the face of this potentially negative news, that the Acquisition was going forward.

[85] *Hutchinson* at paras 193-194

[86] Exhibit 4, Affidavit of Christine George (Sworn via Videoconference October 7, 2020) with the Exhibits, Schedule 4, Profit Calculations

[338] Kitmitto had been told on June 1, 2014 that the announcement had been delayed to June 5, 2014. We found earlier that it is more likely than not that Kitmitto was keeping Goss updated about the timing of the announcement.

[339] Given the frequency and timing of Goss's communications with FH there was opportunity for Goss to tip FH about the Amaya MNPI.

[340] Goss testified that he did not tip FH about the Amaya MNPI but rather recommended Amaya to FH because Amaya fit FH's portfolio, approach and goals. Despite this evidence, FH's trades in Amaya on May 2 are marked as unsolicited. However, under cross-examination Goss resisted identifying the content of FH's voice message as being consistent with Goss having recommended Amaya to FH. The confusing and contradictory evidence about whether FH's Amaya trades were solicited by Goss we find goes to Goss's credibility overall. In this instance, Goss testified that he recommended Amaya to FH and FH's voicemail indicates that he was accepting and acting on that recommendation.

[341] Although Goss had the opportunity to tip FH and FH made what appear to be timely, uncharacteristic and profitable purchases of Amaya we find there is insufficient evidence to support an inference that Goss provided MNPI about Amaya to FH. We find that it is as likely that Goss recommended Amaya to FH as it is that Goss tipped him about the Acquisition. We address this finding in Section IV.B.5(g), which deals with Staff's allegations that Goss recommended Amaya to his clients while he was in possession of MNPI.

(f) Conclusions regarding the allegations that Goss tipped Fakhry, Fielding and FH

[342] For the reasons above we conclude on a balance of probabilities that Goss:

a. did tip Fakhry about the Amaya MNPI contrary to s. 76(2) of the Act;

b. did not tip his client Fielding, and did not recommend Amaya to him while Goss was in possession of MNPI; and

c. did not tip his client FH but did recommend Amaya to him while Goss was in possession of MNPI.

(g) Did Goss recommend Amaya to his clients while he was in possession of MNPI and, if so, was his conduct abusive of the capital markets and /or did it engage an animating principle of the Act

[343] Staff alleges that Goss, while in a special relationship with Amaya, recommended purchasing Amaya to 20 of his clients while he was in possession of MNPI about Amaya. Staff further alleges that conduct was abusive of the capital markets and engages an animating principle of the Act.

[344] We find that Staff has established it was more likely than not that Goss recommended Amaya to 15 of his clients while he had MNPI about Amaya. The fact that the majority of the interactions with clients took place around dates where Goss learned of new information about the Acquisition (through Kitmitto) and in close proximity to anticipated announcement dates makes it more likely than not that Goss was relying on MNPI.

[345] Goss testified that he recommended Amaya to his clients in May and early June 2014. However, as mentioned elsewhere, we note that Goss resisted characterizing his recommendations to clients as such and discrepancies exist in Goss's evidence and on trade tickets about whether trades were solicited or unsolicited. There are no allegations associated with Goss's marking of client's orders. We mention this here as it is a factor in our view about the unreliability of Goss's evidence and because, where we conclude below that Goss did recommend Amaya to clients, we did so in reliance on evidence other than Goss's statements and, in some instances, on what is marked on the trade tickets.

[346] We note that, in some instances, trades for Goss's clients were entered by Fakhry, which was consistent with Fakhry's role as Goss's assistant.

[347] We find that Goss recommended Amaya to the following clients during the Relevant Period based on MNPI: AE, TM, BB, JU, FH, BP, TD, AJ, JM/TM, RP, PK, KT, RB, SO and JE. We address each of these clients in turn below.

i. AE

[348] Goss called AE on April 30, 2014 at 4:51 pm. AE transferred a total of $110,000 to Goss in two installments at 5:08 pm and 5:20 pm. At 9:15 am on May 1, AE bought 15,850 Amaya shares, between his personal and corporate accounts. The trades were marked unsolicited.

[349] We find, given the timing of the call and the purchases, that Goss recommended these purchases to AE, and that AE's continued purchases of Amaya shares during the Relevant Period, including through accounts at other dealers, flowed from Goss's recommendation to AE.

[350] On June 4 at 8:30 am, AE met with Goss in Goss's office. At 9:34 am, AE bought 9,400 Amaya shares in his Aston Securities account. Fakhry entered the trade and marked it unsolicited. We find that, given the timing of AE's meeting with Goss and the trade, Goss recommended this trade to AE.

[351] At 1:30 pm on June 4, Goss asked AE if he would like to buy more Amaya and AE responded, "Let's buy some of the other one…that's enough AMAYA". Goss had a 10-minute conversation with Kitmitto at 1:43 pm on June 4. At 1:54 pm, Goss emailed AE and asked AE to "Call me for an update". AE called Goss at 1:55 pm and Goss then bought 4,500 Amaya shares for AE at 1:57 pm. The trade is marked solicited. We find Goss recommended this trade to AE.

ii. TM

[352] On April 30, 2014, Goss emailed TM at 10:59 am "T [sic], Maybe you could give me a call when you get a chance-I was going to fill you in on an idea that I would like to buy for you." Goss spoke to TM for just over 4 minutes at 6:39 pm on April 30. Goss called TM at his office on May 1 at 2:22 pm; the call lasted 1 minute. TM called Goss back at 2:26 pm on May 1 for 6 minutes. At 2:32 pm on May 1, Goss purchased 70,000 Amaya shares in TM's corporate account. The trade was marked as solicited. On May 2, TM asked Goss what stock Goss had bought for him so he could follow it and Goss confirmed it was Amaya. We find that Goss recommended this trade to TM.

iii. BB

[353] On May 2, 2014, Goss emailed BB at 11:05 am, after Fakhry advised Goss that BB's account was open, "Account open-need to buy AYA". At 11:21 am Goss called BB for 4 minutes. Goss bought 12,000 Amaya shares for BB on May 2 at 11:26 am. The trade is marked as unsolicited. We find that, given Goss's email to BB, and the timing of their calls and the trade, Goss recommended this trade to BB.

[354] On May 23 at 2:38 pm, Goss called BB for 4 minutes. At 2:42 pm, BB bought 7,500 Amaya shares. Fakhry entered the order and marked it unsolicited. Also on May 23, BB bought a total of 11,000 Amaya shares in two accounts at other dealers and 10,000 Amaya shares in a corporate account at other dealers. We find that, given the timing of Goss's call with BB and BB's trades at Aston Securities and other dealers, Goss recommended these trades to BB.

iv. JU

[355] On May 2, 2014, JU bought 6,100 Amaya shares at 10:34 am and 3,500 Amaya shares at 10:38 am. Both orders were entered by Fakhry and were marked solicited. We accept the marking of this trade as solicited and find, as a result, that Goss recommended these trades to JU.

v. FH

[356] We found, at Section IV.B.5(e), that it was as likely that Goss recommended Amaya to FH as it was that Goss provided the MNPI about Amaya to FH. Goss called FH on May 2, 2014 at 12:53 pm for 10 minutes. On May 2, FH, 2 of his businesses and 8 family members bought 60,000 shares of Amaya. The trades were marked as solicited. We find that, given the timing of Goss's call with FH and the trades, Goss recommended these trades to FH.

[357] On May 28 at 10:36 am, Goss returned a call to FH for 9 minutes. FH then bought 5,000 Amaya shares in an account at another dealer. We find that Goss recommended this trade to FH. On June 4, FH called Goss at 9:48 am for 56 minutes. At 10:28 am on June 4, FH, 1 of his businesses and 6 family members bought 5,075 Amaya shares. Given the timing of the call and the trades, we find that Goss recommended these trades to FH.

vi. BP

[358] On May 12, 2014, Goss tried to call BP (at 10:30 am) and then emailed him at 10:31 am "Just tried to get you. Give me a ring when you have a chance." BP called Goss on May 14 at 3:16 pm for 2 minutes. On May 15 at 10:51 am, BP bought 10,000 Amaya shares in his corporate account at Aston Securities. The trade is unmarked. On May 16 at 10:14 am, BP bought another 10,000 Amaya shares in the same account. Goss entered the order and did not indicate if it was solicited or unsolicited. We find that, given the timing of Goss's call with BP and these trades, Goss recommended these trades to BP.

[359] Goss called BP at 11:08 am on June 2 for 5 minutes. In two separate trades on that day, BP bought 5,500 Amaya shares (11:19 am) and 200 Amaya shares (12:23 pm). Fakhry entered the orders and marked them as solicited. Given the timing of Goss's call and the trades, we conclude that Goss recommended these trades to BP.

vii. TD

[360] On May 2, 2014, Goss called TD at 12:32 pm for 1 minute. TD called Goss on May 8 at 10:51 am for 3 minutes. On May 9, TD or his spouse, MD, bought 150 Amaya shares at another dealer. We find that, given the timing of the call and the trade, Goss recommended this trade to TD.

[361] On May 23 at 5:15 pm CST, TD emailed Goss saying "I forgot to put my order in on the Amaya stock. I know its gone up over 20 percent. Do you still recommend buying? If so, please grab me $20K." Goss answered on May 24 at 1:05 pm "Yea I. Do. I will get it for u on Monday am". TD or MD bought 1,800 Amaya shares on May 26. The trade is unmarked and no time is indicated. Given Goss's email, we find that he recommended this trade to TD.

[362] On June 4 at 10:19 am, TD called Goss's office and the call was picked up by Fakhry. At 10:20 am, Fakhry entered an order for TD for 2,800 Amaya shares. The trade is marked as unsolicited. We conclude that the June 4 trade was not recommended by Goss.

viii. AJ

[363] On May 2, 2014 at 12:37 pm, Goss emailed AJ "Call me-I have a good one." On May 5 at 3:41 pm, AJ emailed Goss "Sandy go ahead and buy $20K in Amia [sic] Gaming..". Goss forwarded AJ's message to Fakhry. AJ spoke to Fakhry shortly thereafter and Fakhry then asked Kitmitto and Goss if they had recent research on Amaya to send to AJ. On June 5 at 1:16 pm Goss called AJ for 1 minute. At 3:13 pm AJ bought 1,700 Amaya shares. Fakhry entered the order and marked it as solicited. We find that, given the May 2 and May 5 email exchange and the timing of Goss's call on June 5 and the trade thereafter, Goss recommended this trade to AJ.

ix. JM/TM

[364] On May 2, 2014 at 12:38 pm, Goss called JM, TM's spouse, for 1 minute. At 12:40 pm, JM called Goss for 7 minutes. At 12:50 pm, TM bought 10,000 Amaya shares. Fakhry entered the order and marked it as solicited. We find that, given the timing of the call and the trade, Goss recommended this trade to JM/TM.

x. RP

[365] On May 16, 2014 at 1:33 pm, Goss initiated a 39-minute call with RP. At 2:12 pm on May 16, RP bought 10,000 Amaya shares in his LRSP account at Aston Securities. Goss entered the order and it was unmarked. RP, or his spouse LP, also bought 7,000 Amaya shares on May 16 in their margin account at Aston Securities; there was no information before us about who entered the trade or how it was marked. Given the timing of the call and these trades, we find that Goss recommended them to RP.

[366] On May 21 at 9:53 am, Goss called RP for 1 minute and RP called Goss at 10:04 am for 2 minutes. At 2:25 pm that day, RP bought 2,600 Amaya shares. Fakhry entered the order and it is marked as solicited. We find that, given the timing of the calls and the trade, Goss recommended this trade to RP.

xi. PK

[367] On May 22, 2014 at 10:10 am, Goss's client, PK in trust for IK, bought 120 Amaya shares. The trade was entered by Fakhry and is marked as solicited. In this instance we accept the marking on the trade ticket and find that this trade was recommended by Goss.

[368] On May 30 at 10:58 am, PK called Goss and Fakhry picked up the call. At 11:20 am Goss called PK for 3 minutes. At 11:24 am, Goss entered an order for PK's corporate account for 4,000 Amaya shares and marked it as solicited. At 11:34 am, PK's spouse, LK, bought 890 Amaya shares in their corporate account. Fakhry entered the order and marked it as unsolicited. On May 30 at 11:36 am, PK in trust for CK bought 450 Amaya shares. Fakhry entered the order and marked it as unsolicited. Also on May 30, PK or LK bought 1,500 Amaya shares at another dealer. We find it more likely than not that, given the timing of Goss's call with PK and the trades, all of the May 30 trades flowed from Goss's call to PK at 11:20 am, and were therefore recommended by Goss.

[369] On June 3, PK called Goss's office at 9:54 am and the call was picked up by Fakhry (2 minutes). On June 3, PK or LK bought 2,000 Amaya shares at another dealer. We find that this trade was not recommended by Goss. On June 10 at 12:05 pm, PK in trust for CK bought 1,000 Amaya shares. The trade was marked as solicited. In this instance we accept the marking of the trade and we find that this trade was recommended by Goss.

xii. KT

[370] On June 9, 2014, KT called Goss at 2:07 pm for 7 minutes. At 2:16 pm, Fakhry entered an order for KT to buy 1,800 Amaya shares and marked the trade as solicited. On June 10, Goss called KT at 11:15 am for 2 minutes and at 12:04

pm for 1 minute. At 12:06 pm on June 10, KT bought 1,800 Amaya shares and the trade was marked as solicited. We find that, given the timing of the calls and the trades, Goss recommended these trades to KT.

xiii. RB

[371] On June 11, 2014 at 9:26 am, Goss called RB for 6 minutes and RB called Goss later that morning at 11:40 am for 10 minutes. At 11:53 am on June 11, RB bought 1,500 Amaya shares. Fakhry entered the order and marked it as solicited. Given the timing of the calls and the trade, we find that Goss recommended this trade to RB.

xiv. SO

[372] On May 27, 2014 at 3:20 pm Goss entered an order for SO to buy 10,000 Amaya shares and marked it as solicited. In this instance we accept the marking of the trade and we find that Goss recommended this trade to SO.

xv. JE

[373] On May 27, 2014 at 3:11 pm, Goss emailed JE "I have a hot one-AYA on the TSX". On May 28 JE had a 4-minute call with Goss. At 9:27 am on May 28, Fakhry entered a solicited order for JE to buy 2,000 Amaya shares. We find that, given Goss's email and the timing of the call and the trade, Goss recommended this trade to JE.

[374] We find that Staff failed to establish on a balance of probabilities that Goss recommended Amaya the following clients: CS, WP, AC, SC and Fielding. We address each of these clients in turn.

xvi. CS

[375] CS bought 10,000 Amaya shares on April 28 and 7,500 Amaya shares on May 20. There was no information before us about how the May 20 order was marked. There was no evidence before us of calls or emails between Goss and CS connected with the May 20 trade that would support an inference that Goss recommended it to CS. In addition, the April 28 trade, which was before the Relevant Period, supports an inference that CS had an interest in Amaya unrelated to the MNPI.

xvii. WP

[376] WP called Fakhry on May 2, 2014 at 1:34 pm for 9 minutes. WP's corporate account bought 2,000 Amaya shares on May 2 at 1:43 pm, and 2,000 shares on May 29 at 3:17 pm. Fakhry entered both orders into the system and the trades are marked unsolicited. Staff did not allege that Fakhry recommended Amaya to WP. There was no evidence before us of calls or emails between Goss and WP connected with these trades that would support an inference that Goss recommended them to WP.

xviii. AC

[377] AC had lunch on May 23, 2014 at 12:00 pm with Cheng, Goss and J from Park Lawn. At 2:33 pm AC's corporate account at Aston Securities bought 2,500 Amaya shares. Fakhry entered the order and marked it as unsolicited. While Goss had the opportunity to recommend Amaya to AC during the lunch, in the absence of any other evidence we find that opportunity to be insufficient to support an inference that Goss recommended the trade to AC.

xix. SC

[378] On May 26, 2014 at 2:43 pm, SC texted Goss. There was no evidence about the content of the text nor evidence that Goss texted or called SC in response. At 2:44 pm, Fakhry called SC for 3 minutes. At 2:46 pm, SC bought 2,000 Amaya shares. Fakhry entered the order and marked it unsolicited. Staff did not allege that Fakhry recommended Amaya to SC. There was insufficient evidence before us to draw the inference that Goss recommended Amaya to SC.

xx. Fielding

[379] We found, in paragraph 332, that it was more likely than not that Goss recommended Amaya to Fielding prior to Goss being in possession of MNPI and prior to the Relevant Period, rather than provided Fielding with the Amaya MNPI during the Relevant Period. Fielding testified that he relied on his advisors, including Goss for recommendations about what securities to buy and that he did not conduct his own research. Fielding's Aston Securities brokerage statements consistently indicate the trades in his account were unsolicited, which is inconsistent with his evidence about following his advisor's recommendations. However, it is consistent with what appears to have been Goss's lax approach to marking of trades.

[380] Fielding also testified that Goss made him aware of Amaya after which he gave Goss the go ahead to start building a position in Amaya. Fielding's first purchase of Amaya was on April 11, 2014 and on the morning of April 29 he instructed Goss to sell shares of a different company to make room for Amaya shares. Both of these events were before we found

Goss to have received the Amaya MNPI. Even though Goss subsequently had many opportunities to share the MNPI with Fielding, and Fielding continued to buy Amaya shares during the Relevant Period, we find it as likely that Fielding had a pre-existing interest in the gaming industry and in Amaya that was the basis for his trading during and after this period.

[381] The Commission has previously found the conduct of registrant who recommended a security to a client while in possession of MNPI to be an "unfair market practice, abusive of the capital markets and below the high standards of fitness and business conduct expected of market participants (s. 2.1 of the Act).[87] We agree. The primary means the Commission uses to achieve its mandate under the Act, include restricting fraudulent and unfair market practices and requiring the maintenance of high standards of fitness and business conduct to ensure honest and responsible conduct of market participants (s. 2.1(2)(ii) and (iii)). We find that Goss's conduct of recommending Amaya to his clients while he was in a special relationship with Amaya and while in possession of MNPI was an unfair market practice and beneath the high standard expected of market participants. We also find that it was abusive of the capital markets and undermines confidence in those markets.

[382] As indicated above, although we find Goss's conduct to be both abusive and to engage an animating principle of the Act, either finding is sufficient to support a conclusion that Goss's conduct was not in the public interest.

6. Fakhry

(a) Was Fakhry in a special relationship with Amaya?

[383] We find that, based on the evidence in our analysis of whether Goss tipped Fakhry, Fakhry was in a special relationship with Amaya. We conclude that Staff has established both the "information connection" (Fakhry learned about the Amaya MNPI from Goss and he knew that Goss was in a special relationship and heard the information from Kitmitto who was in a special relationship with Amaya) and the "person connection" (Fakhry knew or ought reasonably to have known that Goss was in a special relationship with Amaya), given:

a. Fakhry's timely and risky trades in Amaya shares;

b. the timely trades of the majority of Fakhry's clients;

c. Fakhry's possession of the specific information about the timing and price of the Acquisition;

d. Fakhry's apparent awareness that Goss's information about the Amaya MNPI came from Kitmitto; and

e. the fact that Fakhry had no personal or professional relationship with Kitmitto but still sent him emails about Amaya and Blackstone.

(b) Did Fakhry trade Amaya shares while in possession of the Amaya MNPI?

[384] It is undisputed that Fakhry traded Amaya shares during the Relevant Period; Fakhry admitted this. Fakhry purchased Amaya shares on May 2, 20, 21, 26 and 28, 2014 and sold all of his shares on June 13, 2014, the day after Amaya announced the Acquisition.

[385] We have found above in Section IV.B.5(c) that Goss gave Fakhry MNPI about Amaya on or after April 29, 2014 and that Fakhry knew Goss's source of the MNPI was Kitmitto and that Goss was in a special relationship with Amaya.

[386] We also find that Fakhry traded in Amaya shares while in possession of the Amaya MNPI in breach of s. 76(1) of the Act, based on the following evidence that Fakhry's trading was:

a. timely and opportunistic:

   i. Amaya was the only stock Fakhry purchased during the Relevant Period;

   ii. he did not own Amaya shares prior to the Relevant Period; and

   iii. he only bought Amaya shares during the Relevant Period;

b. risky:

   i. he invested more than his entire 2013 income and over four times his net worth in Amaya shares; and

[87] *Agueci Merits* at para 297

ii. he borrowed $65,000 (or 70%) of his $90,764 investment in Amaya; and

c. profitable:

i. Fakhry earned a 139% profit on his trading in Amaya shares ($126,546), which was 28 times higher than his next highest profit for securities purchased between January 1, 2012 and June 20, 2014.

[387] Although he had bought derivatives on gaming stocks in the past, he had not previously purchased equity shares of any gaming company. We find the other circumstantial evidence outweighs the fact that Fakhry's trading was, in this sense, not entirely uncharacteristic.

(c) Did Fakhry tip his client CB and his relatives NG and CG with the Amaya MNPI?

i. Client CB

[388] CB maintained accounts with two other brokers, in addition to his account with Fakhry at Aston Securities. Fakhry testified that CB's Aston Securities account was his "fun" account. CB's Aston Securities account was a joint account with his wife, MH, over which CB had trading authority. CB lived and worked in Italy. Fakhry visited with CB on the May 17-18, 2014 weekend, while on vacation in Italy.

[389] Fakhry admits to recommending Amaya to CB after Fakhry listened to Amaya's May 16 analyst call. Fakhry described the tone of that call as "exciting", "upbeat" and "giddy". As Fakhry was flying back from Italy on May 20, he asked Goss to buy 2,500 shares of Amaya for CB.

[390] Late in the afternoon on May 21, 2014 CB emailed Fakhry asking about buying more Amaya shares "or is it too late". CB also asks "no news yet on the stock? Why did it pop from 8 to 8.72. If the news is not out yet, then I think we buy another 10K for a quick profit (hopefully)".

[391] CB bought a total of 7,800 Amaya shares during the Relevant Period and sold his shares on June 13 (the date the Acquisition was announced), earning a significant profit.

[392] May 21 was the then expected date for the announcement of the Acquisition. Staff submits that CB's concern about being too late to buy more shares, his expectation of imminent news and of the possibility for a quick profit all demonstrate that it is more likely than not Fakhry's discussion of Amaya with CB on the May 17-18 weekend included a tip about the Amaya MNPI and that the announcement was expected that day.

[393] Fakhry provided different explanations of what CB's reference to the "news" meant, in his response to Aston Securities's internal review, his compelled testimony and evidence at the hearing. The explanations included several possible events that could have a positive impact on Amaya's share price: recent analyst commentary and the Globe and Mail article about the possibility of Amaya making another acquisition (given its cash on hand); additional US states opening for gaming; Amaya's sale of its Ongame platform; Amaya's $15 warrants; and the volume of trading in the stock. During cross-examination, Fakhry agreed that none of the commentary he referenced indicated an imminent announcement of an acquisition.

[394] We find that none of Fakhry's explanations support CB's urgency about being able to purchase more Amaya shares to take advantage of his apparent expectation of an imminent announcement that would generate a quick profit. We conclude that on a balance of probabilities Fakhry told CB during their weekend discussion about the Amaya MNPI and that May 21 was when it would be announced.

ii. NG

[395] NG is Fakhry's cousin. Fakhry testified that NG was sophisticated about the securities industry and had been registered with the Commission earlier in his career. NG was not Fakhry's client. NG was friends with Fakhry's client TP.

[396] Fakhry's evidence was that he did not recall discussing Amaya with NG and that NG likely learned about Amaya from TP. As discussed in Section IV.B.7(b), we find that Fakhry recommended Amaya to TP on May 2 on the basis of MNPI.

[397] Fakhry had two conversations with NG on May 3. NG bought shares of Amaya on May 6 (1,000), 7 (1,000), 14 (600), 26 (3,100), 28 (6,000) and 29 (100).

[398] Staff alleges that Fakhry tipped NG "at the latest" on May 27 because NG then demonstrates that he has specific information about the Acquisition and its timing. The basis for Staff's position is:

a. on May 27 at 4:57 pm Fakhry and NG had a 20-minute conversation that Fakhry testified was "all about Amaya";

b. on May 28 at 4:37 pm NG asked TP in a text message if TP "was going to sell at 20 if it goes there tomorrow". In response to TP's question about how it would go to 20 tomorrow, NG texted that it is the "word" and that "when a company that is not public merges with one that is…";

c. on May 27 at 10:25 am Kitmitto advised Cheng that he expected the Amaya news to be tomorrow or Thursday;

d. on May 27 at 11:37 am Kitmitto learned from Canaccord that the announcement had been delayed to the weekend and then at 2:00 pm on May 28 Kitmitto was told that the announcement would be between Sunday night and Tuesday after the close; and

e. Fakhry did not hear about these delays until Goss's message on May 28 at 9:58 pm that "I hear AYA news is next week".

[399] Fakhry submits that:

a. he was not a party to the text exchange between NG and TP and therefore has no knowledge about it;

b. there is no evidence that the "it" being discussed is Amaya;

c. the details NG appears to have are inaccurate: the Acquisition was not a merger, merger was what was discussed in the CalvinAyre article that Fakhry had provided to NG on May 24, and NG was sophisticated enough to understand the difference between an acquisition and a merger; and the timing was not consistent with what was happening with the delays in the announcement; and

d. TP did not think that NG had inside information because the day following his text exchange with NG, TP contacted Fakhry to ask if TP should buy more Amaya or sell.

[400] We conclude that NG's trading from May 6 to May 26 was as likely due to TP sharing Fakhry's recommendation about Amaya (not from Fakhry himself), buttressed by the May 24 CalvinAyre article.

[401] We find it was more likely than not that Fakhry did tip NG about the Amaya MNPI on May 27, 2014 because:

a. the "it" being discussed in the text exchange between NG and TP was Amaya, because of the references to the $20 price, the transaction discussed involved a public and a private company and reflected the then current information about the timing of the announcement;

b. NG's knowledge of the specific details of the $20 price and what would have been Fakhry's knowledge of the timing of the announcement; and

c. NG bought 6,100 Amaya shares after being tipped by Fakhry on May 27 and made a significant profit on the trade.

iii. CG

[402] CG is Fakhry's cousin. Fakhry had a close, personal relationship with CG and saw himself as a mentor to his younger cousin. CG was not Fakhry's client. CG and Fakhry regularly discussed investments. Their communications suggest a shared interest in technical analysis.

[403] Fakhry testified that he recommended Amaya to CG in a BlackBerry Message on May 2, after Amaya's May 2 press release. Staff was unable to find any record of a BlackBerry Message between CG and Fakhry on May 2. CG and Fakhry did speak on May 1 and May 2. After their conversation on May 2, Fakhry emailed CG asking if CG had bought the 250 shares he was going to buy and asking what he was waiting for. Fakhry confirmed this was a reference to Amaya.

[404] CG had not done any trading since 2013. CG did not have an active trading account in May 2014 until his account at RBC was opened on May 22. The only trading in that account during the Relevant Period was in Amaya shares. CG bought shares of Amaya on May 22 (170), 23 (98), 26 (46), 28 (360) and June 4 (146) and sold his entire position on June 13 for a significant profit.

[405] Prior to CG's purchase of Amaya, CG had been discussing with Fakhry a potential real estate investment. Fakhry had recommended CG buy mutual funds instead. Staff submits that Fakhry's subsequent recommendation of Amaya, a higher risk investment, is inconsistent with his previous advice and suggests that Fakhry had confidence in the investment for his cousin because of his knowledge about the Amaya MNPI.

[406] In CG's and Fakhry's numerous exchanges about Amaya during the Relevant Period, CG makes references to having "joined the party late", Fakhry going to be rich from Amaya, booking a trip with their Amaya profits, and spending the profits on luxury items (a Porsche, an engagement ring for CG's girlfriend). Fakhry also makes references in their

exchanges to waiting for the "big pop" and that, when Amaya's price dropped 1% immediately after his purchase, CG should leave his investment in Amaya alone and not bother Fakhry about any drop.

[407] We find on a balance of probabilities that it is as likely that Fakhry recommended Amaya to CG as that Fakhry tipped CG about the Acquisition. If CG knew about the Acquisition, we expect that he would have demonstrated more urgency in getting his trading account at RBC opened. The urgency about whether CG had purchased Amaya and why he was waiting appears to be entirely from Fakhry rather than CG.

[408] Amaya's closing share price went from $7.10, on the day CG first bought Amaya, to $12.02, on the date of CG's comments about spending their Amaya profits; approximately a $5 profit per share. CG's comments about "joining the party", Fakhry "getting rich" and spending profits on a trip and a ring, are as consistent with youthful exuberance about a potentially successful investment Fakhry had recommended as with having knowledge of the MNPI.

[409] Therefore, we conclude that Staff has not established its allegation that Fakhry tipped CG about the Amaya MNPI. It is as likely that Fakhry recommended Amaya to CG. Staff's allegation that Fakhry made recommendations while in a special relationship with Amaya and while he had MNPI relates only to Fakhry's clients. CG was not Fakhry's client.

7. Did Fakhry recommend Amaya to his clients while he was in possession of MNPI and, if so, was his conduct abusive of the capital market and / or does it engage an animating principle of the Act?

[410] Staff alleges that Fakhry recommended Amaya to five of his seven other clients while he was in possession of MNPI. Fakhry admits that he recommended Amaya to his clients ST, who traded for himself and for a joint account with his mother AI, TP, who traded for himself and for the account of his sister GP, and his uncle MG. Fakhry, and all of the clients he recommended Amaya to, sold all of the shares they acquired during the Relevant Period on June 13, the day after the announcement.

[411] We find that it is more likely than not that Fakhry recommended Amaya to five of his clients while Fakhry was in possession of the Amaya MNPI. We deal with each of those clients in turn.

(a) ST and AI/ST

[412] On May 1, 2014 at 4:01 pm, Fakhry called ST for 5 minutes. At 5:08 pm ST called Fakhry for 2 minutes. On May 2 at 10:10 am, AI/ST's joint account bought 5,000 Amaya shares. Fakhry marked the trade as unsolicited. We find that, given Fakhry's and ST's calls on May 1, the fact that ST had trading authority for the joint account and Fakhry's evidence that he recommended Amaya to his clients, Fakhry recommended this trade.

[413] On May 2 at 11:12 am, ST bought 5,000 Amaya shares. Consistent with Fakhry's admission, the trade is marked as "solicited". We find that Fakhry recommended this trade to ST.

[414] ST and AI/ST's joint account continued to buy Amaya shares into June; they were all marked as "unsolicited". This is consistent with Fakhry's evidence that while ST learned about Amaya from him, all trades after the initial solicited transaction were on ST's own initiative.

[415] ST earned a significant profit trading in Amaya shares in both his personal and joint account with AI.

(b) TP and GP

[416] Fakhry testified that his client TP was an active and aggressive trader who always wanted to be in the market. On May 2, after Fakhry attempted to call TP and sent TP an email asking that he call Fakhry, TP called Fakhry at 10:29 am for 2 minutes. GP's account, over which TP had trading authority, bought 2,000 shares of Amaya on May 2 at 10:33 am. Consistent with Fakhry's admission that he recommended Amaya to TP, the trade is marked as "solicited". TP bought 200 Amaya shares in his account at TDSI on May 20. GP bought an additional 1,700 Amaya shares on May 21 and 2,750 Amaya shares on May 29. TP bought another 1,500 Amaya shares on May 22. Each of these later trades were marked as "unsolicited". We find that all of these purchases flowed from Fakhry's recommending Amaya to TP on May 2.

[417] TP earned a significant profit trading in Amaya shares in his own account and in GP's account over which TP had trading authority.

(c) MG

[418] Fakhry's evidence about his uncle and client, MG, was that he always accepted Fakhry's recommendations, without question. Fakhry's evidence was that he did not recommend Amaya to MG until after Amaya's May 16 analyst call. MG bought shares of Amaya on May 20, May 27 and June 4. The first trade was unmarked but the remaining two were marked as "solicited".

[419] We accept Fakhry's evidence about MG always acting on Fakhry's recommendations and therefore find that it is more likely than not that Fakhry recommended the May 20 trade to MG, and that the May 27 and June 4 trades were also recommended by Fakhry. MG earned a significant profit trading in Amaya shares.

[420] As indicated above in our analysis regarding Goss, a registrant who recommends a security to a client while the registrant possesses MNPI engages in conduct that is an unfair market practice and abusive of the capital markets. It is also below the high standards of fitness and business conduct expected of market participants, thereby engaging the animating principles of the Act.

[421] As indicated above, although we found Fakhry's conduct to be both abusive of the capital markets and to engage an animating principle of the Act, either finding is sufficient to support a conclusion that his conduct was not in the public interest.

8. Fielding

[422] For the reasons stated in Section IV.B.5(d) above, we conclude that Staff has not established the information connection or person connection test to demonstrate that Fielding knew or ought to have known that Goss was in a special relationship with Amaya. Because we found that Goss did not provide Fielding with the Amaya MNPI and we find that Staff did not establish its allegation that Fielding traded in shares of Amaya with knowledge of the Acquisition contrary to s. 76(1) of the Act.

V. CONCLUSION

[423] For the reasons given above, we conclude that:

a. Kitmitto tipped Vannatta, Christopher and Goss about the Amaya MNPI contrary to s. 76(2) of the Act;

b. Vannatta:

   i. traded Amaya shares while in possession of the Amaya MNPI contrary to s. 76(1) of the Act;

   ii. mislead Staff contrary to s. 122(1)(a) of the Act;

   iii. concealed his trading in Amaya shares from Aston Asset Management Compliance, which conduct is not in the public interest; and

   iv. tipped his relatives CV, DU, NU and KU about the Amaya MNPI contrary to s. 76(2) of the Act;

c. Christopher traded Amaya shares while in possession of the Amaya MNPI contrary to s. 76(1) of the Act. However, Staff did not establish their allegations that Christopher tipped Claudio about the Amaya MNPI contrary to s. 76(2) of the Act or misled Staff contrary to s. 122(1)(a) of the Act;

d. Claudio, given our conclusion that Christopher had not tipped him about the Amaya MNPI, did not trade Amaya shares while in possession of MNPI contrary to s. 76(1) of the Act;

e. Goss:

   i. traded Amaya shares while in possession of the Amaya MNPI contrary to s. 76(1) of the Act;

   ii. tipped Fakhry about the Amaya MNPI contrary to s. 76(2) of the Act; and

   iii. recommended Amaya to fifteen of his clients while in possession of the Amaya MNPI which conduct was not in the public interest;

f. Staff has not established its allegations that Goss:

   i. tipped Fielding about the Amaya MNPI contrary to s. 76(2) of the Act; or

   ii. tipped his client FH about the Amaya MNPI contrary to s. 76(2) of the Act;

g. Fakhry:

   i. traded Amaya shares while in possession of the Amaya MNPI contrary to s. 76(1) of the Act;

   ii. tipped his client CB and his relative NG about the Amaya MNPI contrary to s. 76(2) of the Act; and

iii. recommended Amaya to five of his clients while in possession of the Amaya MNPI which conduct was not in the public interest;

h. Staff has not established its allegation that Fakhry tipped his relative CG about the Amaya MNPI contrary to s. 76(2) of the Act; and

i. As regards Fielding, given our finding that Staff failed to establish its allegation that Goss tipped Fielding about the Amaya MNPI, Staff has failed to establish its allegation that Fielding traded Amaya shares while in possession of the Amaya MNPI contrary to s. 76(1).

[424] The parties shall contact the Registrar on or before June 23, 2022, to arrange an attendance for a hearing regarding sanctions and costs. That attendance is to take place on a date that is mutually convenient, that is fixed by the Secretary, and that is no later than July 11, 2022.

[425] If the parties are unable to present a mutually convenient date to the Registrar, then each party may submit to the Registrar, for consideration by a panel of the Commission, a one-page written submission regarding a date for an attendance. Any such submission shall be submitted by 4:30 pm on or before June 23, 2022.

Dated at Toronto this 26th day of May, 2022.

"M. Cecilia Williams" "Craig Hayman"

REASONS AND DECISION OF HEATHER ZORDEL
(DISSENTING IN PART)

VI. INTRODUCTION

[426] In my view, considering the evidence presented at the hearing, Enforcement Staff of the Ontario Securities Commission has not substantiated, on a balance of probabilities, the allegations brought forward in the Statement of Allegations.

[427] I agree with the procedural and evidentiary decisions set out in the majority decision, except the majority's decisions on (i) no adverse inference against Staff not calling Cheng as a witness which I discuss at paragraphs 514 to 517, and (ii) the witness exclusion order, which I discuss at paragraphs 522 to 527.

[428] Unless otherwise stated, I adopt the same definitions and terminology as the majority. In this decision, "**Amaya**" means Amaya Gaming Group Inc.; "**MNPI**" means material non-public information; and "**NDA**" means the non-disclosure agreement between Aston Asset Management and Canaccord that Kitmitto signed on behalf of Aston Asset Management on April 28, 2014 respecting Amaya and provided to the Amaya and Canaccord team at their meeting on April 29, 2014. As discussed below at paragraph 434, I generally use the term "**alleged Amaya MNPI**" where appropriate.

[429] This is an insider tipping and trading case involving a tipping chain with multiple individuals allegedly passing Amaya MNPI to others who then further passed on the Amaya MNPI and traded with knowledge of Amaya MNPI. The allegations place Kitmitto at the top of the tipping chain, and it is alleged that he tipped three individuals, Vannatta, Christopher, and Goss, and that these individuals engaged in insider trading and passed Amaya MNPI on as follows:

a. Vannatta tipped four other individuals;

b. Christopher tipped his father Claudio, who is also alleged to have engaged in insider trading;

c. Goss tipped Fakhry, Fielding (who is also alleged to have engaged in insider trading), and FH and recommended Amaya to clients while in possession of Amaya MNPI; and

d. Fakhry, who is also alleged to have engaged in insider trading, tipped and recommended Amaya while in possession of Amaya MNPI to relatives and clients.

[430] This case is based on circumstantial evidence. The majority of the Panel found that, based on the mosaic of circumstantial evidence, tipping and trading on the basis of Amaya MNPI occurred with respect to all respondents other than Fielding. Their findings are set out at paragraph 423 of the majority reasons. I am unable to agree with their findings. In my view, a number of different inferences can be drawn from the mosaic of circumstantial evidence. As acknowledged by the case law, "if the circumstantial evidence equally supports two opposing inferences, one in favour of Staff and one in favour of a respondent, Staff will not have met its burden of proof."[88] In my view, multiple inferences can be drawn from the mosaic of circumstantial evidence and Staff has not met its burden of proof on a balance of probabilities. My findings are that:

[88] *Hutchinson* at para 62

a. Kitmitto did not tip Vannatta, Christopher, and Goss about the alleged Amaya MNPI;

b. Given that the insider trading, tipping and/or recommending allegations of Vannatta, Christopher, and Goss depend on having first received the alleged Amaya MNPI from Kitmitto, these other allegations only flow-through if Kitmitto tipped them with the alleged Amaya MNPI. Given that I find that Kitmitto did not tip Vannatta, Christopher or Goss, this breaks the tipping chain and the cascade of allegations that all stem from Kitmitto allegedly passing on Amaya MNPI. My findings are that:

   i. Vannatta never received the alleged Amaya MNPI, did not engage in insider trading, and did not tip CV, DU, NU and KU;

   ii. Christopher never received the alleged Amaya MNPI, did not engage in insider trading and did not tip Claudio;

   iii. Claudio never received the alleged Amaya MNPI and did not engage in insider trading;

   iv. Goss never received the alleged Amaya MNPI, did not engage in insider trading, did not tip Fakhry, Fielding and FH, and did not make recommendations to clients while in possession of MNPI;

   v. Fakhry never received the alleged Amaya MNPI, did not engage in insider trading, did not tip clients and relatives, and did not make recommendations to clients and relatives while in possession of Amaya MNPI; and

   vi. Fielding never received the alleged Amaya MNPI and did not engage in insider trading.

[431] As mentioned, I have found that Kitmitto did not pass the alleged Amaya MNPI to Vannatta, Christopher or Goss and the tipping chain of passing on the alleged Amaya MNPI did not occur. While it is not necessary for me to consider the allegations of tipping and trading flowing through to the additional respondents, I do however now address some of the associated communications and other evidence to reflect back on Kitmitto's relationship with various respondents and the office culture in the context of the mosaic of circumstantial evidence.

[432] In addition to the insider tipping, trading and recommending allegations, Staff also alleged that Vannatta and Christopher misled Staff and that Vannatta concealed his trading in Amaya from his employer. My findings are as follows:

a. I agree with the majority of the Panel that Christopher did not mislead Staff;

b. With regard to the allegation that Vannatta misled Staff, I find that Staff did not prove this allegation on a balance of probabilities; and

c. With regard to the public interest allegation that Vannatta concealed his trading in Amaya from his employer, I find, on a balance of probabilities, that Vannatta did not conceal his trading from his employer.

[433] My reasons are set out below.

VII. KITMITTO DID NOT RECEIVE THE ALLEGED AMAYA MNPI ON APRIL 25 OR AT THE APRIL 29, 2014 MEETING

[434] Before I begin my reasons, I would like to acknowledge that there is some difference amongst the Panel as to the Amaya MNPI being received by Kitmitto. For the purposes of this decision, as with the majority decision, I used the date of April 29, 2014, which was the date Kitmitto attended a meeting with Amaya's CEO, and provided the signed non-disclosure agreement to the Amaya team and was "brought over the wall". I find that the information provided on April 25, 2014 as to the meeting set-up, and the information provided at the meeting on April 29, 2014 did not actually constitute MNPI, which I also refer to as the "alleged Amaya MNPI", for reasons I identify below.

[435] Staff argue that three pieces of information constitute MNPI, specifically the fact of: (1) the meeting with Canaccord and Amaya management; (2) the "potential transaction" or "strategic transaction" involving Amaya; and (3) the signed NDA between Aston Asset Management and Canaccord that Kitmitto signed on behalf of Aston Asset Management on April 28, 2014 and provided to the Amaya and Canaccord team at their meeting on April 29, 2014.

[436] In my view, at the time of the April 29, 2014 meeting, there was still uncertainty with respect to the deal, including that Amaya did not have a firm deal, and the dealers had not confirmed enough subscriber support to raise the required funds. Because of this uncertainty, and the fact there were many conditions yet to be fulfilled and different sources of financing transactions that needed to be completed, and because there was the possibility that parties could walk away given there was no signed agreement for the deal and no shareholder voting support agreements, I find that this did not yet constitute MNPI.

[437] I agree with Kitmitto's submissions that this information, in isolation and collectively, does not amount to MNPI, as it could not "reasonably be expected to have a significant effect on the market price or value of the securities". A person trading on this information would be trading almost entirely on speculation. A person in possession of the limited details from the slide deck would not have any information about the likelihood that the transaction would actually take place and specific timing. I find that the slide deck was "aspirational" of a potential deal; but there was nothing nailed down in it, except maybe some bank and principal shareholder conditional financing amounts, which were not confirmed and were subject to change.

[438] In addition, I find that talk about the stock price for an offering at $20 was also aspirational on April 29, 2014, despite a $20 target stock trading price having been quoted in online chatter (as discussed in the timeline further below).

[439] "Sufficient certainty or specificity to generally disclose the imminent announcement of the Acquisition to the public marketplace"[89] is an important consideration. The possibility of an acquisition, without specific information about whether the acquisition would actually occur and be completed is not sufficient to provide deal certainty. In the present case, I find that there was a lack of certainty that the deal may actually succeed in order for information to be material. Specifically, on April 29, 2014 the deal was still in its preliminary stages. In my view, this was not a business negotiation meeting; this was a marketing meeting (most likely one of many that were also held, with other firms) with Amaya's CEO attending, along with Canaccord representatives to discuss potential opportunities. This was not a meeting where they were negotiating the appropriate price or structure for a new investment.

[440] I also note that the timing of this meeting falls within what would have been Amaya's "quiet period" as set out in National Policy 51-201 – *Disclosure Standards,* which entails that reporting issuers "Observe a quarterly quiet period, during which no earnings guidance or comments with respect to the current quarter's operations or expected results will be provided to analysts, investors or other market professionals. … Companies need not stop all communications with analysts or investors during the quiet period. However, communications should be limited to responding to inquiries concerning publicly available or non-material information." Amaya's CEO would be required to abide by this quiet period from March 31, 2014 or earlier in accordance with Amaya's internal policy, until after the financial results for the first quarter ended March 31, 2014 were released, which was not done until May 15, 2014. Although Amaya was in discussions about potential opportunities, any expected results relating to an acquisition would not have been disclosable or shared with Kitmitto or others at this time.

[441] It was a preliminary marketing meeting dealing with the ideas for Amaya to expand and grow; and a question of whether Aston Asset Management would support that growth. Amaya's CEO was there to listen to any Aston Asset Management concerns and to "sell" the idea and Amaya stock. But there was no agreement that Amaya could consider press-releasing at this point because they did not have the money lined up to do the deal. They didn't even have a term sheet or subscription agreement with them. It wasn't clear whether it was a private placement or prospectus offering that Amaya would do. It also was not clear what shareholder and regulatory approvals would have to be obtained by the parties. The purpose of the April 29 meeting was early "testing the waters". Accordingly, this did not yet meet the threshold for materiality.

[442] While there was a signed NDA between Aston Asset Management and Canaccord, the Panel was not provided with evidence, at that time, of an NDA or other binding agreement having been signed between Amaya and Oldford Group Limited/PokerStars (and if this had already occurred, then the parties omitted providing it in evidence). I note the case law referred to by Kitmitto as to the existence of an NDA between two companies engaging in a transaction not constituting MNPI, because such an agreement is not a fact that a reasonable investor would expect to have a significant effect on the market price or value of shares.[90] While Aston Asset Management was involved with the financing of the Amaya deal, in my view the same principles in the case law can extend and apply to the present case. An NDA is a normal course "starter" business document. There was no binding agreement on either party, parties were not obligated to negotiate or enter into a transaction; parties could negotiate with third parties and consummate transactions with third parties. As financing was being sought, there was definitely an effort being made to put a deal together, but this effort did not reach the point where it crystalized to being material yet.

[443] Rumours on the internet indicated that there were other potential partners for PokerStars, including Wynn Resorts, Limited (**WYNN**) which was a NASDAQ-listed company (Trading Symbol: WYNN) in the S&P500 stock market index and an established operator in the gaming space, with experience in accessing debt/capital markets, so it is not surprising that rumours identified and focused on WYNN if an acquisition were to proceed. The WYNN rumours continued circulating May 26 and 27, 2014, and there was evidence that at this same time financing details were still not finalized for the Amaya deal and so there was no clear deal that would constitute MNPI for Amaya in April 2014 and even late May. On the Amaya side, there was uncertainty as to who would be involved in the deal and who would ultimately end up financing it. There was no evidence of a confidential material change report having been filed. As a result, I could not conclude that evidence of efforts to put a deal together constituted material facts or material information due to deal uncertainty

89 *Cheng (Re),* 2019 ONSEC 8, (2019) 42 OSCB 1148 (***Cheng***) at para 62
90 *Jin* at paras 49-54

through to the June 12, 2014 deal announcement date. Amaya's stock trading was then halted for its announcement press release, and a material change report and other regulatory filings were made.

[444] Much emphasis has been put on the details of the slide deck. While there was a slide deck setting out a preliminary description of a proposed deal, at this time Amaya was seeking financing (from numerous sources) and there was no assurance that such financing would be secured or from whom it would be secured. The terms of the deal were definitely not finalized yet. The lead group of underwriters was not confirmed and in fact during the course of the deal this evolved. While a meeting was held on April 29, 2014 and Kitmitto did inform Compliance at Aston Asset Management to put Amaya on the restricted list for "access" people, putting a company on the restricted list because an NDA was signed is insufficient to satisfy a test that the deal was material at the time. It is also more likely than not that investment banking firms in addition to Canaccord Genuity were in the same situation, as well as financial institutions that were participating in associated financings, and lawyers and other professionals and non-professionals were being otherwise restricted from trading. We were not provided with evidence about any agreements between Amaya and Oldford Group Limited/PokerStars to demonstrate the likelihood or certainty, as of April 29, 2014, that the deal would succeed.

[445] In addition, deal uncertainty persisted for a long time. For example, on May 8, 2014 there was still uncertainty about the deal. Kitmitto was informed that the deal announcement was delayed until May 21 and the reason for this given by the President of Canaccord Genuity (US), was that work on financing was still in progress and that they were still a "little short of our goal" and there was "zero intention of doing anything unless base is fully subscribed." This quote confirms, there was uncertainty as to the minimum required financing being available, and thus uncertainty that a deal will proceed forward. "Although identification of a participant in a financing may provide additional certainty about the probability of a transaction and therefore be a material fact"[91] it is not determinative for deal certainty, and in any event, in the present case all the participants in the financing where not confirmed until a much later date.

[446] Further, I note that on May 26, 2014 there was still deal uncertainty. On that day, Amaya issued a press release responding to trading activity and market rumours (further discussed in the chronology below). This was a non-denial denial press release. Amaya acknowledged that as part of its growth strategy it considers strategic acquisitions but that there is no assurance that any such discussions will lead to a transaction. The press release went on to state that "The company intends to make no further comment or release regarding current market rumours unless and until such comment is warranted."

[447] In my view, this press release indicates that there was no firm deal on May 26, 2014 and there was a possibility that the deal would not come to fruition as Amaya was not comfortable announcing the deal yet. A firm deal would need to be disclosed in accordance with *National Policy 51-201 – Disclosure Standards*, s. 4.3, which sets out that a significant acquisition or disposition is potentially material information. However, there was still too much uncertainty at this time.

[448] I also note that the press release announcing the deal on June 12, 2014 indicates that the following institutions were involved in some way with the financing of the deal, GSO Capital Partners LP, the credit division of The Blackstone Group, Deutsche Bank AG New York Branch, Barclays Bank PLC, Macquarie Capital (USA) Inc., and Canaccord Genuity Corp. and the press release also indicates the advisors involved in the deal, which were not just located in Canada but internationally as well. This demonstrates that, with so many players involved in the deal across the world, much co-ordination was required, and such an international scope creates additional uncertainty surrounding the deal especially early on. Further, the press release of June 23, 2014 (described in detail below), indicates that Amaya announced an upsizing of the previously announced underwritten private placement of convertible preferred shares to meet market demand. This demonstrated that the transaction was very fluid throughout the Relevant Period of the allegations and was fluid even after the deal was announced on June 12, 2014, and it did not close until after shareholder approval was obtained at the meeting of Amaya shareholders on July 30, 2014.

[449] Somewhere between the original April 29, 2014 meeting with Kitmitto, Amaya's CEO and the representative of Canaccord and the June 12, 2014 public announcement of the transaction, it is possible that the information updates Kitmitto was receiving about the transaction had the effect of turning his full information into MNPI, but I do not have specific evidence of timing of that. As I found above, deal uncertainty persisted for a long time and continued even shortly before the transaction itself was closed.

[450] I find that the presentation material and information received by Kitmitto was not material.

VIII. STAFF DID NOT ESTABLISH ON A BALANCE OF PROBABILITIES THAT KITMITTO TIPPED VANNATTA, CHRISTOPHER AND GOSS

[451] Since I found that Kitmitto never received material information, it therefore follows that if he was not in possession of material information or other MNPI, he could not have tipped Vannatta, Christopher and Goss with such information.

[91] *Cheng* at para 47

Even if I am wrong in this regard, I find that it was not established that Kitmitto passed MNPI to Vannatta, Christopher and Goss.

A. Kitmitto's credibility

[452] Before assessing the circumstantial evidence with respect to the allegation of tipping each of Vannatta, Christopher and Goss, I make the following observations about Kitmitto's credibility. Staff takes the position that Kitmitto lacks credibility; however, I find that there is insufficient evidence to suggest he lacks credibility. Kitmitto did not shift his position, contradict himself or give incoherent answers during his testimony with respect to the Amaya tipping allegations brought against him.

[453] While there may have been some discrepancies between Kitmitto and Goss's testimony regarding the Intertain private placement, and the payment of $14,000 that Goss gave to Kitmitto in July 2014, I find that this evidence is of limited relevance. Staff used it to question the character of both Kitmitto and Goss. The payment of $14,000 to Kitmitto related to Intertain, a publicly traded company focusing on online gaming and entertainment, and on which Fielding was a director, that was not the subject of the allegations. I accept Kitmitto's testimony that this payment from Goss related to Kitmitto's participation, through Goss, in a private placement of Intertain in December 2013. At the time of the private placement, Goss contributed $10,000 on Kitmitto's behalf. Intertain's value increased such that when Goss paid Kitmitto out for the stock in July 2014, the profits he passed along to Kitmitto totalled $14,000. Kitmitto testified that this was an informal arrangement with no written confirmation. Kitmitto wanted to participate in the potential upside of this investment. Goss offered a contractual arrangement where Goss purchased and owned Intertain shares, and Kitmitto got the benefit of the upside of Goss's investing while capping Kitmitto's downside potential losses. The amount loaned to Kitmitto in respect of the Intertain shares was not excessive in the context of Kitmitto's financial situation and it allowed Kitmitto to indirectly participate in a company and profit from future growth.

[454] In my view, this alone is insufficient evidence to convince me that, as a whole, Kitmitto is not credible. I find instead that when looking at Kitmitto's evidence as a whole, this is an outlier event where there may have been inconsequential discrepancies as to what transpired, but this is insufficient to undermine the rest of Kitmitto's evidence which was consistent throughout. I find that Kitmitto was truthful in his evidence with respect to the tipping allegations at issue and there is insufficient evidence to convince me otherwise.

[455] Kitmitto was, in 2014, an educated young adult who worked at Aston Asset Management as a senior analyst of the registered investment funds manager entity, while he was also studying for his professional exams. Aston Asset Management specialized in the development, sales and management of closed-end investment funds, open-end funds and hedge funds. Aston Financial was the parent company of Aston Asset Management and Aston Securities was an investment dealer and a member of the Investment Industry Regulatory Organization of Canada. Kitmitto started off working at Aston Asset Management in 2008 after graduating with a Bachelors of Business Administration from Wilfrid Laurier University, first as an associate and then was promoted to analyst and then to senior analyst. In his senior analyst role, he kept track of the public filings by reporting issuers, press releases, news and gossip in the industry sectors he had been assigned to, including the "gaming" sector. There was no evidence of any conduct to suggest that Kitmitto was unreliable or untrustworthy and that his testimony could not be trusted. I find that Kitmitto was candid and honest.

[456] The issue of Kitmitto's debt also came up during the hearing. In my view, his debt does not affect his credibility. Kitmitto was a young person at Aston Asset Management, starting his career and making reasonable money, but at this life stage in the time of 2014, it is not surprising that individuals would have debt. He had a roommate (Christopher) to share occupancy costs, which were/are a big percentage of living costs in Toronto. He was eligible for additional performance pay if he did well. In 2014 Kitmitto earned a salary and bonus. He was studying for his professional exams and, if he successfully completed them, he would have improved compensation opportunities. The reality on Bay Street is that individuals may have debt and yet be educated enough to take calculated business "risks". He knew that, if he successfully completed his professional exams, he would have improved job and compensation opportunities.

[457] Staff suggests that the fact of Kitmitto's indebtedness to Fielding during the Relevant Period (a loan from Fielding for $24,000 made two months prior to the announcement of the Amaya transaction) supports Kitmitto's liability. In my view, this is too far of a stretch. There was no specific allegation that Kitmitto tipped Fielding directly and this is beyond the scope of the Statement of Allegations. Presumably, the inference Staff asks the Panel to draw is that Kitmitto was willing to pass Fielding MNPI about Amaya because of this debt. I disagree with Staff's position and make no such finding.

[458] Based on Kitmitto's specialized education and experience, and the mosaic of evidence including the evidence of other respondents, I accept Kitmitto's evidence that he understood what MNPI was and conducted himself accordingly. He understood that he could only share it with those entitled to know it. He understood that when he signed an NDA or came into possession of MNPI regarding a company, he needed to inform management at Aston Asset Management so that they could restrict access person trading, including his own, relating to that company. The evidence was he did comply and inform management immediately regarding the Amaya meeting. Further, he understood that he was required to pre-clear his trading with Aston Asset Management's CCO, Sasha Rnjak. There was insufficient evidence to demonstrate

that Kitmitto acted otherwise. Staff submitted that there was "evidence of Kitmitto's cavalier approach to confidentiality and compliance—consistent with the Aston [Asset Management] culture", however Staff did not provide any specific examples of Kitmitto not complying with Aston Asset Management Compliance policies. There was no evidence that specifically showed Kitmitto himself was offside Aston Asset Management's Compliance policies. In addition, on April 29, 2014 at 1:47 pm Kitmitto sent an email to one of Aston Asset Management's equity traders instructing the trader to buy 200,000 Amaya shares for two of the Aston Asset Management funds. Kitmitto's evidence was that it was Cheng who decided what the funds bought and sold, it was an immaterial trade, and this trade was for the purpose of rebalancing funds. I note that Staff did not allege that this trade was an illegal insider trade and no compliance issues were raised regarding this trade. Instead, Staff focused on the fact that others at Aston Asset Management concealed information from Compliance and then Staff made assumptions that if others had a cavalier approach then Kitmitto must also be taking a cavalier approach to compliance. In my view, it is a stretch to make such an assumption without supporting evidence. I therefore disagree with Staff's submission that Kitmitto had a cavalier approach to confidentiality and compliance.

B. There were other potential sources of the alleged Amaya MNPI

[459] Kitmitto submits that the evidence strongly supports the conclusions that none of the other respondents were tipped with the alleged Amaya MNPI, being details and timing about the transaction, and if any respondents were aware of details about the transaction it is equally likely or more likely than not that Kitmitto was not the source of that information. I agree that upon looking at the mosaic of circumstantial evidence, it is possible to draw inferences to reach the conclusion that it is equally likely that there were other sources for the alleged Amaya MNPI (including details such as the structure of the transaction, parties to the transaction, pricing and timing), which I address below.

1. It is equally likely that Vannatta and Goss could have learned the alleged Amaya MNPI from other sources at the Aston Asset Management offices

[460] Numerous people at Aston Asset Management were apprised of the details of the Amaya transaction as the transaction developed. These individuals included Kitmitto's boss, Ben Cheng (President of Aston Financial and the Co-Chief Investment Officer and a Portfolio Manager at Aston Asset Management) as well as portfolio managers AH and SL, and SR and LQ who worked at the trading desk to execute Cheng's instructions. Any of these individuals was equally a potential source of MNPI within Aston Asset Management.

[461] Vannatta worked at Aston Asset Management, and while he shared an office with Kitmitto, it is equally possible that he could have learned about the alleged Amaya MNPI from others in the office.

[462] In addition, Aston Asset Management and Aston Securities (where Goss worked) had offices on the same floor where there was easy access of employees between the two. While there was some debate about the glass partition between Aston Asset Management and Aston Securities and whether there was a lock or not, Goss testified that when he visited the Aston Asset Management office, he would enter the Aston Asset Management office through its reception area. In my view, the evidence demonstrated that employees did circulate between Aston Asset Management and Aston Securities with ease. The majority of the Panel also acknowledged that Goss was regularly in the Aston Asset Management offices speaking with Cheng, Kitmitto, and others and I acknowledge the same. However, where I differ from the majority of the Panel is that, based on this evidence, I can infer that it was easy for Goss to visit Aston Asset Management and there was equally an opportunity that Goss could speak to others in Aston Asset Management's office or even potentially overhear the alleged Amaya MNPI from other sources while visiting.

[463] Furthermore, the initial meeting Kitmitto had with Amaya's CEO, was held on Tuesday, April 29, 2014 at 1:00 pm at Aston Asset Management's offices and included Canaccord representatives. As this meeting was held at Aston Asset Management, others in the Aston Asset Management offices may have seen Amaya's CEO or overheard information discussed. Having a meeting at Aston Asset Management was, more likely than not, one of a number of meetings with investors and potential investors and lenders that Amaya's CEO would have set up in Toronto on a day when he was in from Amaya's home office in Montréal, as he sought to raise a significant amount of money for Amaya to facilitate acquisition transactions. Those assisting Amaya with financing the transaction approached numerous financial firms and institutions, as is apparent from the slide deck. To the extent there was information circulating in the market about Amaya, Amaya's CEO was meeting with Aston Asset Management and others with respect to the Amaya transaction, I find that, beyond Aston Asset Management, the details of the alleged Amaya MNPI, including those contained in the slide deck that Kitmitto received on April 29, would have been available to others in the financial industry in Toronto and elsewhere, and this could have included many other individuals. During cross-examination George conceded that Kitmitto was not the only individual who had knowledge of details of the transaction, and that besides Kitmitto, individuals at Canaccord, Amaya, other brokerage houses and other advisors would have had knowledge of such information and George conceded that perhaps dozens or hundreds of individuals may have been aware of facts relating to the transaction.[92]

[92] Hearing Transcript, Kitmitto (Re), October 15, 2020 at 20 line 16 to 21 line 15

Considering this, and the number of ultimate institutional participants in the Amaya transaction, I find that it is equally likely that the alleged Amaya MNPI, or non-MNPI information, could have been circulating from other sources.

[464] In addition, there was evidence at the hearing that demonstrates that some Aston Asset Management employees did talk about the Amaya transaction and that others could overhear, providing an equal opportunity that Vannatta or Goss could have overheard the alleged Amaya MNPI or other information from someone other than Kitmitto. For example, Fakhry testified that he overheard the potential price for Amaya. He explained that he heard it from DT, an investment advisor at Aston Securities's Toronto office after Amaya's quarterly financial disclosure conference call: "So, that was a reference to [DT] had said, you know, if something big happens on this thing, this thing is going to move to $25, and this was after the conference call … He just comes out of his office and he just blurbs – blurbs a line, nothing more than that."[93] Further, Fakhry also testified that he overheard DT talk about how Blackstone was involved in the Amaya transaction, specifically testifying that "This was a comment that I heard from [DT], our branch manager. He came out of the office and just blurted out that he had heard that there is a rumour that Blackstone is involved."[94] The Blackstone Group involvement in Amaya financing was not seen in an Amaya press release until the June 12, 2014 deal announcement.

[465] Considering all of the above, I find that it is equally likely that Vannatta and Goss could have learned about the alleged Amaya MNPI, or other information, from other sources at Aston Asset Management and elsewhere.

2. Timeline of available information relating to Amaya

[466] In this case, the mosaic of circumstantial evidence includes many dates and events that demonstrate that between 2012-2014 there was lots of positive news about Amaya and its growth, it was being reported on in the media and there were internet rumours about possible transactions, including the PokerStars transaction. The chronology of dates and events demonstrates that it is equally likely that Christopher, Goss and Vannatta (and the other respondents) could have relied on the following information instead of information from Kitmitto.

[467] The following is a non-exhaustive list of specific dates and information that was publicly available regarding Amaya and its activities, and transactions that Amaya was involved in, as evidenced in Amaya's SEDAR filings and other forms of communications such as online posts and news articles. Where relevant, excerpts of those documents are included. Also included in this list are some important key dates in the timeline of this case such as when the respondents purchased Amaya shares. While some of the information below predates the Relevant Period, the inclusion of this information is helpful to show that over a long period of time there were predictions of transactions of some form and also the possibility of a target price of $20 per share and even $25. This is the story of the rise of a Canadian listed publicly traded company that had a lot of positive news and the rise of a new industry of online gaming, as noted below.

2012-2013: Dates and events prior to the April 29, 2014 meeting with Amaya's CEO, Canaccord representatives and Kitmitto

a. July 30, 2012, Stockhouse Online Blog Post thread about Amaya, comment from analyst Peter Imhof, stating "Gaming company that has hands in a lot of areas of gaming. Likes the story. Involved with a couple of provincial governments as well as in Caribbean. One of his largest holdings. Flush with cash and looking for other acquisitions. Thinks revenues and earnings will start to play out".

b. February 2013, Amaya issued 2013 debentures under and pursuant to the first supplemental debenture indenture as of February 7, 2013 to the debenture indenture dated as of January 17, 2012.

c. March 11, 2013, Analyst Report from Global Maxfin Capital Inc. for Amaya, stating "UPCOMING CATALYSTS NEAR TERM: Growth from accretive strategic acquisitions and expansion into new markets. LONG TERM: Growth in various geographies from gaming and regulatory product solutions and services; Possibility that online gaming in the US market will be legalized; Lower cost base driven through synergies; Given the ongoing consolidation in the industry, we expect that any one of the larger competitors could view Amaya as a potential take-out target."

d. June 10, 2013, "Stock Purchase Agreement by and among Amaya Americas Corporation, Diamond Game Enterprises, James Breslo and Roy Johnson" filed on SEDAR.

e. July 11, 2013, there was an underwriting agreement entered into between Amaya, Canaccord Genuity Corp., Cantor Fitzgerald Canada Corporation, Cormark Securities Inc., BMO Nesbitt Burns Inc., Clarus Securities Inc. and Global Maxfin Capital Inc., in connection with a June 2013 Offering.

f. July 11, 2013, Amaya announced that it had closed a private placement of common shares, originally announced on June 19, 2013, at a price of $6.25 per common share for total gross proceeds of approximately

[93] Hearing Transcript, Kitmitto (Re), November 27, 2020 at 36 lines 19-26
[94] Hearing Transcript, Kitmitto (Re), December 1, 2020 at 44 lines 2-5

$40.0 million. The net proceeds from the June 2013 Offering were for general corporate purposes and working capital to assist in the implementation of Amaya's growth strategy and the expansion of its international activities.

g. October 24, 2013, Stockhouse Online Blog Post thread about Amaya, comment from "solarman2013", stating "This company is a takeout at $20 by end of next year by some bigger online play. Don't be surprised if an internet giant comes along and makes that kind of offer."

h. November 8, 2013, German online news article and its English translation "Online Poker USA: No License for Pokerstars? (Update)" which identified the Rational Group (PokerStars) not obtaining New Jersey licensing due to a criminal case against Isai Scheinberg (PokerStars principal) and alongside this, news that Amaya "signed a contract with *entertainment bwin.party digital signs*, which applies to New Jersey and Europe". The article was updated at 7:30pm that same day to list applications for licenses in New Jersey that were pending and this list included both Amaya and the Rational Group (which owned PokerStars and Full Tilt Poker).

i. December 16, 2013, Cantech Letter article announcing the "2013 Cantech Letter TSX Tech Stock of the Year Finalists". The Cantech Letter awards recognize excellence in Canadian technology stocks and are voted on by a panel of Canadian technology analysts and readers of Cantech Letter (cantechletter.com), an online magazine focused on companies listed on the Toronto Stock Exchange and TSX Venture Technology, Cleantech and Life Sciences Sectors. This article described Amaya as: "Amaya Gaming, which took home both awards in the TSX Venture category last year, returns this year for a battle with the big boys. 2013 was the year Amaya became a force in the nascent deregulation of gambling in the United States. In New Jersey, which recently became the third state to legalize online betting, the Quebec-based company has already partnered with six of the twelve casinos there, including Caesars Interactive and Borgata Hotel Casino and Spa, which together own 55-60% of the land based revenue in the state."

j. December 20, 2013, Amaya Press Release, "Amaya Announces Refinancing of Cadillac Jack Credit Facilities", stating "Amaya Gaming Group Inc […] is pleased to announce that its wholly-owned subsidiary, Cadillac Jack Inc. […] has entered into an agreement for the refinancing of its credit facilities. [...] Under this agreement, Cadillac Jack will have access to term loans in an aggregate principal amount of up to $160 million […] The Credit Facilities will be used to fully repay the outstanding balance on the 2012 Loan, as well as related fees and expenses and to fund the ongoing working capital and other general corporate purposes of Cadillac Jack."

k. December 23, 2013, Analyst Report from Canaccord Genuity for Amaya, stating "Amaya Gaming announced it is refinancing its largest credit facility. […] The cash is expected to be used to pay for Diamond Game, for working capital and to extend Cadillac Jack's Class I and Class II business".

l. December 23, 2013, Analyst Report from Global Maxfin Capital Inc. for Amaya, stating "EVENTS: Amaya's Cadillac Jack subsidiary signed an agreement for up to US$160M in credit facilities comprised of five-year term loans […] IMPLICATIONS Positive: The refinanced facilities have been increased by US$50M and come with a lower interest rate and longer duration. Along with the interest savings ($1M+/yr or ~$0.01 in EPS), Amaya gains some flexibility and an increase in funds to help finance its working capital and strategic growth initiatives. CATALYSTS: The upcoming catalysts for Amaya include growth from driving sales and cost synergies from Cadillac Jack and Ongame, with Diamond Game Enterprises (OGE) most likely impacting H114; the legalization of online gambling in the US market; and the ramp up of recent deals with Bally Technologies/SHFL Entertainment. We expect further announcements out of California, Florida and other states considering online gaming. […] RECENT M&A SUPPORTS VALUATION Given the ongoing consolidation in the industry, we anticipate that any one of the larger competitors could view AYA as a potential acquisition candidate."

m. December 31, 2013, Amaya's 2013 Annual Financial Statement for the year ended December 13, 2013, stating "Amaya has developed its portfolio of solutions through both internal development and strategic acquisitions. Amaya acquired Chartwell Technology Inc. ("**Chartwell**") in July 2011, CryptoLogic Ltd. ("**CryptoLogic**") in April 2012, Ongame Network Ltd. ("**Ongame**") in November 2012, Cadillac Jack Inc. ("**Cadillac Jack**") in November 2012, and Diamond Game Enterprises ("**Diamond Game**") subsequent to year end in February, 2014, all of which provide technology, content and services to a diversified base of customers in the regulated gaming industry."

2014: Dates and events prior to the April 29, 2014 meeting with Amaya's CEO, Canaccord representatives and Kitmitto

n. December 31, 2013, Amaya Gaming Group Inc., "Form 13-502F1, Class 1 Reporting Issuers – Participation Fee" filed on SEDAR for end date of last completed fiscal year December 31, 2013.

o. January 10, 2014, Amaya Press Release, "Amaya Announces Hiring of EVP, Corporate Development and General Counsel", stating "Amaya Gaming Group Inc. […] is pleased to announce that it has appointed Marlon

D. Goldstein as its new Executive Vice-President, Corporate Development and General Counsel effective as of January 24, 2014. "With his strong background in gaming, governance, finance and M&A, Marlon has the experience and expertise to oversee our legal team and help us achieve our corporate objectives."

p. January 15, 2014, Analyst Report from Global Maxfin Capital Inc. for Amaya, stating "IMPLICATIONS Positive: Borgata and Caesars reported a combined US$5.4M in gross online gaming revenues for the month of December 2013, both of which are Amaya's online gaming partners. H2 Gambling Capital estimates online betting in the US to reach US$7.4B by 2017E – we believe Amaya is strategically positioned in the market to capture a portion of the forecasted revenues. CATALYSTS The upcoming catalysts for Amaya include growth from driving sales and cost synergies from Cadillac Jack and Ongame, with Diamond Game Enterprises (DGE) most likely impacting H114; the legalization of online gambling in the US market; and the ramp up of recent deals with Bally Technologies/SHFL Entertainment (BYI-US, Not Rated). We expect further announcements out of California, Florida, and other states considering online gaming. […] RECENT M&A SUPPORTS VALUATION I Given the ongoing consolidation in the industry, we anticipate that any one of the larger competitors could view Amaya as a potential acquisition candidate."

q. January 20, 2014, Cantech letter news release "[Amaya's CEO] wins TSX Tech Exec of the Year at Cantech Letter awards".

r. February 4, 2014, Stockhouse Online Blog Post thread about Amaya, comment from analyst Peter Hodson, stating "This one came out of nowhere but is now kind of flat lining. Have done a lot of acquisitions. This is really about the online gaming space right now. They have a relationship in New Jersey where online gaming looks like it is going to be a pretty big industry. Have done so many acquisitions over the last couple of years that investors are expecting something else so they may just bide their time for a little bit. Fundamentals are pretty good right now. On this you need a 2-3 year timeframe and you need to be a riskier type of investor. Management still owns a lot of stock. Thinks their game is to sell the company."

s. February 11, 2014, Amaya Press Release, "Amaya Announces Closure of Sale of WagerLogic", stating "Amaya Gaming Group Inc. […] announced today that, pursuant to a share purchase agreement dated November 27, 2013 (the "Share Purchase Agreement"), one of its subsidiaries has completed the previously announced sale to Goldstar Acquisitionco Inc. ("Goldstar") of all of the issued and outstanding shares of WagerLogic Malta Holdings Ltd. ("WagerLogic") for $70 million (the "Purchase Price"), less a closing working capital adjustment of $7.5 million, satisfied through cash consideration of $52.5 million and a vendor take-back in the form of a promissory note of $10 million, bearing interest at 6.0% per annum payable semi-annually in arrears starting in the second year following the closing date and due on the fourth anniversary of the closing date."

t. February 11, 2014, "Revenue Guarantee Agreement Between Amaya Gaming Group Inc., Cryptologic Malta Holdings Limited, Gaming Portals Limited, Amaya (Malta) Limited, Ongame Network Ltd. and Cryptologic Operations Limited" filed on SEDAR.

u. February 14, 2014, Amaya Press Release, "Amaya announces Closure of Acquisition of Diamond Game Enterprises", stating "Amaya Gaming Group Inc. […] announced today that it has closed its previously announced acquisition of 100% of the issued and outstanding securities (the "Transaction") of the private, arms-length company Diamond Game Enterprises […] We anticipate this acquisition will be immediately accretive to adjusted EBITDA."

v. February 19, 2014, Amaya Press Release, "Maryland Lottery Awards 5-Year ITLM Contract to Amaya's Diamond Game Enterprises", stating "Amaya Gaming Group […] is pleased to announce its subsidiary Diamond Game Enterprises ("Diamond Game") has been awarded a 5-year contract with the Maryland Lottery and Gaming Control Agency (the "Lottery"), with the Lottery holding a five year renewal option, to provide Veterans' Organizations (VOs) in the state with Instant Ticket Lottery Machines (ITLM) and related services (the "Contract"). […] The Contract amount is estimated by the Lottery at up to US$57 million over the original five year term and an additional amount of up to US$60 million for the renewal option…"

w. March 7, 2014, Amaya Press Release, "National Instrument 62-103 Early Warning Report", stating "Amaya acquired beneficial ownership and control of 550,000 common shares (the "Acquired Shares") of The Intertain Group Limited ("IT" or the "Issuer"), representing approximately 4.04% of the issued and outstanding common shares of IT… on a non-diluted basis. […] Prior to purchasing the Acquired Shares, Amaya already owned 1,350,000 Common Shares […] Therefore, Amaya now has beneficial ownership and control of 1,900,000 Common Shares, representing 13.97% of the issued and outstanding Common Shares."

x. March 31, 2014, Amaya Press Release, "Amaya Gaming Group Announces its 2013 Fourth Quarter and Full Year Financial Results", stating "Recent Highlights: […] Amaya and various subsidiaries received transactional waivers from the New Jersey Division of Gaming Enforcement in 2013 to supply technology for real money online gaming websites operated by licensed permit holders in New Jersey. […] Financial Results: […] Revenue

for the year ended December 31, 2013 was $154.53 million compared to $76.44 million for 2012, representing an increase of 102%."

y. April 1, 2014 at 9:00 a.m. Amaya hosts a conference call to discuss its 2013 financial results with Amaya's CEO, chairing the call.

z. April 1, 2014, Amaya Press Release, "Amaya to Supply Online Casino Games to Ultimate Gaming in New Jersey", stating "Amaya Gaming Group Inc. […] is pleased to announce that one of its subsidiaries has entered into a licensing agreement (the "Agreement") with Fertitta Acquisitions Co, LLC, d/b/a Ultimate Gaming ("Ultimate Gaming") to provide online casino gaming content to Ultimate Gaming in New Jersey, subject to all applicable jurisdictional licensing requirements and regulatory approvals."

aa. April 1, 2014, Online Article from CalvinAyre.com, "Amaya Doubles Revenue in 2013, but Losses Rise Four-Fold on Increased Costs", stating "Canadian gambling technology outfit Amaya Gaming Group […] saw revenue double in 2013, but lingering costs from its recent acquisition spree resulted in a quadrupling of its annual losses. Revenue in the 12 months ending Dec 31, 2013 rose to CDN $154.5m (US $140m) thanks to full year contributions from subsidiaries such as gaming device maker Cadillac Jack, software developers Cryptologic and the Ongame online poker platform, all of which Amaya acquired in 2012."

bb. April 1, 2014, Analyst Report from Canaccord Genuity for Amaya, stating "Valuation: Amaya currently trades at 9.0x C2014E EV/EBITDA, versus peers at 9.2x. Given Amaya's strong growth prospects in 2014 and product strength, we believe it deserves to trade at a premium and could be viewed as an attractive acquisition in a consolidating industry."

cc. April 1, 2014, Analyst Report from Global Maxfin Capital Inc. for Amaya, stating "IMPLICATIONS Neutral: Q413 revenue was up 5% y/y due to the inclusion of a full quarter of Cadillac Jack revenues. However, Amaya missed expectations due to declining hosted casino revenues from WagerLogic, which was divested subsequent to year end, and a large deal that slipped into Q114. With the Diamond Game Enterprises (OGE) acquisition now closed, and Cadillac Jack moving into Class III machines, we see strong revenue and EBITDA growth prospects for Amaya in 2014E."

dd. April 1, 2014, Stockhouse Online Blog Post comment from "solarman2013", stating:

i. At 1:43pm: "They will now work on consolidating expenses and pumping sales with what they have. They need to show that they can grow the businesses they are in, or get out of them in a timely manner. The trend is towards online and mobile which is their best play. Hardware is a play in the short term to satisfy locations that exist, but the big plays are as virtual takes over and they are certainly well positioned there. A few knocks of humility are not a bad thing. It brings it all down to reality once in a while. I believe in $20 in two years. The states will fall one by one, and then there's....Asia!"

ii. at 3:03pm: "This is a very deep discount to average valuations in this sector. I think we will see analysts remain in the range of previous predictions and we've simply seen a run away and will see as strong a run back and then beyond. A CEO and management who haven't sold a share...tells you something that they know that we can't."

ee. April 10, 2014, Goss emailed four clients to tell them "Word has it we need to own this stock".

2014: Dates and events, including first trades in Amaya occurring in April 2014 prior to the April 29, 2014 meeting with Amaya's CEO, Canaccord representatives and Kitmitto

ff. **Respondent Trade:** April 11**,** 2014, Goss makes his first purchase of Amaya shares. Goss subsequently purchased Amaya shares for himself or a family member on April 29, May 2, 14, 20, 26, 27, 28, 29, 30, and June 2, 3, and 4, 2014.

gg. **Respondent Trade:** April 11, 2014, Fielding makes his first purchase of Amaya shares. Fielding subsequently purchased Amaya shares on April 29, 30 and May 1, 2, 6, 9 and 14, 2014.

hh. April 15, 2014, Analyst Report from Global Maxfin Capital Inc. for Amaya, stating "VALUATION: Amaya is currently trading at a C2015E EV/Sales of 2.8x and EV/EBITDA of 7.7x versus industry comparables at 2.5x and 8.4x, respectively. We believe the Street is underestimating the positive impact of the DGE deal as well as the growth opportunities in US online gaming - we could see ROE in the mid-20% range by the end of 2015E."

ii. April 15, 2014, Amaya Press Release "Notice of Amaya Annual General and Special Meeting date" with meeting to be held on July 30, 2014.

jj. April 16, 2014, Amaya Press Release, “Amaya Announces Agreements for Gaming Machine Shipments in United States”, stating “Amaya Gaming Group Inc. … is pleased to announce that its subsidiary Cadillac Jack has entered into multiple agreements to ship approximately 1,100 gaming machines to existing and new customers in the United States.”

kk. April 17, 2014, Stockhouse Online Blog Post comment from “solarman2013”, stating:

i. at 10:24 am: “This deep dive is an emotional response just as was 9.30 to potential upside. I think [Amaya’s CEO] is the right CEO for the job. He got a hard and expensive lesson in not giving guidance, and I believe we will see a substantial correction upwards when they give guidance. [AS] is just a distraction like many others. He's holding onto an old way of business to protect his asset value. Dinosaurs did the same thing. And worldwide the trend is unstoppable. He will certainly cost us some upside until the other side becomes as vocal and visible. We see a small upside move this morning and perhaps its the wave of panicked owners is gone and more reason will come back. I suspect we will see 7-7.25 level in the near term and will go back up once guidance and performance is shown. Remember that they have cash, a number of successful growth opportunities and a very capable team.”

ii. at 9:48 pm: “Don't agree. Here's what I think: Diamond Jack is going to surprise in how it helps the Q1 results. The other divisions will be pumping upwards too. [Amaya’s CEO] didn't want to give any guidance without proof that they can reach them. I think you are going to all be in for a wild kind of surprise when annonce [sic] Q1 (already closed) in May. The announcement of over 1000 new machines going in is again pointing to a company which is not only moving online but also on the floors. Unlike other pureplay online companies, AMAYA has floor machines to buffer any potential downwards effect by Mr. [A]'s threats. Bottomline is that if any US state decides to go against online gaming, they know that their constituents will simply play offshore games. A couple of days ago I said we'd be back at 7ish levels soon. I take that back. We will be back at 8ish ones in no time flat. All analysts are going to err on the side of caution for a while to protect themselves. Nobody minds only a 30% upside so when a much bigger one materializes, they will just shrug their shoulders and smile.”

ll. April 22, 2014, Stockhouse Online Blog Post comment from “retiredcf”, stating: “Analyst Recommendation - First stock in the clip. GLTA http://watch.bnn.ca/#clip1081532 http://www.stockchase.com/expert/view/1299/Amaya-Gaming-Group-Inc. - referenced-by-James-Hodgins - James Hodgins opinion - Management has done a nice job of putting the company together and is betting on the gambling online market, which is coming back in the US. Has moved more into the land based casino equipment business, which took a big hit in the quarter, largely due to the weather. Thinks their strategy is to continue to make acquisitions where they have done a good job of integrating them and making them profitable.”

mm. April 24, 2014, Globe and Mail Article by Tim Shufelt, “Amaya Gaming: An Investor’s Play on U.S. Online Gambling”, stating “[…] [Amaya] has seen its stock battered after a recent earnings miss. But the company’s long-term outlook was largely unaffected, making the stock priced-to-buy for investors who continue to like Amaya’s odds. […] Over the long term, Amaya looks poised to generate substantial growth through its services for casinos, while capitalizing on the increased popularity and adoption of online gambling in the United States. The online market could be seen as a bonus, potentially adding $2 to $3 to Amaya's stock price over the next three to five years, said Mr. Garcea, who has a “strong buy” rating and an $11 target on the shares. Of the nine analysts covering Amaya’s stock, eight rate it a “buy” at an average share price target of $9.58.”

nn. Spring 2014, Claudio, in testimony, observed that he decided to purchase Amaya shares in Spring 2014 when: “My recall was more on issues about moving into the American market would be a very significant play. ... talked about New Jersey. But there was constant reference to a sector that was getting quite exciting. That also overlapped with the fact that, from my own observations, watching even the sports channel, all there was was poker and all these ads about PokerStars and what have you. So, it was even my own observation that this gaming thing was building up. And I recall even remarking that all of a sudden poker has become a sport as it was telecast all over the TSN channel.”[95]

oo. April 25, 2014, Stockhouse Online Blog Post comment from “retiredcf”, “RE: Thorough Overview on Amaya for Investors”, which recited the entire April 24, 2014 Globe and Mail article.

April 29, 2014: Events that took place on the meeting day with Amaya’s CEO, Canaccord representatives and Kitmitto

pp. April 29, 2014, Online Article from CalvinAyre.com by Rafi Farber, “Amaya – Don’t be Fooled by Recent Losses”, stating “There are many reasons to be optimistic about the next few years. The most important one in my opinion

[95] Hearing Transcript, Kitmitto (Re), November 13, 2020 at 32 line 23 to 33 line 5

is that Amaya's upper management knows how to play ball with the gaming keymasters, which are the government and its army of regulators. [...] All in all, a scrappy company that, while it has not yet stabilized and has some work left to do, has a clear plan, is in with the right people, has shown the ability to raise significant amounts of money, and is growing responsibly."

qq. April 29, 2014 at 1:00 pm meeting at Aston Asset Management offices with representatives from Amaya's management, including Amaya's CEO and Canaccord representatives with respect to a potential Amaya transaction. Kitmitto signed a non-disclosure agreement and provided it to the Amaya management team at the meeting. That agreement provided that there would be no representation or warranty as to the accuracy of completeness of the evaluation material. There was no deal yet. At this meeting Kitmitto received the slide deck and learned about the potential Amaya transaction. He heard of two dollar figures associated with the slide deck, $20 and he wrote on it $25. After the meeting, Kitmitto returned to his office and emailed Rnjak, the Chief Compliance Officer, to inform him that Aston Asset Management was "over the wall on a transaction for Amaya". He copied the email to SR, who worked at the trading desk, on the email to prevent any mistaken trades. Kitmitto also informed Cheng and gave him the slide deck. That day or later he informed AH, and he later informed SL, a portfolio manager.

rr. **Respondent Trade:** April 29, 2014, Vannatta makes his first purchase of Amaya shares. Vannatta subsequently purchased Amaya shares on May 6 and May 14, 2014.

April 2014 - June 2014: Dates and events post April 29, 2014 meeting with Amaya's CEO, Canaccord representatives and Kitmitto

ss. May 2, 2014, Amaya Press Release, "Amaya Announces Lab Approval for Slot Machines in New Jersey", stating "Amaya Gaming Group Inc. […] announced today that its subsidiary Cadillac Jack has received approval from New Jersey's Division of Gaming Enforcement (the "DGE") to utilize its Genesis DV1 slot machine platform and associated hardware and software, including top performing game titles Fire Wolf, Siberian Siren, and Legend of White Buffalo, in the state. Cadillac Jack will now apply to the DGE for transactional waivers to begin supplying machines to Atlantic City casinos."

tt. May 2, 2014, online Motley Fool article "Should Investors Gamble on These 3 Gaming Stocks", stating "Investors who believe that online gaming is the next big growth area in the industry should look at Amaya Gaming (TSX:AYA), which creates and maintains the software that powers many of the leaders in the space. Essentially, Amaya is a play on the United States government approving online gaming. Two states, New Jersey and Nevada, have approved online gaming in a limited form. There are currently seven online casinos catering to new Jersey gamblers, and Amaya supplies the software to six of them. It's also big with many online casinos that are headquartered in Europe. In the meantime, Amaya acquired Cadillac Jack, a maker of electronic slot machines, for $177 million. This provides a nice steady business for the company while it waits for other jurisdictions to open up online gambling."

uu. May 2, 2014, Analyst Report from Global Maxfin Capital Inc. for Amaya, stating "AYA to Supply its Slot Machines in New Jersey" and "IMPLICATIONS Positive. Cadillac Jack will begin deployment of its gaming machines to Atlantic City Casinos once it's granted the transactional waivers from the DGE. The approval is significant for AYA since it will expand its presence in the commercial casino and Class III gaming machine markets. We note that NJ is the third largest commercial casino market."

vv. **Respondent Trade:** May 2, 2014, Fakhry makes his first purchase of Amaya shares. Fakhry subsequently purchased Amaya shares on May 20, 21, 26 and 28, 2014.

ww. May 3, 2014, Stockhouse Online Blog Post comment from "ozphoenix", stating "Calvin Ayre on Amaya - This interesting article was posted on April 29th - just before the recent uptick in the SP. Seems prophetic, somehow :) http://calvinayre.com/2014/04/29/business/amaya-dont-befooled-by-recent-losses/".

xx. May 5, 2014, Analyst Report from Clarus Securities Inc., stating "Amaya Gaming announced that the company's Cadillac Jack subsidiary has received approval from New Jersey's Division of Gaming Enforcement (DGE) for the "Genesis DVI" slot machine platform, and associated hardware and software. This approval allows Amaya to proceed with applying for transactional waivers with the State's respective casinos to begin supplying them with Class III gaming machines." and "We believe that this is a significant development as it marks the first major push for Amaya's converged gaming strategy."

yy. May 5, 2014, Research Update from Industrial Alliance Securities Inc., stating "New Jersey's Division of Gaming Enforcement (DGE) has approved Cadillac Jack's Genesis DVI slot machine platform and associated hardware and software. The next step is to apply to the DGE for transactional waivers to begin supplying machines to Atlantic City casinos."

zz. **Respondent Trade:** May 8, 2014, Christopher makes his first purchase of Amaya shares. Christopher subsequently purchased Amaya shares on May 21, 2014. He sold on September 9, 2014, the same day as Claudio sold.

aaa. May 13, 2014, Research Update from Industrial Alliance Securities Inc., stating “We expect revenue of $47.1 M, up 24 % from $38.1 M last year. The consensus expectation is for $43.7M.” and “This will be the first quarter in which revenue and profitability from on-line gaming in New Jersey will be of significance.”

bbb. May 14, 2014, Stockhouse Online Blog Post comment from “solmarman2013”, stating “My concern is that its being pushed down once again by people who know something inside as has almost always been the case. I don't think it will last long though and it may just be shorts covering. I am suspecting good news here and some guidance for this year. When analysts are almost unanimous that this thing is worth north of $9 easily, it means they surely know something we don't.”

ccc. May 15, 2014, Amaya issued and filed on SEDAR 2014 Quarterly Financial Statements for the Three Month Period Ended March 31, 2014.

ddd. May 15, 2014, Amaya Press Release, “Amaya Gaming Group Announces its 2014 First Quarter and Full Year Financial Results”, stating Amaya’s basic earnings per share was $0.42 up from $0.09 in the first quarter of 2013, net income in the 2014 first quarter was $9,643,610 compared to a loss of $7,440,841 in the first quarter of 2013 and stating “First Quarter and Subsequent Highlights: On May 15, 2014, Amaya’s wholly-owned subsidiary Cadillac Jack, Inc. (“Cadillac Jack”) obtained credit facilities from FS Investment Corporation and FS Investment Corporation II for the purpose of financing working capital expenses and general corporate purposes of the Amaya group. […] The credit facilities provide for (1) an incremental USD$80 million term loan to Cadillac Jack’s existing USD$160 million senior term loan, with the new aggregate principal amount of USD$240 million bearing interest at a per annum rate equal to LIBOR plus 8.50% with a 1% LIBOR floor (the “Senior Facility”); and (2) mezzanine debt in the form of a subordinated term loan in the aggregate principal amount of USD$100 million, bearing interest at a per annum rate equal to 13%; provided, at the option of Cadillac Jack, interest accruing at a per annum rate of 7% may instead be paid in-kind in lieu of cash (the “Mezzanine Facility”, and collectively with the Senior Facility, the “New Facilities”). […] Amaya has agreed to grant the lenders, in relation to the Mezzanine Facility, with 4 million common share purchase warrants, entitling the holders thereof to acquire one common share of Amaya at a price per common share equal to CAD$15 at any time up to a period ending 10 years after the closing date. […] Financial Results: Revenue for the three month period ended March 31, 2014 was $41.20 million compared to $38.05 million for the three month period ended March 31, 2013, representing an increase of 8%.”

eee. May 15, 2014, Stockhouse Online Blog Post comment from “ferret_ca”, stating "TO THE MOON ALICE - great results, should be interesting to see the markets reaction in this negative environment cheers and gl ferret".

fff. May 16, 2014 at 9:00 a.m. Amaya hosts a conference call to discuss its 2014 first quarter earnings with Amaya’s CEO, chairing the call, stating “Overall, our revenue grew above 8%, but we’re expecting to record a growth rate above 25% on a full-year basis […] We believe we are now very well positioned to execute on strategic initiatives, including supporting our organic growth and we also have the flexibility to capitalize on strategic acquisition opportunities that may arise. […] revenues were CAD41.2 million in the first quarter of 2014 compared to CAD38.1 million in Q1 2013, with growth driven by gaming machine sales and a higher participation agreement revenues […] We are guiding 2014 revenues to be in the range of CAD193 million to CAD203 million.”

ggg. May 16, 2014, Stockhouse Online Blog Post comment from “retiredcf”, stating “Insider Purchase - $700K is a pretty respectable outlay. GLTA - May 15/14 - May 14/14 - Fielding, John David - Indirect Ownership – Common Shares - Acquisition in the public market size: 100,000 $7.18.”

hhh. May 16, 2014, Stockhouse Online Blog Post comment from “drd8”, stating “Amaya has been growing organically and by acquisition wouldn't be suprised [sic] to see them take a 9.9% stake in Poydras Gaming. Financed @ .25. Trading at .18. Great entry point.”

iii. **Respondent Trade:** May 16, 2014 Claudio makes his first and only purchase of Amaya shares. He sold on September 9, 2014, the same day as Christopher sold.

jjj. May 20, 2014, Research Update from Industrial Alliance Securities Inc., stating “We speculate that Amaya is planning to sell its Ongame poker platform by the end of Q2 and has been establishing increased debt facilities (+US$180M) in order to purchase a larger platform”, “VALUATION We are raising our target from $9.00 to $9.75”, “A significant acquisition could be coming -likely a poker platform - It would therefore seem likely that the mystery asset is Ongame Network, which is Amaya's poker platform. The company has also disclosed that Ongame has been responsible for a decrease in software licensing revenue (in Europe). Considering how critical

having poker is for an iGaming platform, we would have to assume that Amaya is looking to "tradeup" to a larger poker platform. Liquidity (ie: number of players) is key in an on-line poker platform, enabling a more robust offering and larger jackpots. As was clear in the Q1 results and conference call, Amaya has been positioning itself to make a sizeable acquisition".

kkk. May 22, 2014, Stockhouse Online Blog Post comment from "ozphoenix", stating "If you read carefully the notes of the most recent financial release and then listened attentively to the Q&A at the end of the web-cast, especially some of the later questions and the answers offered, you will come to the conclusion that there is at least one very promising announcement soon to be made - and, it will not be a small one. The answers, as well as what was NOT said in answer to some probing questions, should give you a clue or two. And, you do not build a war chest of approx. $300 million and then sit on it – especially when one of the recent lenders 'benefits' is a promise of future shares available at $15, albeit sometime in the next 10 years. What lender waits that long for a pay-off? Someone has a strong idea of what's coming sooner rather than later. I think we can expect something to 'pop' in the near future and it will not be accompanied by a 'fizzle' :) If you miss my point or missed the earnings call, the webcast recording is still available for a few days, I think - go back and have a re-listen."

lll. May 23, 2014, Stockhouse Online Blog Post comment from "goldencalf", stating "Fact or Fiction: has anyone heard the rumour Amaya may be buying PokerStars.net…someone I know high up at a major brokerage firmy [sic] mentioned this to me the other day…could this be what's behind the sudden move…any thoughts?" and reply comments from:

i. "ferret_ca" stating "10.08 right now. I love this stock lol. It can now support my pokerstars habit, lol. cheers and gl ferret",

ii. "drd8" stating "on Fire!! Same backers of Amaya when it first came public have backed Poydras Gaming (PYD-tsxv). Same space.",

iii. "Tobuyornot" stating "Obviously somebody knows something... - that isn't known to the rest of us! Had sale in for 10% of my holdings. Blew right thru my already set high price.",

iv. "goldencalf" stating "now for a short breather…before they finish off the 10s! – un..b..lievable!",

v. "solarman2013" stating "The trading indicates an imminent announcement – For better or for worse, Amaya isn't good at keeping secrets. The volume and stamina of this rise lends credence to a major event. I suspect they have the biggest acquisition yet lined up and that the current level of $10+ will be far surpassed when they announce. Consolidation in this industry makes sense, and Amaya needs to fill up their geographic holes. So they are buying sales channels for their products, one way or another. I am so glad that I didn't sell one single share in the past year...and I suspect that happiness with get even bigger sometime next week. I doubt that they are big enough to buy Pokerstars.net, unless they do it with funds as part of consortium. In that case, its the most exciting move possible."

mmm. May 24, 2014, Online Article from CalvinAyre.com by Steven Stradbrooke, "Amaya Gaming and PokerStars Talking Acquisition?", stating "Is Canada's Amaya Gaming Group about to merge with online poker giant PokerStars? Something is clearly going on behind the scenes, as Amaya's stock shot up nearly 14% on Friday. The stock closed at $10.25 after finishing Monday's trading at just $7.71, with Friday's trading volume nearly five times the daily average over the preceding three months. As unlikely as it may sound, sources have told CalvinAyre.com that an agreement is in place that would see Amaya assume ownership of the Isle of Man-based online poker colossus, thereby clearing the way for the Stars brand to return to regulated US markets."

nnn. May 24, 2014, Stockhouse Online Blog Post comment from "therivercard", stating "According to this article, the two principle California Indian gaming groups appear ready to move forward. Pokerstars had been an obstacle as the article points out but even that opposition has weakened. And if the speculation surrounding Amaya is correct, the sky could be the limit. This really is one "Amaya-zing" company. Here's to the three year hat trick performance at the next tech awards and hopefully all the well-earned returns for the long term Aya supporters."

ooo. May 26, 2014, Stockhouse Online Blog Post comment from "ozphoenix", stating "Amaya mergers and acquisitions - All the rumours about Amaya and Pokerstars might, or might not, be right. Only time will tell us which is the correct answer. An alternative partnering might be with bwin.party though - they're under heavy shareholder pressure to make major changes in the way they are managed and operate, especially from activist investor Spring Owl. bwin.party have been touted as being better off de-merged, that the merger has not produced the results that were envisaged when the merger happened. And, they're more likely the size that would be digestible by Amaya right now, as opposed to possible indigestion with Pokerstars. That said, there have so far seem to have been no rumours about this possible partnering so, unless the Amaya-Pokerstars rumour is just a smokescreen to hide some possible action over at bwin-party, it seems likely that, given the appetite for acquisition that Amaya has displayed to date, a 'bigger than all before' type deal seems the most

likely scenario, at present. Anyone care to dispel the thoughts of a bwin-party move, as opposed to a Pokerstars step??"

ppp. May 26, 2014, Amaya Press Release, "Amaya Comments on Trading Activity", stating "In response to trading activity that may stem from market rumours that have come to the company's attention regarding a potential strategic acquisition, Amaya Gaming Group Inc. (TSX: AYA) stated today that strategic acquisitions have been and are one component of the company's growth strategy and, as such, Amaya regularly evaluates potential acquisition opportunities. From time to time, this process leads to discussions with potential acquisition targets. There can be no assurance that any such discussions will ultimately lead to a transaction. As a general policy, Amaya does not publicly comment on potential acquisitions unless and until a binding legal agreement has been signed. The company intends to make no further comment or release regarding current market rumours unless and until such comment is warranted."

qqq. May 26, 2014, Financial Post Article (part of the National Post newspaper) by April Fong, "Amaya Gaming Group Inc. Moves to Quell Takeover Speculation as Shares Rise", stating "Is Amaya Gaming Group Inc. looking to acquire another company? Speculation of a potential takeover sent the Pointe-Clare, Que.-based gaming company's shares up nearly 5% Monday afternoon in Toronto - and even prompted a response from Amaya Gaming. […] Amaya Gaming is likely planning to sell its poker platform, Ongame Network, by the end of second quarter in order to finance "a significant acquisition," Neil Linsdell, analyst with Industrial Alliance Securities, wrote in a May 20 note. Mr. Linsdell also said in the note he expects Amaya is looking to 'trade up' to a larger poker platform."

rrr. May 26, 2014, online article on "uspoker.com", titled "Pokerstars' US Ambitions Could Lead To A Sale", stating "In recent months, whispers have been heard throughout the industry that various companies might acquire online gaming giant PokerStars. One rumour was that Wynn was a potential buyer, with WilliamHill and Amaya Gaming as potential suitors as well. Others said that bwin.party had pitched a transaction to the Isle of Man-based company, but that it was for a sale, not a purchase..."

sss. May 26, 2014, Stockhouse Online Blog Post comment from "goldencalf", sharing the Financial Post article dated May 26, 2014.

ttt. May 27, 2014, Stockhouse Online Blog Post comments from:

i. "goldencalf" stating "based on what I've read up till now including the way Amaya's press release was worded...I'm convinced these so called rumours...have some validity...that's just a hunch…",

ii. "retiredcf" stating "would agree with goldencalf. Often when you see press releases commenting on abnormal SP activity, companies simply state that there is no apparent reason (ie. they have no idea why the sudden trading activity). But AYA didn't go down that road and instead talked about whether acquisitions may or may not occur. IMHO, that's definitely a hint of what's to come. …",

iii. "ozphoenix" stating "… There is something significant going on at Amaya, without a doubt. My post last Thursday, the day before the first meteoric rise, pointing to an imminent announcement and 'sizzle', was based on so-called 'public' information, such as financial releases and earnings call comments. Goldencalf's 'personal' supply of information was also somewhat prophetic, coming just hours (or even minutes) ahead of the initial surge last Friday. In my own opinion, if we do not see some major move 'formally' announced this week, then we will see it next week - as I said earlier, you do not build a war chest of cash, on the back of yield-sensitive incentive components for the lenders, just to sit and look at it. … - the share price will build and occasionally have some dips, but overall, this one's a 'keeper' and a 'grower'.",

iv. "ferret_ca", stating "… ps i think the pokerstars rumours are pure fantasy imho, unless pokerstars swallow aya and uses it as a vehicle to the us market. i'm sure the likes of wynn sands etc would be more than happy to buy ps if it is for sale.", and

v. "drd8", stating "They buy pokerstars and it may be a 20 dollar bill. Why wouldnt yoy [sic] buy potdras [sic]. Same geoup [sic] that initially funded aya arenthe [sic] largest backers of pyd. . Big financiang [sic] at .25 cents. A single seller. A gift at .17. Buy all you can. The money will flowminto [sic] poydras gaming very doon [sic]".

uuu. May 27, 2014, online article from CantechLetter.com "Amaya Gaming roars to all-time highs on acquisition rumours", stating "Investors in Amaya have developed a keen eye for the upside that acquisitions can make for a reason; they have transformed the company...With a cash position of $119.3 million and gross debt of $201.5-million at the end of its recent Q1, Amaya has demonstrated that it is aggressive with its balance sheet. With management disclosing an additional debt facility of US$80 million on its current US$160 million senior term

loan, the company does seem fully capable of closing on another potentially transformative acquisition. The question for Amaya shareholders is whether the company's success with them has trained the market into a "buy on rumour, sell on news" reaction, or if the company can surprise with more upside if an acquisition does indeed happen. At press time, shares of Amaya Gaming were up 2.8% to $10.85."

vvv. May 27, 2014, online article from gaming-awards.com "Amaya Gaming stock rises on rumours", stating "Heavy speculation over the weekend focused on Amaya Gaming Groups possible purchase of online poker giant PokerStars, with Amaya's stock value rising 30% since Friday 23rd May ... Mr. Linsdell also said in the note he expects Amaya is looking to '"trade up' to a larger poker platform". But the question is would that platform be PokerStars? It seems highly unlikely at this point as PokerStars is a privately held company and worth billions of dollars, observers say Amaya Gaming has only some $500 million in disposable cash for any acquisitions, leaving them well short of any approach. However some observers are saying a merger or a reverse sale could be more likely."

www. May 30, 2014, online article from CardChat.com "Amaya Rumored to be talking Acquisition with PokerStars" stating "According to an industry report, the biggest name in online poker might be in talks regarding an acquisition…Rumors have been circulating that there is an agreement in place that would actually see Amaya assume ownership of PokerStars, not the other way around as conventional logic would dictate...Clearly, it seems ridiculous that a decently sized Canadian company would have assets and wealth in place to acquire the biggest name in the industry...It is of importance to note that PokerStars is currently a privately held company and thus, no actual value has ever been pinpointed, but many believe it is well into the billions of dollars. It might stand to reason then that a "reverse takeover" is being planned, where Amaya would simply become the new corporate face of PokerStars, making it a cheap and extremely fast way for PokerStars to, in a roundabout way, become publicly traded international entity with a fresh new face and corporate name, which is sure to placate lawmakers and those that grant licenses in the United States."

xxx. May 31, 2014, Stockhouse Online Blog Post comment from "ozphoenix", stating "Another recent perspective - again nothing startling - http://www.poker-online.com/poker-news/general/rumored-amayapokerstars-merger-might-not-happen/2726".

yyy. June 1, 2014, Stockhouse Online Blog Post comments from:

i. "ozphoenix", stating "if you add up all the signals (and, I don't just mean the recent price rises and the volumes) it is next to impossible to not think something big is about to happen at Amaya - whether or not it is Pokerstars or someone else. A big move is where Amaya has been headed, all the signals and rumors point to it, all the timing (just for example, with regard to imminent big changes in US laws, but other things also) is right. My opinion, for what it is worth, is that we will hear something in a matter of days, not weeks and certainly not months. There's a fire burning somewhere and the smoke and heat are not being completely covered (maybe even intentionally so). People 'in the know' are making good use of their knowledge and getting set for a major 'win'. Just IMHO, nothing more."

ii. "retiredcf", stating "Tend to agree with ozphoenix as there certainly seems to be more than just smoke signals here. Depending on the news, we may see some of the shortsighted investors exercising the buy on rumour and sell on news option but for anyone with a longer term horizon, that would be a buying opportunity as this one is a definite keeper."

zzz. June 2, 2014, Stockhouse Online Blog Post comments from:

i. "ozphoenix", stating "if you think through the information available and given how any 'big deal' Amaya might (or might not) be about to 'spring' would need to be set up and executed, for a variety of reasons. I think that, before many more days are done, we'll all look back and say... 'ahah!'. Again, just my own opinion. Enjoy the suspense :)".

ii. "solarman2013", stating "We will see it fluctuate quite a bit before news. The news will not disappoint but again we will dip as always has happened. Unless the news establishes clearly a new value floor (which a merger would do, whether reverse or not). The issue is that Amaya has proven time and again the ability to do good things with cash and now its armed with access to more cash than ever in its history so its logical to assume, as the market has, that the next step is the biggest yet. That's what we have seen from [Amaya's CEO] and there is no reason to believe he's going to spend his time on an insignificant addition. It does mean that as they mature, the size of the deal will grow yet the candidates slate will diminish too, so the rumors of PokerStars does make sense IF Amaya has pre-vetted such a move with the right american authorities, which we can safely assume that is General Wesley Clark's role amongst others..."

iii. “ozphoenix”, stating “I agree with everything said by solarman2013 and think that a lot of 'pre-vetting' of many types would have been undertaken - and, in addition to [GC], don't forget that a heavy-hitter like [G] does no [sic] come on board just to pen operator agreements and to author building rental agreements - he was brought in for a reason and it was big. So, I'm long, large and strong on this one (unlike other stories I could tell) and I don't believe I'll be needing to 'salvage' what I can for $9 :) I think I'll have a different story to tell my bank manager."

iv. “solarman2013”, stating “None of the recent big buys are day trading. They are big investors coming in. Somebody knows enough and the only issue now is when not if…”

v. “ozphoenix”, stating “At that price, they will not be mine that you're picking up :))) Enlightenment will also be sooner, I'll wager - my left big toe has a feeling about this :)))”.

vi. “ozphoenix”, stating “For sure, all of the 'big moves' and 'action steps' have already been done, I think. Those still digging around are working on scraps and tit-bits. The 'big play' boys are already sitting around a table enjoying a red wine and a quiet steak and exchanging a smiling nod and wink or two :)))”.

aaaa. June 3, 2014 Goss received a fax from FH with a markup of the Amaya non-denial denial Amaya Press Release, “Amaya Comments on Trading Activity” published May 26, 2014, prior to Goss entering an order to purchase shares for FH June 4, 2014.

bbbb. June 4, 2014, Goss received another fax from FH including a May 29, 2014 article from www.poker-online.com titled “Rumored Amaya - PokerStars Merger Might Not Happen”.

cccc. June 4, 2014, Stockhouse Online Blog Post comments from:

i. “therivercard”, stating “Amaya took out Cadillac Jack at a cost of $167m back on September 25/'12 after acquiring Chartwell and Cryptologic in the previous 18 months at a combined cost of 60m. Private placement funding for 10m-'11, 107m-'12, and most recently 40m-'13/$6.25 share, might suggest that Amaya clearly has the vision/execution necessary to attract this level of eager financing which at recent share price levels indicates that they have been well rewarded. With this history of success and with the movement toward regulation in the US, would Pokerstars seem logical.”

ii. “solarman2013”, stating “As always, AYA will jump up, then trend down as no news comes out..and then with good news jump again. Its like everyone knows that Baazov is going to make the next move the best and yet we don't know where, where [sic] or how. What do [sic] we do know today is that performance is improving on all metrics, cash is deeper (or more available) than ever before, and each move gets bigger and bigger. So if a $160M acquisition was the last one...this next one has to be multiples and that is a huge game changer..”

dddd. June 6, 2014, Stockhouse Online Blog Post comments from:

i. “therivercard”, stating “In a follow-up statement entitled, Amaya Gaming issues non-denial-denial of PokerStars acquisition report, to their original posting, CalvinAyre maintained their "sources" as solid. http://calvinayre.com/2014/05/26/business/amayagaming-statement-on-pokerstars-rumors/. Still, it is not surprising to see day trading, profit taking and some disbelievers influencing trading the past few days. However, trading today might suggest that the trend is changing back in recognition of the potential that any Pokerstars/Amaya relationship might represent.”

ii. “solarman2013”, stating “And even if its not PokerStars, knowing how Baazov operates...is he going to sit on a wad of cash that just produces 0.5% in the bank for long? Not. So the larger the potty the prettier the hotty is the operating premise and if its PokerStars then he's just done in gaming what Apple did last week with Beats in music...put the #1 brand in the world in his back pocket. When the announcement is made, they will be giving Amaya a valuation that will blow people's minds...because PokerStars needs it and because Amaya deserves it....meantime day traders will bring it up and down and up and down. What is most important is the huge buys on the runup to this level. Not fools buying in those quantities at these levels."

eeee. June 8, 2014, Stockhouse Online Blog Post comment from “solarman2013”, stating “The largest online poker state in the world will be California and they won't forego access to revenues in these budgetary crunch times. Interesting that Pokerstars is the other player in this mix. Of course the entire problem goes away should AYA and PokerStars do a deal and you can bet that either way, Amaya is going to greatly benefit from this milestone.”

ffff. June 8, 2014, online article from OnlineCasino.org, “Amaya Gaming Group Clinches another iGaming Deal, This Time with Cherry AB”, stating “Not surprisingly, the seemingly unceasing announcements about Amaya's newest iGaming achievements and partnership agreements have created positive effects on AGG's stock market performance. Last Friday, the Canadian gaming company's stocks went up by 14 percent and closed at CA$10.25, after starting at only CA$7.71 at the opening of the previous week's stock trading. Accordingly, there will be more announcements to come, which could even involve PokerStars; but all deals still have to be finalized before these are made public...”

gggg. June 12, 2014 at 12:22 p.m., IIROC Online News, “IIROC Trading Halt – AYA”.

June 12, 2014 – Press release announcing Amaya’s acquisition

hhhh. June 12, 2014, Amaya Press Release (followed by a Material Change Report filing), “Amaya Agrees to Acquire Rational Group, Owner of PokerStars and Full Tilt Poker, for $4.9 Billion”, stating “Amaya Gaming Group Inc. […] and privately held Oldford Group Limited (“Oldford Group”), the parent company of Rational Group Ltd. (“Rational Group”), the world’s largest poker business and owner and operator of the PokerStars and Full Tilt Poker brands, announced today they have entered into a definitive agreement (the “Agreement”) for the Corporation to acquire 100% of the issued and outstanding shares of Oldford Group in an all-cash transaction for an aggregate purchase price of $4.9 billion (the “Purchase Price”), including certain deferred payments and subject to certain other customary adjustments (the “Transaction”). […] KEY TRANSACTION HIGLIGHTS: The Transaction will result in Amaya becoming the world’s largest publicly-traded online gaming company.” The press release also set out the financing details as follows:

i. “The Purchase Price will be paid using a combination of cash on hand, new credit facilities and equity financing, allocated as follows:

(a) $2.1 billion senior secured credit facilities, consisting of a $2.0 billion first lien term loan and a $100 million revolving credit facility fully underwritten by Deutsche Bank AG New York Branch ("Deutsche Bank"), Barclays Bank PLC ("Barclays"), and Macquarie Capital (USA) Inc. ("Macquarie Capital").

(b) $800 million senior secured second lien term loan fully underwritten by Deutsche Bank, Barclays, and Macquarie Capital, with participation from GSO and the Investment Manager.

(c) $1 billion to be raised through the issuance of convertible preferred shares on a private-placement basis at an initial conversion price of C$24 per convertible preferred share.

(d) C$500 million to be raised through the issuance of subscription receipts convertible on a one-to-one basis into common shares upon completion of the Transaction on a bought-deal private-placement basis, and an Underwriters’ Option to purchase subscription receipts for additional gross proceeds of up to C$140 million and a commitment from GSO to purchase common shares for additional gross proceeds of up to $55 million.

(e) Remainder of the balance payable in cash.”

June 2014: Dates and events post Amaya’s announcement of the acquisition

iiii. June 23, 2014, Amaya Press Release, “Amaya Announces Upsize of Previously Announced Offering of Convertible Preferred Shares”, stating “Amaya Gaming Group Inc. […] announced today that it has upsized its previously announced private placement offering of convertible preferred shares of the Corporation (the “Convertible Preferred Shares”) from treasury, on an underwritten bought-deal private placement basis, in order to meet additional demand. The size of the offering was increased by agreement between Amaya and Canaccord Genuity Corp., as sole underwriter, by approximately US$50 million to approximately US$180 million from the previously announced US$130 million. As a result, the total gross proceeds from the issuance of Convertible Preferred Shares will now be US$1,050,000,000. […] The Corporation intends to use the net proceeds from the issuance of the Convertible Preferred Shares to partially fund the payment of the purchase price for the acquisition of the Rational Group.”

jjjj. July 7, 2014, Amaya Press Release, “Amaya Announces Closing of Subscription Receipt Offering Including Exercise of Underwriters’ Option for Gross Proceeds of $640 Million”, stating “Amaya Gaming Group Inc. […] announced today the completion of its previously announced offering, on an underwritten bought-deal private-placement basis, of 25 million subscription receipts priced at $20 per subscription receipt (the “Subscription Receipts”), and that the underwriters of the offering have exercised in full the option granted to them to purchase an additional seven million Subscription Receipts (the “Subscription Receipt Offering”). Total gross proceeds to Amaya from the Subscription Receipt Offering are $640 million.” A Material Change Report was filed.

kkkk. July 7, 2014, the Underwriting Agreement set out the details of the transaction and specified that "Canaccord Genuity Corp. ("Canaccord Genuity"), Cormark Securities Inc. and Desjardins Securities Inc., as co-lead underwriters and joint bookrunners (the "Lead Underwriters"), and Clarus Securities Inc. (collectively with the Lead Underwriters, the "Underwriters" and each individually, an "Underwriter"), understand that Amaya Gaming Group Inc. (the "Corporation") proposes to issue and sell to the Underwriters, on a bought deal private placement basis, 25,000,000 Subscription Receipts (as defined herein) of the Corporation (the "Firm Subscription Receipts") at a price of $20.00 per Firm Subscription Receipt (the "Offering Price") for aggregate gross proceeds of $500,000,000 (the "Base Offering")."

llll. July 28, 2014, Amaya Press Release confirming Amaya had received all required gaming regulatory approvals regarding the acquisition of Rational Group.

July 30, 2014 – Shareholder approval of the acquisition

mmmm. July 30, 2014, Amaya Press Release, "Amaya Shareholders Approve Rational Group Acquisition", stating "[…] Amaya's Shareholders approved all resolutions related to aspects of the financing (the "Transaction Financing") for the Corporation's proposed acquisition of Oldford Group Limited, the parent company of Rational Group Ltd., which is the owner and operator of the PokerStars and Full Tilt brands (the "Proposed Transaction"). […] Amaya has now obtained all necessary shareholder and regulatory consents for the Proposed Transaction."

[468] All the information listed above demonstrates that there were internet rumours and news media about Amaya going on for a prolonged period of time, much of it focused on the potential for transactions, growth for the company and upside for the share price. There was a lot of positive news available on the internet over a long period of time, which equally could have been relied upon instead of relying upon information from Kitmitto. Where respondents did rely on this information, I have set this out in the analysis for each respondent below.

[469] As early as October 24, 2013 there was a rumour on the online blog forum Stockhouse of a price target of $20 for Amaya. This was months before the April 29, 2014 meeting when Kitmitto learned of the alleged Amaya MNPI and the target price of $20 for Amaya. Much emphasis in his case has been put on the fact that Kitmitto was the source of the $20 target price for Amaya, however others had speculated online about such a price (albeit for different reasons) months before Kitmitto came into possession of the alleged Amaya MNPI. As evidenced from the list above, since 2013 there was a lot of positive hype about Amaya and rumours available. Further, on April 1, 2014, an Analyst Report from Canaccord Genuity for Amaya viewed Amaya positively and predicted it to trade at a premium and that Amaya was an attractive acquisition in a consolidating industry. There were many different reasons to support future growth and price appreciation for Amaya and these reasons would also equally influence someone to trade its shares.

[470] Another important fact from November 8, 2013 is that at that time, Amaya was in-line to get a license, a contract with revenue and mentioned that a formerly strong competitor was not doing well as the regulator didn't like its management – which situation put the competitor in play for acquisition. This was reported in an online German article "Online Poker USA: No License for Pokerstars? (Update)" and it listed applications for licenses in New Jersey that were pending and this list included both Amaya and the Rational Group (which owned PokerStars and Full Tilt Poker). These facts in a public article about the application for a license foreshadow future opportunities for Amaya and Rational, which turned out to be that Amaya subsequently on June 12, 2014 announced it was purchasing Oldford Group Limited, the parent company of Rational Group Ltd.

[471] As demonstrated from the list above Amaya was actively engaging in various transactions, one of which was the acquiring beneficial ownership and control of 550,000 common shares of Intertain. This was announced by press release on March 7, 2014. The respondents in this proceeding were involved with Intertain as follows: (1) Goss had participated in a private placement of Intertain and also invested in Intertain; (2) Fielding sat on the board of Intertain and had invested in Intertain and (3) Kitmitto had participated, through Goss, in a private placement of Intertain. Again, long before Kitmitto supposedly learned of the alleged Amaya MNPI, when on April 25, 2014 he scheduled a meeting with Canaccord and Amaya and then at the April 29, 2014 actual meeting, Kitmitto, Goss and Fielding had an interest in the gaming sector and activities related to the gaming sector and had reason to follow Amaya's activities. It is not surprising that Kitmitto, Goss and Fielding would have an interest in Amaya based on these circumstances and it is equally likely that this was a reason why they had an interest in Amaya. This is also supported by the fact that Goss and Fielding made their first purchases of Amaya on April 11, 2014 before Kitmitto ever met with Amaya's CEO on April 29, 2014.

[472] Notably, on April 24, 2014, before Kitmitto came into possession of the alleged Amaya MNPI on April 25, 2014 (the date on which he scheduled the meeting with Canaccord and Amaya), the Globe and Mail published a very positive article on Amaya's outlook. Specifically, it mentioned that over the long term "Amaya looks poised to generate substantial growth through its services for casinos, while capitalizing on the increased popularity and adoption of online gambling in the United States" and that Amaya had strong "buy" ratings. This was not just an internet rumour, this information was published in a national newspaper.

[473] Shortly following the April 24, 2014 Globe and Mail article, Amaya's CEO came to Aston Asset Management's office, along with a Canaccord representative, for a meeting with Kitmitto on April 29, 2014. Given the publicly, highly visible and available news article in the Globe and Mail, many eyes at Aston Asset Management's and Aston Securities's office could have "seen" Amaya's CEO visiting, especially since the "wall" between Aston Asset Management and Aston Securities was made of glass and had a glass door. Therefore it is equally possible that individuals could have put "two and two" together, from the visit and news articles, that something might be going on with Amaya without Kitmitto being the source of this information.

[474] On April 29, 2014, on the same day of the meeting at Aston Asset Management, there was also an article posted on CalvinAyre.com emphasizing that there were many reasons to be optimistic about Amaya for the next few years, focusing on work with government and regulators to expand online gaming and in turn the ability for Amaya to raise significant amounts of money, and grow.

[475] Throughout the month of May 2014, more positive information relating to Amaya continued to come out. In addition, news about Amaya was widely discussed on Bay Street at the time. I accept Kitmitto's testimony that in May 2014 while the rumours may have lacked specificity, there was a lot of anecdotal Bay Street chatter about Amaya.[96]

[476] The May 16, 2014 Amaya conference call also contained positive information. Many were excited by the news discussed. For example, Fakhry testified that the call was "upbeat" and he explained that "I mean, it was very nice. I liked the tone of the analysts, how they were kind of, like, giddy, and you had [Amaya's CEO] kind of, you know, "I'd like to tell you, but I can't tell you." That's what I came out with."[97] In my view, this demonstrates there were hints provided to the marketplace about what was to come for Amaya and Kitmitto was not the sole source of the alleged Amaya MNPI.

[477] Further there were also anonymous posts on Stockhouse in May 2014 that acknowledged that there were rumours about Amaya acquiring PokerStars. Specifically, a post on May 23, 2014 by "goldencalf", stated "Fact or Fiction: has anyone heard the rumour Amaya may be buying PokerStars.net…someone I know high up at a major brokerage firmy [sic] mentioned this to me the other day…could this be what's behind the sudden move…any thoughts?" While the post is anonymous, the reference to a major brokerage firm could have been from a number of possible sources. Other firms on Bay Street were also aware of the deal, having been involved in the financing of the transaction. As seen from the Underwriting Agreement dated July 7, 2014, the following institutions were involved: Canaccord, Cormark Securities Inc., Desjardins Securities Inc., and Clarus Securities Inc. Individuals at all of these institutions would have been aware of the details of the transaction and could have been the source of the internet rumours.

[478] There was also further media coverage in the Financial Post on May 26, 2014 commenting on Amaya's press release of the same day which was essentially a non-denial denial statement about increased trading activity and transaction potential. The news article commented on speculation of a potential takeover and the author stated he expected "Amaya is looking to "'trade up' to a larger poker platform." Here is an example of coverage from a national media outlet that was following Amaya and noted the strong potential for some sort of transaction. Positive news about Amaya and potential for some sort of transaction was not a secret and media outlets were following this story.

[479] Further, I note that rumours were so prevalent that Amaya had to actually issue a press release to acknowledge this. In the May 26, 2014 press release, Amaya was responding to market rumours regarding a potential strategic acquisition and saying that strategic acquisitions have been and are one component of the company's growth strategy and are regularly evaluated. This non-denial denial signaled in my view the possibility of something happening in the future and was a reason to spark interest in investing in Amaya. Anyone following Amaya's stock would be very interested in all of these developments listed above, and Kitmitto was not the source of information for these developments. Information on these developments came from many sources of information other than Kitmitto including the events listed in the chronology at paragraph 467 of these reasons.

[480] The timeline above also demonstrates that Amaya was actively engaging in various transactions. To emphasize, this active engagement in transactions, capital raising and expansion activities occurred over a prolonged period of time. Specifically:

a. In February 2013, Amaya issued debentures and the underwriting agreement dated February 7, 2013 in connection with the January 2013 offering was signed by Amaya, Canaccord Genuity Corp., Macquarie Capital Markets Canada Limited, Cormark Securities Inc., BMO Nesbitt Burns Inc., and Mackie Research Corporation.

b. In June 2013, there was a transaction started that lead to an underwriting agreement dated as of July 11, 2013 that was signed by Amaya, Canaccord Genuity Corp., Canaccord Fitzgerald Canada Corporation, Cormark Securities Inc., BMO Nesbitt Burns Inc., Clarus Securities Inc., and Global Maxfin Capital Inc.

[96] Hearing Transcript, Kitmitto (Re), November 6, 2020 at 102 lines 10-18
[97] Hearing Transcript, Kitmitto (Re), November 30, 2020 at 81 lines 3-6

c. On July 11, 2013, Amaya entered into an underwriting agreement with Canaccord Genuity Corp., Cantor Fitzgerald Canada Corporation, Cormark Securities Inc., BMO Nesbitt Burns Inc., Clarus Securities Inc. and Global Maxfin Capital Inc., in connection with the June 2013 Offering for a bought deal of Subscription Receipts exercisable for Amaya common shares, that was conditional on the "Proposed Acquisition" being completed.

d. Amaya then did a $40 million private placement in July 2013, giving it cash for growth and expansion of its international activities.

e. Amaya's December 31, 2013 Annual Financial Statements, press released March 31, 2014, discusses Amaya's strategic acquisitions, including acquisitions of Chartwell, Cryptologic, Ongame, Cadillac Jack and Diamond Game. Specifically, Amaya also reorganized the credit facilities of its subsidiary Cadillac Jack Inc. in December 2013 giving it stable access to $160 million of term loan financing for four years.

f. Amaya's 2014 Management Discussion & Analysis for the three months ended March 31, 2014 explained that Amaya was intending to target expansion of its interactive gaming solutions, including into newly regulated markets, notably in the US and that three states, New Jersey, Delaware and Nevada, have subsequently regulated online gaming. Amaya's acquisitions and activities were efforts to provide it with the scope and scale to participate in the nascent real money online gaming market in the US.

g. News of Amaya's expansion activities was announced on April 16, 2014, specifically that its subsidiary Cadillac Jack was shipping 1,100 machines to Oklahoma and California and received a license for land-based machines in Wisconsin.

h. On May 2, 2014 Amaya announced that its subsidiary Cadillac Jack received approval from New Jersey's Division of Gaming Enforcement to utilize its Genesis DV1 slot machine platform and associated software. This was just the start of expansion as Cadillac Jack was going to now apply for transactional waivers to begin supplying machines to Atlantic City casinos.

i. On May 15, 2014 Amaya also announced its subsidiary Cadillac Jack received credit facilities from FS Investment Corporation and FS Investment Corporation II for the purpose of financing working capital expenses and general corporate purposes of the Amaya group and the credit facilities provided for an incremental USD$80 million term loan to Cadillac Jack's existing USD$160 million senior term loan, with the new aggregate principal amount of USD$240 million.

j. As of July 7, 2014, Amaya had a Subscription Receipt Agreement with Canaccord providing for an underwritten issuance of Subscription Receipts, each exercisable at $20 for one common share, conditional on the "Proposed Acquisition" being completed. There was a separate Underwriting Agreement dated the same day. Unless permitted by securities legislation, the holder of the security could not trade the security before November 8, 2014, after 4 months had expired from issue.

[481] The above list of events shows participants involved in the transactions and demonstrates that Amaya was active in the Canadian securities market and was being supported by multiple capital markets registrants. In my view, this transaction activity which was public on SEDAR demonstrates that it was widely known that Amaya actively pursued potential transactions for strategic growth. It is not surprising that investors (such as the respondents) would follow Amaya's activity in this space and invest in Amaya. The chronology listed at paragraph 467 sets out dates and events that the respondents did rely on, in particular the internet rumours on Stockhouse and news articles published by the media, the specifics of which are addressed in the analysis of each respondent. I address the publicly available information listed in the chronology that certain respondents relied on in paragraphs: 489, 599, 600, 607 c., e., l., t., 608 (Goss), 496 and 532 (Vannatta), 506, 570 b., c., e. and f. (Christopher), and 625 to 627 (Fakhry).

[482] The list of events above, when looked at cumulatively, demonstrates the prevalence of positive news, rumours and interest in Amaya, independent of Kitmitto, and much of this having started long before Kitmitto on April 25, 2014 scheduled the Amaya meeting. The meeting took place on April 29, 2014 but the presentation material did not contain MNPI and there is no evidence Kitmitto came into possession of Amaya MNPI through that meeting. Continuing after the April 29, 2014 meeting, there was information, rumours and news online, independent from Kitmitto. As a result, I find that it is equally likely that Goss, Vannatta and Christopher (and any of the other respondents) could have relied on other sources of information including the media articles and internet rumours listed in paragraph 467 when investing in Amaya. Specifically, I've indicated the public information each of them relied on in the following paragraphs of my reasons: 489, 599, 600, 607 c., e., l., t., 608 (Goss), 496 and 532 (Vannatta), 506, 570 b., c., e. and f. (Christopher). As a result, I find that Staff has not shown on a balance of probabilities that it is more likely than not that Kitmitto tipped these individuals.

3. Publicly available information relating to Amaya demonstrates that it was an investment with potential for growth

[483] In addition, I find that Amaya was not a particularly "risky" investment or stock to trade. Much focus has been on the fact that the respondents engaged in risky trading and this supports that Kitmitto must have tipped them. In my view, a review

of the SEDAR documents in evidence (listed in paragraph 467 along with other information available on the internet) demonstrates that Amaya was a well established growing company with a promising future.

[484] According to Amaya's December 31, 2013 "Form 13-502F1 – Class 1 Reporting Issuers – Participation Fee" that was filed in evidence and on SEDAR, the market value of Amaya's listed securities was approximately $133.9 million and market value of all its securities was approximately $611 million. At December 31, 2013, it had over $440 million in assets as compared to $349 million the prior year. For the fiscal year ended December 31, 2013 it had revenues of $154 million, up from $76 million in 2012; and adjusted net earnings of $15 million in 2013, up from $10 million in 2012, showing sizeable growth. There was extensive publicly available information on SEDAR including the Annual Information Form and Management Discussion and Analysis filings as a senior issuer.

[485] According to its 2013 AIF, "Amaya is engaged in the design, development, manufacturing, distribution, sale and service of technology-based gaming solutions for the regulated gaming industry worldwide. Amaya's objective is to become a leading provider of technology-based gaming solutions while maintaining a steadfast commitment to the highest levels of integrity and responsibility". An example of one of its casino products, was the popular "Legend of the White Buffalo", which Amaya's May 2, 2014 press release (listed at paragraph 467 ss.) described as one of its top performing games. Amaya was a strong player in an industry where there were significant barriers to entry, including regulatory approvals, capital and leading technology requirements. It was diversified in terms of operations locations. It had reduced risk due to having separate subsidiaries in different jurisdictions: Cryptologic (Guernsey), Cadillac Jack Inc. (Georgia USA) and Amaya (Alberta) Inc. (Alberta, Canada). It operated in multiple countries in different parts of the world. It had a highly qualified, international board of directors, with representation from Québec, British Columbia, California, Florida and Arkansas. It had a number of businesses, including interactive gaming solutions, land-based gaming solutions and lottery solutions (instant ticket vending machines and mobile lotteries). Considering all of the above, Amaya was an established growing and developing issuer with plenty of positive news readily available on SEDAR that the respondents could have and did review, themselves, by having material researched and sent to them, or by talking to their advisor, business contact, friend or relative at Aston Asset Management.

C. Kitmitto did not tip Goss, Vannatta and Christopher with the alleged Amaya MNPI

1. Donald (Alexander) Goss

[486] While Kitmitto and Goss worked at different entities, Aston Asset Management and Aston Securities respectively, they did have occasion to interact and the evidence showed that they talked and had coffee together. In my view, Goss played a mentorship role to Kitmitto by getting to know him as a young talent at Aston Asset Management and introducing Kitmitto to board opportunities. Goss looked for opinions as broadly as he could with respect to potential investments, chatted with Kitmitto and even included Kitmitto in some investment opportunities. There was insufficient evidence to demonstrate that it was more likely than not that, when Kitmitto and Goss communicated, it was for the purpose of the alleged Amaya MNPI being transferred.

[487] Kitmitto would answer analysis-related questions for those at Aston Asset Management and Aston Securities. Kitmitto would be asked about chatter, rumours, and other public information about Amaya by people, such as Goss, who were not "access" people privy to the alleged Amaya MNPI. Goss and others knew that Kitmitto was the analyst that covered Amaya. I accept Kitmitto's evidence that, when asked, Kitmitto would share what he could about Amaya, and give his analysis on what was publicly known. I conclude that there were other sources for the alleged Amaya MNPI (as listed in paragraph 467) and that Staff did not prove that Kitmitto was the source of the alleged Amaya MNPI.

[488] Staff focused on the point that Kitmitto and Goss frequently interacted and that this was an opportunity for sharing MNPI. I find that Kitmitto and Goss frequently communicated, but it is equally likely that they communicated about matters that had nothing to do with Amaya before, during and after the Relevant Period. In the first half of 2014, Kitmitto, Fielding and Goss worked on several potential investment opportunities, which included Intertain (gaming), Synaptive (medical), Park Lane Farms (medicinal cannabis), Patient Home Monitoring (tele-health), World Gaming (gaming) and Orthogonal (medical field). All were private companies except for Intertain and Patient Home Monitoring. The three individuals were in regular communication in relation to the various investment opportunities they were considering. Further, Kitmitto was on the board of directors for the company Ethoca (a private fintech company specializing in fraud prevention, a growing industry at the time) and Fielding was the chair of the board. As a result, they were in contact about Ethoca-related matters. The regularity of communications among the three of them, the equal likelihood that they could have been discussing potential investment opportunities listed above, and companies they were on the boards of, undercuts the inference that the interactions suggest tipping the alleged Amaya MNPI. Staff has not proven on a balance of probabilities that it is more likely than not that the communications related to the alleged Amaya MNPI.

[489] While Goss did trade in Amaya, he began on April 11, 2014 – two weeks before Kitmitto was first approached about any meeting relating to Amaya. In fact, contemporaneous documents show that by April 11, 2014, Goss had already been discussing and recommending the stock to numerous individuals and had purchased it for Fielding and others. It is also important to note that Goss invested alongside his clients showing his true support for the investment. Goss both bought

and sold during the Relevant Period, but this trading can equally be attributed to the internet rumours and news, some of which is set out in the list above, and research that he and his assistant Fakhry conducted. Such information included:

a. numerous analyst reports, which were highly positive about Amaya, indicated that the stock was a "buy" or a "strong buy", and always had a very high price target;

b. numerous online news websites, as well as traditional news sources such as The Globe and Mail and the National Post;

c. online posts on the popular website Stockhouse, and in particular posts by a commentator known as "solarman2013"; and

d. an online German news article dated November 8, 2013 and its English translation entitled "Online Poker USA: No License for Pokerstars? (Update)" which Fakhry later found during the course of his research for Goss (the details of which are set out in paragraphs 467 h. and 470 above), which I find to be significant, in part because it showed that there was European interest in, and coverage on Amaya, and this indicated that interest in Amaya had expanded far beyond Canada and the United States.

[490] In addition, Staff submitted that Kitmitto and Goss communicated before Goss made trades, however the evidence in the list from a. to d. below shows that they only communicated after Goss's trades. I find that there is insufficient evidence presented by Staff to support a finding that Kitmitto and Goss were communicating. There was evidence that Kitmitto was out of the office for ten days starting May 28, 2014 to study for his CFA exam and he did not have the opportunity to meet for discussions with others at the office. Where there was evidence of phone conversations, those conversations happened after the trades took place. Specifically, I find that:

a. Kitmitto was told about changes in timing on May 23, 27, and 28, but did not communicate with Goss between May 23 and May 28;

b. Kitmitto was told about a change in timing on May 29 and he spoke with Goss that day, but their conversations took place after Goss had traded in Amaya that day;

c. Kitmitto was told about a change in timing on June 1, but did not communicate with Goss between June 1 and June 3, when Goss bought shares in Amaya; and

d. Kitmitto and Goss spoke over the telephone on June 4, but their conversation took place after Goss had purchased Amaya earlier that day, and a couple of hours after that conversation Goss sold 3,300 Amaya shares, notwithstanding that, at the time, Kitmitto expected the acquisition to be announced the following day. While the majority of the Panel also points out at paragraph 302 that Goss's client AE also bought shares both before and after Goss's conversation with Kitmitto on June 4, I disagree that the timing of Goss's conversations leads to a conclusion that Goss encouraged his client AE to buy more Amaya in anticipation of the announcement. As set out in the chronology at paragraph 467 aaaa., bbbb. and cccc., on June 4, there were rumours circulating online on Stockhouse about a possible acquisition, and on June 3 and 4 another client of Goss, FH, was emailing Goss Amaya's recent non-denial denial press release of May 26 and another internet article from May 29. Goss had other sources of information available to him on June 4, independent of Kitmitto.

[491] Staff submits that a $20 figure identified in the slide deck Kitmitto received at the Amaya meeting on April 29, 2014 indicated to Kitmitto a potential stock value of $20, which he communicated in MNPI. I accept the evidence that $20 was the purchase price of the above-referenced upcoming subscription receipts offering, which could be converted into common shares and then sold by the underwriters for a profit after a four month hold period.

[492] I accept Kitmitto's testimony that he wrote $25 as a best proxy for minimum share value, as $24 was then the price for Amaya debt conversion into equity and we have evidence, subsequently announced on June 12, 2014, that Amaya's equity financing would include a US$1.050 billion offering of Amaya preferred shares on a private placement basis with an initial conversion price of C$24 per Common Share, subject to adjustments including 6% accretion to the conversion ratio, compounded semi-annually (which would take the conversion price over $25 quickly).

[493] While Amaya might have been discussed between Kitmitto and Goss, there is insufficient evidence to demonstrate that the alleged Amaya MNPI was ever provided by Kitmitto to Goss, and their conversations were not out of the ordinary (or followed by timely trades). It is equally likely that Kitmitto and Goss discussed topics other than Amaya and did not discuss non-public information about Amaya.

[494] For the reasons stated above, I find that Staff did not prove on a balance of probabilities that it is more likely than not that Kitmitto tipped Goss with the alleged Amaya MNPI. Considered as a whole, the mosaic of circumstantial evidence shows that Goss had other reasons to trade Amaya (based on the dates and events listed in the chronology at paragraph 467) and that his trading and communications line up with the exploitation of public information only.

2. Steven Vannatta

[495] Staff submits that Kitmitto must have tipped Vannatta because they had a close relationship, as friends, and shared an office; Vannatta concealed his trading and misled Staff; and Vannatta engaged in parallel suspicious trading. However, Staff's argument is flawed as it does not take into account other circumstantial evidence supporting that it is equally likely Vannatta may have learned information about Amaya from other sources (including the dates and events listed in the chronology at paragraph 467). Further, Staff's position relies on a finding that Vannatta concealed his trading from Aston Asset Management Compliance and misled Staff, which I find did not occur for reasons set out below at paragraphs 540 to 555.

[496] Vannatta and Kitmitto both worked at Aston Asset Management and shared an office. As mentioned above, since Vannatta also worked at Aston Asset Management, there was equally opportunity for him to learn or overhear information about Amaya from others in the Aston Asset Management office and elsewhere. On the day of the April 29, 2014 meeting, Vannatta could have seen or heard that Amaya's CEO, other representatives from Amaya's management and representatives from Canaccord came into the Aston Asset Management office for a meeting and he might have overheard something. He could have overheard comments from individuals at Aston Asset Management or Aston Securities, like DT (who was an investment advisor and branch manager at Aston Securities) or others, just as Fakhry did. While Vannatta knew his office-mate Kitmitto was analysing the gaming sector, including Amaya, he also was aware that investment fund entities managed by Aston Asset Management were invested in Amaya and he could equally see this through public reporting of the investment funds, including through newspaper articles. In addition, it is also likely that Vannatta read some of the publicly available information on Amaya on SEDAR and other information on the internet as set out above in paragraph 467. Vannatta was also aware (having worked in the oil sector and then working as an analyst covering oil and other resources), that the resources sectors he followed, and previously invested in, were subject to cyclical change, and which suffered a major drop in oil price in 2014, for example, so he was looking for a rising industry investment. It is at this point in time that Vannatta switched to investing in the gaming sector. The mosaic of circumstantial evidence demonstrates that there were other sources of information besides Kitmitto, and I cannot make the inference that Staff asks, which is that Kitmitto communicated pre-meeting MNPI to Vannatta, and communicated that or further MNPI he may have learned at the meeting, or later, to Vannatta afterwards.

[497] Kitmitto's evidence was that the $20 referenced in the Amaya slide deck was not necessarily the target trading price. He also wrote on the slide deck, at the meeting, "$25", which was an Amaya debt conversion price, as stated above. Conversion prices are set at what is considered a reasonable target, as debt conversion would be helpful for Amaya's financial statements. Debt holders could convert and sell securities for a profit if the market went above that price, or at break even at that price, either way providing cash that could enable such providers to make further debt available to Amaya to expand its businesses.

[498] I also disagree with Staff's submission that Vannatta could have learned the alleged Amaya MNPI through the Bloomberg chats with Kitmitto and others. In cross-examination of George, it was made clear that it could not be assumed that Vannatta would have read or acknowledged comments in the Bloomberg chat with Kitmitto and others without the additional Bloomberg data concerning user preferences. There is insufficient evidence to demonstrate that Vannatta learned the alleged Amaya MNPI through the Bloomberg chat. Vannatta had a complicated job to do and, despite this era of constant electronic communications, I do not conclude that Vannatta was looking at, and relying on a constant Bloomberg chat for his trading. Further, the Bloomberg chats occurred prior to the April 29, 2014 meeting and I have found at paragraphs 434 to 450 that Kitmitto did not receive the alleged Amaya MNPI on April 25, 2014 or at the April 29, 2014 meeting.

[499] With respect to Vannatta's trading, Staff submits that it was risky, especially considering that he was under what Staff described as "significant financial strain" at the time, as he had many debts and borrowed to invest in Amaya. However, while I find that while Vannatta's overall trading was a bit risky, it was not excessively so for someone working in the investment industry who thought a stock was poised for growth, which company had a real business and revenue so it was not likely to drop precipitously. As I have said in paragraph 483, while Staff submitted Amaya was risky, I find that Amaya was a well-established growing company with a promising future. Yes, Vannatta's trading was well above what he had done in prior years and he had debt, but that can be an explanation in itself as to why he borrowed money to buy Amaya: he saw this as a rising stock and, if he got in early enough, he could make money to pay off his debts. In my view, Vannatta's debt is not a determinative factor that much weight should be put on. He had a university education and had completed the three levels of the CFA exam. Like Kitmitto, he had business experience on boards and helping non-public companies. He first became a registrant in 2013, and started off as an associate portfolio manager, then became a portfolio manager. His base salary in 2014 while working at Aston Asset Management was $120,000 and with a bonus of $45,000, that brought him to $165,000. His other sources of income at the time included some options at Aston Asset Management, an investment portfolio and a condo in Calgary that he rented to his brother. During his compelled interview with Staff, Vannatta estimated his net worth to be approximately $400,000 to $500,000 at the end of 2014. There was no evidence of Vannatta having made any investment decisions based on his debt situation.

[500] For the reasons stated above, I find that Staff did not prove on a balance of probabilities that it is more likely than not that Kitmitto tipped Vannatta with the alleged Amaya MNPI. It is equally likely that Vannatta could have overheard information about Amaya from others at Aston Asset Management and/or Aston Financial, and he could have conducted his own investment research or could have come across public information about Amaya, all absent any sharing of information from Kitmitto. Vannatta had appropriate education and experience, was comfortable with risk in the energy sector, and was quite capable of evaluating the risks and opportunities in the gaming sector himself.

[501] I also decline to make an adverse inference against Vannatta because he elected not to testify. A respondent is free to decide whether or not to testify in their defense and regardless of whether or not they choose to testify, Staff still has the burden to prove the allegations on a balance of probabilities[98] and I have found in this case that Staff failed to meet that burden.

3. Christopher Candusso

[502] Christopher and Kitmitto had known each other since 2004 and were roommates from June 2011 until January 2015, living in a condominium owned by Christopher's father Claudio. They were friends and socialized together. Staff focussed on the fact that they were roommates and therefore there was opportunity for Kitmitto to tip Christopher with MNPI and Kitmitto admitted that it was possible he disclosed MNPI to Christopher.[99] However, this tentative and unsure admission alone does not reflect the entirety of the circumstantial evidence.

[503] Christopher and Kitmitto both testified that they did not regularly discuss stocks, particularly those Kitmitto covered at work. Christopher's knowledge of Kitmitto's employment was limited to the fact that he was an analyst at Aston Asset Management, which he understood to mean that Kitmitto researched different companies in the gaming and tech industry and provided recommendations to fund managers.

[504] While Kitmitto did occasionally mention to Christopher an investment he thought Christopher could be interested in, Christopher tended to rely on his own research when making investment decisions based on the information he gathered from reading Stockhouse posts and watching BNN. Kitmitto was unaware of what companies Christopher invested in. Notably, while they were roommates, Christopher's investments did poorly and he invested in what Staff described as the "risky" mining sector, a sector which Kitmitto did not cover. I prefer to characterize the mining, oil and gas and resource sectors as "cyclical" rather than risky – the rock and oil and gas does not go anywhere until needed and extracted. It is common knowledge that the mining sector has a similar economic cyclical situation to the oil and gas sector and that both sectors suffered declines in 2014.

[505] Kitmitto told the Panel that he was fairly confident that he did not share any MNPI with Christopher. Kitmitto did not waver in his responses and was consistent and candid. As mentioned above, I find Kitmitto credible and believe his testimony. During cross-examination, Kitmitto adopted his compelled interview testimony wherein he responded to Staff's question of whether it was possible that MNPI "slipped out" in a discussion with Christopher by saying, "I would like to think that it didn't. I'm pretty sure it didn't."[100] When pressed on this and asked again whether it was possible that it slipped out, he stated, "I'm fairly confident it didn't."[101] I accept Kitmitto's candid testimony that he did not pass the alleged Amaya MNPI to Christopher.

[506] Christopher had a business degree and was capable of making his own decisions. In addition, Christopher provided evidence that his investment decisions were not based on information from Kitmitto. The evidence showed that Christopher waited a long time while watching the gaming industry before he decided to purchase Amaya shares, including waiting until after the April 14, 2014 Globe and Mail article, the April 29, 2014 CalvinAyre.com post and the May 2, 2014 Motley Fool article. Specifically, it is just as likely that Christopher relied on the following information when deciding to invest in Amaya for his May 8 and May 14, 2014 trades (after the price dip and just before the May 15, 2014 Third Quarterly financial statements were released and when he knew he would be getting some dividend), and did not rely on a tip from Kitmitto:

a. Amaya was one of the few gaming companies listed on a Canadian stock exchange;

b. Amaya was nominated as a finalist for the "2013 Cantech Letter TSX Tech Stock of the Year" and Amaya's CEO won and was announced as the TSX Tech Executive of the Year on January 20, 2014, demonstrating that Amaya was an up-and-coming company in the tech field with a positive future;

c. Amaya had made a number of significant acquisitions, and through its newly acquired subsidiaries had entered into lucrative supply agreements, as well as obtained contracts with US state governments that started to legalize online gambling;

98 *F.H. v McDougall*, 2008 SCC 53 at para 46; *Hutchinson* at para 36
99 Hearing Transcript, Kitmitto (Re), November 6, 2020 at 79 line 4 to 80 line 3
100 Hearing Transcript, Kitmitto (Re), November 6, 2020 at 79 lines 16-17
101 Hearing Transcript, Kitmitto (Re), November 6, 2020 at 79 line 26 to 80 line 3

d. Amaya was being rumoured on Stockhouse to continue to grow by acquisition;

e. Amaya was discussed, in the April 24, 2014 Globe and Mail article, as a stock that was "battered after a recent earnings miss but the Canadian company looks poised to generate substantial growth over the long term … through its services for casinos, while capitalizing on the increased popularity and adoption of online gambling in the United States". This article also noted that Amaya had completed a number of significant acquisitions and was in a position to make another large acquisition, and referred to several analysts who rated Amaya stock as a "buy" or a "strong buy", with the target price from $9.58 to $11.46;

f. Amaya was discussed in a CalvinAyre.com article dated April 29, 2014. The article noted that the company was "on a dip", but its prospects were looking good, as demonstrated by a string of smart and selective acquisitions;

g. Amaya was mentioned as one of three gambling stock picks, along with Great Canadian Gaming and Las Vegas Sands, in a Motley Fool article posted on Stockhouse on May 2, 2014; and

h. Amaya was discussed on several occasions on BNN market calls.

[507] Considering all of the above, in my view, Staff has not proven, on a balance of probabilities, that it is more likely than not that Kitmitto tipped Christopher with the alleged Amaya MNPI. It is equally likely that Christopher did his own investment research and came across public information, including through BNN, about Amaya absent any sharing of information from Kitmitto.

D. Trading volume is not a determinative factor

[508] When assessing the mosaic of circumstantial evidence, many different facts come into play. One such fact is the trading volume of the respondents. Staff's submissions focused on trading volume, specifically that the trading volume on May 1 and May 2, 2014, of Goss, his clients and Fakhry's clients, represented 25% and 18%, respectively, of the daily trading volume in Amaya. Staff focused heavily on this factor. In my view, trading volume is not a determinative factor, because there are too many variables, involving the entire market, in its daily and monthly calculation. The majority of the Panel considered the trading volume along with other circumstantial evidence, such as the interactions and communications of Kitmitto with Goss. However, I take a very different view of those interactions. As set out above and in the Goss section below, there were a number of reasons Goss and Kitmitto may have been interacting and I cannot come to the conclusion that it is more likely than not that Kitmitto tipped Goss with MNPI, and the existence of the trading volume does not sway me in my finding.

[509] Furthermore, as evidenced from the chronology of events listed above, there was high interest in, and rumours and media coverage of Amaya, and many individuals at dealers such as Canaccord, Cormark Securities Inc., Desjardins Securities Inc., and Clarus Securities Inc., institutional large shareholders including investment funds; and other large institutions were aware of and a part of the transaction. The fact that so many people were aware also means that many individuals may have been on restricted lists at their respective firms, just like the restricted list at Aston Asset Management (I note that Amaya was put on Aston Asset Management's restricted list on April 29, 2014, when after the meeting with Amaya's CEO and Canaccord representatives, Kitmitto emailed Aston Asset Management's CCO to add Amaya to the restricted list), and may not have been allowed to trade. The only people at Amaya and dealers, such as Aston Asset Management, who would be legally trading were non-access people not on restricted lists and who were not aware of the transaction. I also note that there was evidence that pre-clearance procedures at Aston Asset Management appeared to be lax and documents went missing. Specifically, George testified that Aston Asset Management's CCO did not send out a company-wide email advising access persons that Amaya had been placed on the restricted list on April 29, 2014, and that other companies were known to have sent a blanket announcement when an issuer was placed on the restricted list. In my view there is insufficient evidence to demonstrate that it is more likely than not that Kitmitto was the source for the tip that influenced the trading volume. It is equally possible that the trading volume, other than possibly by those who settled their cases, was due to the positive news about Amaya set out in the chronology of events.

E. Opportunity is not a determinative factor

[510] Throughout this case Staff focussed heavily on opportunity and on the fact that certain respondents knew each other and had pre-existing professional and personal relationships and Staff submits and asks the Panel to conclude that this creates an opportunity for tipping and sharing MNPI.

[511] There is no dispute that some of the respondents had personal and professional relationships. However, such relationships alone are insufficient to establish insider tipping and trading with knowledge of MNPI. As noted in *Hutchinson*, the facts of a close relationship are "no more consistent with [the respondent] having been involved in the

scheme than they are with his innocence."[102] Furthermore, as held by the Alberta Court of Appeal in *Walton*, opportunity to pass material non-public information is nothing more than an opportunity.[103]

[512] In my view, when looking at opportunity, it is also important to consider it in context with other overlapping factors and it should not be a determinative factor or take on excessive weight. I am concerned that factors are being layered on top of case facts in a way that allows a conclusion of insider trading without an adequate balance with the evidence and other factors and overreliance on "opportunity". The factor of a close relationship providing "opportunity" has to be questioned in its application. If we find insider tipping and trading takes place because people work together, without adequate evidence of them using their proximity and interactions for same, then in my view we are not acting in the public interest, but rather decimating businesses.

F. Profitability is not a determinative factor

[513] Staff also placed emphasis on the profits that certain of the respondents made when trading Amaya. Staff alleges that high profits are a factor that indicates the likelihood of insider tipping and trading. In my view, profitability in trading should not be the "nail in a coffin". When a stock is doing well and its price is rising like seawater with the tide coming in, such as Amaya stock was in this case where the electronic and online gaming market "water" was rising, then all boats rise. Further, when a sector is doing well, it is not uncommon for investors to jump in and take advantage of an investing opportunity in a sector that is on the rise. Investing or de-investing on momentum is common. Profit alone is not a determinative factor, and when considered in the context of other factors caution should be taken not to over-emphasize this factor. When considered with other factors, its importance will vary depending on the circumstances. For example, highly profitable trades will not be out of the ordinary for successful investors (for example, this applies to Fielding, an aggressive investor with a track record of profits as set out in paragraphs 664 and 665). Where there is no direct evidence and only circumstantial evidence, a cautious approach needs to be taken to ensure that factors such as profitability (or opportunity and trading volume mentioned above) are not given excessive weight when other pieces of the mosaic of circumstantial evidence (in this case the chronology of information and rumours available on the internet), and the testimony of multiple credible respondents, provide more context to piece together a more fulsome story.

G. Adverse inferences

[514] I note that Kitmitto reported to Cheng, and that Cheng entered into a settlement with respect to the tipping allegations brought against him. Other individuals have also entered into settlement agreements relating to tipping and insider trading relating to Amaya MNPI in a separate proceeding. I recognize that the settlement agreement documents themselves are not in evidence before the Panel and are from a separate proceeding and that the facts contained within the settlement agreements are the result of negotiations between the parties and such negotiated and agreed upon facts may be different from those found at a contested merits hearing. I do not rely on the specific facts in the settlement agreements, but I do acknowledge that such settlement agreements exist and their existence was also mentioned in the George Affidavit at paragraph 13. Without going into any of the facts of those agreements, Staff has recognized in the George Affidavit that others have settled regarding conduct related to Amaya.

[515] The difficulty that arises is that neither Staff nor any of the respondents elected to call any of the individuals who settled as witnesses in this proceeding. At the hearing, both Staff and certain respondents submitted that adverse inferences should be drawn where an individual did not call a witness, on the basis that, since that witness was not called, then that witness must not have been helpful to their case. Staff submitted that it is established precedent that the Panel can draw an adverse inference against a respondent who fails to testify,[104] and Kitmitto submitted that similarly an adverse inference should be drawn against Staff because Staff purposely did not call Cheng and others at Aston Asset Management as a witnesses and as such it can therefore be inferred that their testimony would have been unfavourable to Staff's case. Staff also submitted that the respondents could have called Cheng as a witness. While it is true that none of the respondents called any of the individuals who settled as witnesses, this was Staff's case to prove. As set out by the Supreme Court of Canada, the burden of proof is a balance of probabilities based on clear and cogent evidence.[105] Staff needs to show on a balance of probabilities that their evidence supports the allegations. Whether or not the evidence of any of the individuals who settled would have been relevant or helpful is unknown and it would be speculation to consider what they may or may not have testified about if called. Nevertheless, the fact that they were not called as Staff witnesses leads me to believe that Staff would not have found their evidence helpful in support of Staff's case and I draw an adverse inference against Staff.

[516] I make such an inference because Staff's case heavily relies upon the opportunities that were available for Kitmitto to share information with Goss and Vannatta, but neglects to acknowledge that there were also other possible opportunities for Goss and Vannatta to speak with others at Aston Asset Management who were in possession of MNPI. Staff's

102 *Hutchinson* at para 145

103 *Walton v Alberta (Securities Commission*), 2014 ABCA 273 (CanLII) (***Walton***) at para 31

104 Staff cites *Sextant Capital Management Inc (Re),* 2011 ONSEC 15, (2011) 34 OSCB 5829 at paras 245-246; *Hutchinson (Re),* 2019 ONSEC 36; (2019) 42 OSCB 8543 at paras 64-65, 215, 268 and 388; *Money Gate Mortgage Investment Corporation (Re),* 2019 ONSEC 40, (2019) 43 OSCB 35 at paras 71 and 77; *Mega–C Power Corporation (Re),* 2010 ONSEC 19, (2010) 33 OSCB 8290 at paras 275-276

105 *F.H. v McDougall*, 2008 SCC 53 at para 46

evidence only narrowly looks at the relationships with Kitmitto, Goss and Vannatta and fails to look at or take into account possible relationships with others at Aston Asset Management. Surely Goss and Vannatta had occasion to interact with others at Aston Asset Management. They did not solely interact with Kitmitto. In my view, it is equally possible that other individuals at Aston Asset Management, including management personnel, could have been the source of the alleged Amaya MNPI and Staff did not provide sufficient evidence through the witnesses called at the hearing to prove otherwise.

[517] Further, I note that two of the settlement agreements and an excerpt from the third settlement agreement were submitted to the Panel by Staff in their Book of Authorities accompanying the closing submissions and Staff cites the settlement agreements in their written closing submissions. This was after the Panel told the parties at the hearing that we recognize a settlement is a negotiated document, not based on evidence, and that when we make our decision in this matter, it will be based on the evidence in this matter. While the settlement agreements are not in evidence, by including them in their Book of Authorities and submissions there is the concern that Staff is providing the settlements to show guilt by association. I note that since the individuals who settled were not called as witnesses, none of the respondents had any opportunity to cross-examine them and the settlement agreements are not helpful in the circumstances and I do not rely on the settlement agreements.

H. There was no allegation that Kitmitto engaged in insider trading

[518] Staff did not allege that Kitmitto himself engaged in insider trading. I note that the majority of the Panel mentions at paragraphs 200 to 202 that Kitmitto sent an email to one of Aston Asset Management's equity traders instructing the trader to buy 200,000 Amaya shares for two of the Aston Asset Management funds on the instructions of his boss Cheng. The majority acknowledges that there was no insider trading allegation regarding this trade. However, the majority finds that the trading instructions support an inference that Kitmitto's attitude towards compliance lacked rigour. I disagree and in my view such an inference is a stretch. There is nothing nefarious or out of normal business practice with Kitmitto executing Cheng's instructions for a trade for a non-materially sized rebalancing of Amaya on April 29, 2014 at 1:47 pm. I accept Kitmitto's evidence that he was following instructions from his boss. In any event I found that the information Kitmitto received at the April 29, 2014 meeting was not material as there was lack of deal certainty at the time and therefore there would be no concerns with Kitmitto providing instructions for this trade to occur.

I. Conclusion

[519] The majority Panel finds that Kitmitto received Amaya MNPI at the April 29, 2014 meeting and was therefore in a special relationship pursuant to s. 76(5) of the Act. I disagree. I find that Kitmitto did not receive the alleged Amaya MNPI at the April 29, 2014 meeting. However, even if I am wrong on this first point, I find that Kitmitto did not tip Goss, Vannatta or Christopher with the alleged Amaya MNPI and therefore he did not breach s. 76(2) of the Act. It is equally likely, based on the mosaic of circumstantial evidence, that the interactions and communications between Kitmitto and these individuals were unrelated to the alleged Amaya MNPI and there were other sources of Amaya information non-publicly available (for example the sources being others who worked at Aston Asset Management) and publicly available (as set out in the chronology at paragraph 467), which may have been relied upon.

IX. STAFF DID NOT ESTABLISH ON A BALANCE OF PROBABILITIES THE ALLEGATIONS LOWER DOWN ON THE TIPPING CHAIN OCCURRED

[520] As mentioned above, I found that the information received by Kitmitto at the April 29, 2014 meeting was not yet certain enough to constitute MNPI. Further, I find that even if it was MNPI, on a balance of probabilities it has not been demonstrated that Kitmitto tipped Goss, Vannatta and Christopher with the alleged Amaya MNPI. As these individuals never came into possession of MNPI, they were never in a position to engage in insider trading or tip others with MNPI. However, as the majority of the Panel did find that MNPI was passed down the tipping chain and further insider tipping, trading and recommending occurred, I find it necessary to comment and indicate where I come to a different conclusion and I also address the allegations with respect to misleading Staff and concealing trading from Aston Asset Management.

A. Vannatta

[521] As stated above, Staff did not prove on a balance of probabilities that it is more likely than not that Kitmitto tipped Vannatta with the alleged Amaya MNPI. It is equally likely that Vannatta could have overheard information about Amaya from others at Aston Asset Management and/or Aston Financial, he could have conducted his own investment research, and he could have come across public information about Amaya, all absent any sharing of information from Kitmitto.

1. Staff breached the witness exclusion order

[522] Before considering the allegations relating to Vannatta, I must address Vannatta's submission that Staff breached the Panel's witness exclusion order and that this prejudiced him by allowing Rnjak to tailor his evidence on issues that had a high impact on the outcome of the hearing.

[523] On October 9, 2020, the Panel issued an order excluding all witnesses from attending the hearing and reminded the parties that after a witness has testified, they were not to speak with any other witnesses about their testimony. Vannatta submits that Staff breached the witness exclusion order when conducting a pre-hearing preparation of Rnjak on October 20, 2020 after the cross-examination of George and that as a result, the Panel should give no weight to Rnjak's evidence, should draw an adverse inference against Staff's case and should dismiss the allegations against Vannatta.

[524] Specifically, Vannatta argues that Staff breached the witness exclusion order by:

a. telling Rnjak that there were pre-clearance forms with no associated approval email from Rnjak and it might come up in the hearing;

b. asking Rnjak about the handwriting on Vannatta's transaction histories which appears different from other writing by Vannatta on other documents; and

c. with respect to the Slemko review (an internal review at Aston Asset Management in 2016 lead by Aston Asset Management's then president, Slemko), advising Rnjak of questions asked of George in cross-examination relating to gaps in Rnjak's record keeping and Vannatta's defence being that Rnjak lost documents that Vannatta had provided.

[525] I disagree with the majority's finding that Staff did not breach the witness exclusion order. I find that the witness exclusion order was breached in all three instances Vannatta identified and that Rnjak's evidence on the points in question are not reliable. Specifically:

a. While the topic of preclearance forms and whether Rnjak always approved trades by email was discussed in the earlier witness preparation session, I find that the specific information provided to Rnjak by Staff at the October 20 session, that he would be cross-examined on the fact that there specifically were pre-clearance forms with no associated approval email, to be a breach of the witness exclusion order.

b. With respect to the handwriting on the Scotia transaction histories differing from other samples of Vannatta's handwriting, the October 20 preparation session notes indicate that Staff told Rnjak that Staff noticed the handwriting appeared to be different. There is no evidence this topic was part of Rnjak's September 20 preparation session or that Rnjak was aware of the different handwriting previously. The issue of the apparently different handwriting was, however, a part of Vannatta's cross-examination of George prior to the October 20 preparation session. I find that Staff's raising of the issue of the different handwriting to be a breach of the witness exclusion order.

c. The October 20 preparation notes show that Staff shared with Rnjak information about questions from George's cross-examination so that Rnjak knew what to expect on his cross-examination. The questions related to gaps in Rnjak's record keeping and Vannatta's defence being that Rnjak lost documents Vannatta had provided. While some of this may have been discussed with Rnjak earlier, at the October 20 meeting, it appears Staff gave Rnjak more specific guidance about the questions he was going to be asked and information about Vannatta's defense. I find this is a breach of the witness exclusion order.

[526] I accept Vannatta's submission that the purpose of an order excluding witnesses is to ensure that witnesses do not alter or tailor their evidence based on the evidence provided by other witnesses. It is improper for counsel to communicate to excluded witnesses any details of evidence given in their absence, including disclosing questions asked in cross-examination which is what Staff did in the present case. I rely on *R v Singh*[106], where the Court agreed that sharing with an excluded witness of a question that was asked in Court was a breach of the witness exclusion order, albeit a less significant breach than disclosing the answer given in response. In the present case because Rnjak was aware of questions he would be asked on cross and questions that George was asked on cross relating to compliance issues Rnjak dealt with, this allowed Rnjak to possibly tailor his subsequent testimony.

[527] I find that while these breaches are serious, they are not as significant as disclosing answers given by other witnesses. Accordingly, I give no weight to Rnjak's evidence on these points but decline to draw an adverse inference against Staff's case against Vannatta. For the reasons outlined in detail below, I find that Staff did not prove the allegations against Vannatta for other reasons separate from Staff's breach of the witness exclusion order.

2. Vannatta was not in a special relationship with Amaya

[528] Staff asked the Panel to infer that Vannatta knew or ought to have known that Kitmitto was a person in a special relationship with Amaya based on Vannatta's awareness that Kitmitto attended a meeting with Amaya's CEO and had signed an NDA; the Bloomberg chats between Vannatta and Kitmitto; and Vannatta's own experience as an Aston Asset Management portfolio manager and as a chartered professional accountant. Staff also submit that as a registrant, a

[106] 2018 ONSC 5230 at paras 34-37

higher degree of vigilance was expected of Vannatta. I acknowledge the fact that Vannatta was registered as an Advising Representative with Aston Asset Management, Portfolio Manager, Investment Fund Manager and Exempt Market Dealer and that some previous case law has found the misconduct of a registrant to be an aggravating factor (as a registrant should have known better and be held to a higher standard), however I do not find that Vannatta behaved in a manner less than the standard that what would be expected of a portfolio manager and chartered professional accountant and do not find there was any misconduct or any aggravating factors.

[529] The majority of the Panel rely on the fact that Kitmitto and Vannatta were friends who shared an office at Aston Asset Management and participated in a persistent Bloomberg chat and conclude it is more likely than not that Kitmitto shared the Amaya MNPI with Vannatta. In their analysis of whether Vannatta was in a special relationship with Amaya, the majority relies on the following factors: (a) Vannatta's personal and professional relationship with Kitmitto; (b) the timely, uncharacteristic, and risky nature of Vannatta's trading in Amaya; (c) the steps Vannatta took to conceal his trading from Aston Asset Management Compliance; and (d) Vannatta's misleading statements to Staff during his compelled interview.

[530] That conclusion is unsupported by the mosaic of circumstantial evidence in this case and is also dependent upon a finding that Vannatta concealed his trading from Aston Asset Management Compliance and misled Staff, which I find did not occur, for reasons detailed below at paragraphs 540 to 555. Based on the following, I find that Vannatta was not in a special relationship with Amaya. When I consider the evidence that is before me, I draw an inference that it is equally as likely that Vannatta relied on his own research and may have learned information about Amaya from other sources and did not rely on information from Kitmitto prior to his purchase of Amaya.

[531] Vannatta was aware that Kitmitto was an analyst that covered Amaya. Vannatta had spoken to Kitmitto about Amaya being a good stock and that a number of gaming stocks, including Amaya, were hot and doing well. Since Vannatta worked at Aston Asset Management, there were a number of opportunities for him to learn or overhear information about Amaya from others in the Aston Asset Management office and elsewhere instead of Kitmitto. Vannatta could have also relied on information about Amaya from online sources, a number of whom reported positive news and commentary about Amaya. I find that while Kitmitto and Vannatta shared an office and had spoken about Amaya, Vannatta's interest in and decision to purchase Amaya was independent of Kitmitto and he did not rely on Kitmitto's advice about which stocks to invest in. Vannatta's trades were consistent with his trading pattern and while his trading was a bit risky, it was not excessively so for someone working in the investment industry who thought a stock was poised for growth. I discuss Vannatta's trading in more detail below.

3. Vannatta's insider trading allegations are not proven

[532] The timing and nature of Vannatta's trades do not match up with being dependent on the alleged Amaya MNPI from Kitmitto. It is equally as likely that Vannatta's interest in a hot stock poised for growth, the opportunities he had working at Aston Asset Management to learn or overhear information about Amaya from others in the office and that he could have conducted his own independent research and come across public information about Amaya, led to Vannatta's purchase of Amaya. Specifically:

a. On October 24, 2013, a comment was made by solarman2013 on a Stockhouse thread about Amaya, stating "This company is a takeout at $20 by end of next year by some bigger online play. Don't be surprised if an internet giant comes along and makes that kind of offer."

b. On December 16, 2013, an article by Cantech listed Amaya as a finalist for the TSX tech stock of the year and noted that Amaya was a key force in the legalization of online gambling in the United States.

c. On April 24, 2014, the Globe and Mail published an article which noted that Amaya looked poised to generate substantial growth over the long term, that the company was in a position to make another large acquisition and that several analysts rated Amaya as a "buy" or a "strong buy".

d. On April 29, 2014, an article was posted on CalvinAyre.com commenting that despite Amaya's recent losses, there are many reasons to be optimistic about Amaya's future in the next few years and that it is growing responsibly. That same day, Vannatta purchased 1,750 securities of Amaya for $11,991 in his Scotia RRSP account. This trade occurred prior to Kitmitto's meeting with representatives from Amaya's management to discuss a potential Amaya transaction.

e. On May 2, 2014, an article was posted on Motley Fool noting that investors who believe that online gaming is the next big growth area in the industry should look at Amaya Gaming. The article noted that Amaya is a play on the United States government approving online gaming and the company recently acquired Cadillac Jack, a maker of electronic slot machines, to provide a nice steady business for the company while it waits for other jurisdictions to open up online gambling.

f. On May 6, 2014, a post was made on Stockhouse from solarman2013, commenting that Amaya's basic premise and strategy is solid, they are growing fast and have the cash to make another acquisition. The post noted that

given Amaya's CEO, CFO and management depth, their stock is a long term investment for anyone who wants to retire well. Later that same day, Vannatta used $5,000 from his line of credit and purchased 2,043 securities of Amaya for $16,646 in his Scotia TFSA account.

g. On May 9, 2014, a post was made on Stockhouse that referred to commentary by an investment analyst who recommended Amaya and predicted that it was "looking at big, big profits later on".

h. On May 14, 2014, a post was made on Stockhouse from solarman2013, stating that they are expecting good news from Amaya and that when analysts are almost unanimous that Amaya's stock is worth north of $9 easily, it means they surely know something the public doesn't. That same day, Vannatta used his line of credit to purchase 410 securities of Amaya for $2,978 in his Scotia Regular account.

i. From August 11, 2014 to September 14, 2015, Vannatta sold all his Amaya shares, beginning two months after the announcement of the PokerStars acquisition.

[533] As highlighted by the sample above, there was numerous positive news, information and speculation about Amaya around the time of Vannatta's purchases of Amaya. Based on the mosaic of circumstantial evidence in this case, there is insufficient evidence to conclude that Vannatta was motivated to purchase Amaya shares based on MNPI he received from Kitmitto. Vannatta did not have a history of relying on Kitmitto for investment advice, nor is there evidence he did so for his purchases of Amaya. Vannatta first purchased Amaya shortly after the release of the Globe and Mail article which framed Amaya in a very positive light prior to Kitmitto's meeting with Amaya management to discuss a potential transaction, and he did not sell his shares immediately after the June 12, 2014 announcement. To conclude that Vannatta traded Amaya shares with possession of the alleged Amaya MNPI would be mere speculation and is unsupported by the evidence in this case.

[534] The majority of the Panel found that Vannatta's trading was timely, risky, and uncharacteristic, and that this supported their finding that Kitmitto tipped Vannatta with Amaya MNPI and Vannatta traded with knowledge of that information. With respect, I disagree. Vannatta managed a resource fund at Aston Asset Management and was an experienced investor. He previously invested in energy and resource stocks, areas he was familiar with due to his Western Canadian upbringing and education, his work at Aston Asset Management and his other board and market investment experience. He was on the boards of two private companies, New Wave Energy Services and Salida Energy, both based in Alberta, evidencing that his advice was sought out in the local community.

[535] Vannatta's trading in Amaya was not uncharacteristic, but rather consistent with his demonstrated appetite for investing in cyclical sectors, which can be volatile, but have big potential upside. Stock markets can go up and can crash down. In 2014, the oil and gas sector experienced negative cyclical issues resulting in a large downturn in stock prices and as a result, Vannatta sold his stocks and decided to invest in the gaming sector. In my view, the amount he invested in Amaya was not out of the ordinary for him or a departure from the risks he took when investing. While Vannatta's investment in Amaya was a bit risky, it was not excessively so for someone working in the investment industry who thought a stock was poised for growth, and which had a real business and revenue so it was not likely to drop precipitously as the resource and energy investments he had invested in had done when the market turned. It is likely that Vannatta saw Amaya as a rising stock and, if he got in early enough, he could make money to pay off his moderate debts. As discussed above in paragraph 499, I do not find Vannatta's debt to be a determinative factor nor do I conclude that his actions were motivated by his debt. Amaya was a company that had seen a significant amount of growth and was constantly mentioned positively in online posts, news and articles. There was so much positive public information about Amaya at the time and any of that could have prompted Vannatta to purchase its stock and feel confident about his choice.

[536] In my view, Vannatta's decision to purchase Amaya shares and the timing of his trades is just as likely to be motivated by the vast amount of positive publicly available information about Amaya and his interest in a stock poised for growth. As a portfolio manager at Aston Asset Management, Vannatta also had the education, experience and knowledge to understand and interpret information about Amaya in the public forum and could have overheard any amount of information about Amaya from individuals in the office other than Kitmitto. I find that Staff did not prove the allegation of insider trading against Vannatta.

4. Vannatta did not tip his relatives

[537] Since I have found that Kitmitto did not tip Vannatta with the alleged Amaya MNPI and that Vannatta never came into possession of the alleged Amaya MNPI, it follows that Staff has not proven that Vannatta tipped his relatives CV, DU, NU, and KU with the benefit of the alleged Amaya MNPI. Therefore, I find that Staff did not prove the allegations of insider tipping brought against Vannatta.

[538] The majority found that the trading by Vannatta's relatives was timely, profitable and either uncharacteristic or opportunistic, and that this supported their finding that Vannatta tipped his relatives with Amaya MNPI. The majority of the Panel put significant weight on the fact that all four of Vannatta's relatives traded in Amaya starting on April 30, 2014, the day after April 29, 2014 when Kitmitto had a meeting with the Amaya CEO at the Aston Asset Management office.

The majority found that Vannatta learned about Amaya MNPI, given their conclusion that Kitmitto had MNPI and disclosed same to Vannatta. However, there is another equally plausible explanation for the trading by Vannatta's relatives, and that is the Globe and Mail article published on April 24, 2014, which included positive information about Amaya. The article commented that Amaya looked poised to generate substantial growth over the long term, that the company was in a position to make another large acquisition and that several analysts rated Amaya as a "buy" or a "strong buy". This is an article from a well-known newspaper with national reach (accessible to Vannatta's relatives in Alberta) and made positive information about Amaya broadly available and findable.

[539] With respect, the circumstantial evidence in this case falls far short of a conclusion that Vannatta tipped others. As the majority noted in their decision, Staff did not lead any evidence, nor obtain the records of telephone calls or emails between Vannatta and any of his relatives, nor call any of them to testify as witnesses at the hearing. There is also no direct evidence before me that Vannatta contacted any of his relatives prior to their purchases of Amaya, nor any evidence that he informed his relatives of the alleged Amaya MNPI. As well, at least one of Vannatta's relatives, CV, owned Amaya shares prior to April 2014. Evidence of profitable trades during a period of time when there was a lot of online positive news about Amaya (such as the April 24, 2014 Globe and Mail article), and without evidence of any discussions between Vannatta and the alleged tippees, is insufficient to establish an allegation of insider tipping. I find there is insufficient evidence to conclude that Vannatta tipped his relatives with the alleged Amaya MNPI.

5. Vannatta did not mislead Staff

[540] Staff alleges that during compelled interviews, Vannatta misled Staff, contrary to s. 122(1)(a) of the Act, by claiming he:

a. did not know he traded Amaya securities on May 14, 2014;

b. had submitted brokerage statements for each of his three Scotia accounts to Aston Asset Management Compliance for the period of April to June 2014;

c. had pre-cleared his April 29, May 6, and May 14, 2014 trades in Amaya with Aston Asset Management Compliance;

d. did not intentionally select a 45-day range on the transaction histories for his Scotia RRSP and TFSA accounts that he provided to Aston Asset Management Compliance; and

e. had provided Aston Asset Management Compliance with a transaction history for his Scotia Regular account for April and May 2014.

[541] I disagree with the majority, and I find that Vannatta did not mislead Staff during his compelled interviews on October 19, 2016 and August 16, 2017.

[542] Rnjak was Aston Asset Management's Chief Compliance Officer. I am not relying on Rnjak's evidence relating to the topics set out at paragraph 524 where the witness exclusion order was breached. Regarding the rest of Rnjak's testimony I find that Rnjak was unreliable and had difficulty recollecting events related to Vannatta's trading compliance and I give his evidence no weight. The following exchange during Rnjak's cross-examination supports this:

> Q. But I also take it from your evidence today that today, you're suffering from the ability to recollect the events accurately because they occurred five to six years ago, correct?
>
> A. "Suffering" is a strong word, but yes.
>
> Q. Yeah. Poor choice of words, but you acknowledge you've got a recollection problem, correct?
>
> A. Yes.[107]

[543] At the hearing Rnjak testified he had no independent recollection of the documents received by Vannatta. He also conceded that he may have in advertently lost some of the documents relevant to Vannatta.

[544] Staff relies on the documents received from Aston Asset Management's Compliance to support their position that Vannatta misled Staff, however, Staff cannot demonstrate that they received all the appropriate documents from Aston Asset Management in the first place. Due to gaps or incompleteness of Aston Asset Management's Compliance Department it is likely that there could have been trading pre-clearance forms that were provided by Vannatta and subsequently lost by Rnjak. I agree with Vannatta's submission that due to the incompleteness of Rnjak's evidence, Staff cannot prove that Vannatta misled Aston Asset Management and Staff.

[107] Hearing Transcript, Kitmitto (Re), October 29, 2020 at 50 line 25 to 51 line 3

[545] With respect to (a) the May 14, 2014 trade and (b) whether Vannatta submitted the brokerage statements for each of his three Scotia accounts, during his August 16, 2017 compelled interview Vannatta testified that to the best of his knowledge he provided all the statements, including the one with the May 14, 2014 trade to Rnjak. Staff questioned Vannatta as to why Aston Asset Management didn't have that statement which included the May 14 trade. Vannatta could not explain why the statement was missing from Aston Asset Management and he informed Staff that he gave all his statements to Rnjak every quarter. I find, based on Rnjak's evidence at the hearing, that it is likely Rnjak lost this statement and that is why Staff did not have it. It was not due to Vannatta misleading or concealing anything from Staff.

[546] With respect to the pre-clearance forms, Vannatta testified during his compelled interview with Staff that he filled out pre-clearance forms for all his Amaya trades including the May 14 trade. He also testified that the Compliance Department at Aston Asset Management was loose and that his practice was to fill out a pre-clearance trading form and put it on Rnjak's desk, instead of emailing the form to Rnjak. Vannatta also testified that he would store copies of his pre-clearance forms on his computer at the office.

[547] During Staff's investigation of the offices of Aston Asset Management, they were notified that Vannatta's hard drive had been wiped by Aston Asset Management upon his termination and that Aston Asset Management had no pre-clearance forms on file for Vannatta. With the hard drive wiped, and Vannatta having been terminated with no access to his computer, Vannatta was in no position to provide any relevant documentation concerning his trades in Amaya, since he only saved copies of all his pre-clearance forms on his work computer. In my view, Vannatta was not misleading Staff. In this situation it was impossible for him to access the pre-clearance forms on his work computer as he was terminated and the computer was wiped upon his termination. I also note that Vannatta had no control with respect to Aston Asset Management wiping his computer.

[548] Further, while Aston Asset Management had initially told Staff's investigators that they had no pre-clearance forms on file for Vannatta, after reviewing emails George subsequently found a pre-clearance form for Vannatta for a trade in October 2014 where the computer record could not be found. After George made subsequent requests to Aston Asset Management, Rnjak checked his hard copy files of pre-clearance forms and located 6 pre-clearance forms from Vannatta in 2014. Vannatta only made three trades, which were purchases of Amaya. The fact that Rnjak later found hard copies of Vannatta's pre-clearance forms after first informing Staff that they had no pre-clearance forms for Vannatta demonstrates the lax record keeping at Aston Asset Management. This was no fault of Vannatta's and Vannatta's assertion in his compelled interview that he did provide pre-clearance forms to Rnjak was correct as the forms where later found by Rnjak. Vannatta was not misleading Staff.

[549] Given the credibility concerns with Rnjak's evidence and the breach of the witness exclusion order, I rely on Vannatta's testimony during his compelled interview with Staff that he filled out pre-clearance forms for all his Amaya trades, including the May 14, 2014 trade and left them on Rnjak's desk. Given the above, there is insufficient evidence to conclude that Vannatta misled Staff. It is just as likely that loose practices in the Compliance Department at Aston Asset Management led to confusion as to whether Vannatta pre-cleared his trades, and Aston Asset Management's wiping of Vannatta's computer make it impossible to prove either way.

[550] Regarding Staff's allegation that Vannatta misled Staff by claiming he did not intentionally select a 45-day range on the transaction histories for his Scotia RRSP and TFSA accounts, that he provided to Aston Asset Management Compliance, I find that Vannatta did not mislead Staff. Staff's position is that Vannatta manipulated the transaction histories in his Scotia RRSP and TFSA accounts and used the 45-day range to conceal his trading from Aston Asset Management and Staff. In my view, the evidence demonstrates that it is likely that any discrepancies with the date ranges on the transaction histories is due to human error and difficulties with the Scotia iTrade website.

[551] Bawden, a Senior Compliance Officer at Scotia iTrade was called as a witness. He testified that the default setting for the Scotia transaction history reports was 45 days and that a user could override the 45-day default setting and use other date ranges besides 45 days including 90 days, one year and YTD. With a default setting of 45 days, this means that even if March 25 to June 25, 2014 was chosen as the date range, the transaction history reports would default to show only a 45-day trading history. Bawden testified that there was allegedly a button to click to override the 45-day default setting but even he could not find that button during his testimony before the Panel. Bawden conceded that there is always the possibility of human error when it comes to producing these transaction history reports. The testimony of Bawden demonstrated that even Bawden had his own difficulties in trying to work through the Scotiabank website and was not ultimately successful in showing how to override the default setting. Staff introduced no evidence nor made any compelling submissions to rebut the evidence from Bawden. I accept Vannatta's evidence from his compelled interview on August 16, 2017 that he did not intentionally select the 45-day date range to hide his trades from Aston Asset Management and Staff. In my view, it is likely human error and difficulty with changing the default settings on Scotia's online platform that contributed to Vannatta being unable to provide the correct date range for the transaction histories. I find that Vannatta did not mislead Staff.

[552] Regarding Vannatta's claim that he provided Aston Asset Management Compliance with a transaction history for his Scotia Regular account for April and May 2014, I accept Vannatta's testimony in his August 16, 2017 compelled interview

that he did provide the transaction summaries. Staff questioned Vannatta as to why Aston Asset Management Compliance did not have a copy of this transaction history and Vannatta could not provide an explanation as to why Aston Asset Management Compliance did not have them. As discussed above, I find that Aston Asset Management Compliance had poor record keeping and I find that, based on Rnjak's evidence at the hearing, it is likely Rnjak lost the transaction histories that were provided to him and that is why Staff did not have them. It was not due to Vannatta misleading or concealing anything from Aston Asset Management or Staff. Given the above, I find that Staff has failed to present clear, cogent, and convincing evidence with respect to the allegation that Vannatta misled Staff.

6. Vannatta did not conceal his trading from Aston Asset Management Compliance

[553] Staff alleges that Vannatta concealing his trading in Amaya securities from his employer. I disagree with the findings of the majority Panel and I find that Vannatta did not conceal his trading from Aston Asset Management Compliance.

[554] As set out above at paragraphs 542 to 545, Rnjak, Aston Asset Management's Chief Compliance Officer had trouble recollecting events and conceded that documents may have been lost. Due to gaps or incompleteness of Aston Asset Management's Compliance Department records, it is likely that there could have been trading pre-clearance forms, account statements and account transaction histories that were provided by Vannatta and subsequently lost by Rnjak and not retained in Aston Asset Management paper records or on their computers after his departure. I rely on Vannatta's testimony in his compelled interviews that he provided the required information and documents to Aston Asset Management Compliance and did not mislead the Compliance Department at Aston Asset Management for the same reasons as set out in paragraphs 544 to 548 above. Vannatta's approach to compliance was responsible, not "cavalier", and I accept his explanations in his compelled testimony that that he filled out pre-clearance forms for all his Amaya trades. Once his computer was "wiped" after his departure, he had no way to reproduce the documentation.

[555] Given the above, I find that Staff has failed to present clear, cogent, and convincing evidence with respect to the allegation that Vannatta misled Aston Asset Management Compliance.

7. Conclusion

[556] I find that, based on the mosaic of circumstantial evidence in this case, it is equally as likely that Vannatta learned information about Amaya through his independent research and from sources other than Kitmitto and that he only learned about the PokerStars acquisition from the press release published on June 12, 2014. I conclude it is more likely than not that Vannatta did not receive MNPI from Kitmitto, did not engage in insider trading and did not tip his relatives CV, DU, NU, and KU. I also conclude that Staff has not established that Vannatta misled Staff during his compelled interviews, nor that he attempted to conceal his Amaya trading from Aston Asset Management Compliance. I find that Staff have not proven any of the allegations against Vannatta.

B. Christopher

[557] As stated above, Staff did not prove on a balance of probabilities that it is more likely than not that Kitmitto tipped Christopher with the alleged Amaya MNPI. It is equally likely that Christopher did his own investment research and came across public information about Amaya absent any sharing of information from Kitmitto.

1. Christopher's credibility

[558] I disagree with the majority's finding that Christopher's evidence about why he bought Amaya shares and when he bought them was not credible. Overall I found Christopher to be a credible witness. Christopher's testimony at the hearing about his independent research leading up to his purchase of Amaya stock was consistent with the testimony he gave at his compelled interview with Staff. In both instances Christopher recalled seeing a number of examples of publicly available information and positive news about Amaya prior to his purchase of Amaya. The fact that Christopher gave more detailed answers about his research at the hearing compared to his earlier compelled interview with Staff is not surprising, given that prior to his testimony at the hearing he had the opportunity to review the information and refresh his memory as part of preparing his defense.

[559] This difference of evidence referred to on different dates and in different documents is not a sufficient reason to find an individual not credible, particularly in light of the number of inter-related parties and large volume of evidence here. I find there is insufficient evidence to suggest that Christopher lacks credibility.

2. Evidence of opportunity is not conclusive

[560] I accept Christopher's evidence that he was not aware of the planned PokerStars acquisition until it was announced on June 12, 2014. Staff have put forward no direct evidence of contact or communications between Kitmitto and Christopher, nor any compelling circumstantial evidence, to suggest that Kitmitto tipped Christopher and Christopher traded with knowledge of MNPI.

[561] Christopher attended university with Kitmitto. Christopher graduated from Wilfrid Laurier University with a Bachelors of Business Administration in 2008. Staff put significant weight on the fact that Christopher and Kitmitto were friends and roommates, and they partied and consumed alcohol together, and therefore there were plenty of opportunities for Kitmitto to tip Christopher. Staff also rely on the fact that Kitmitto did not completely foreclose the possibility that the PokerStars acquisition might have slipped out because he was only "fairly confident" that it didn't.

[562] There is no dispute that Christopher had a personal relationship with Kitmitto. However, that alone is insufficient to establish that Kitmitto tipped Christopher and Christopher then traded with knowledge of MNPI. As noted in *Hutchinson*, the facts of a close relationship are "no more consistent with [the respondent] having been involved in the scheme than they are with his innocence."[108] Furthermore, as held by the Alberta Court of Appeal in *Walton*, opportunity to pass material non-public information is nothing more than an opportunity.[109] The fact that Christopher and Kitmitto were friends and roommates and thus Christopher had the opportunity to receive MNPI from Kitmitto is not conclusive and is unsupported by the evidence in this case.

[563] The evidence in this case shows that while Kitmitto and Christopher were friends and roommates, they rarely discussed stocks, Christopher had an interest in gaming and relied on his own research and not Kitmitto's advice when purchasing stocks, and that Kitmitto did not pass any MNPI about Amaya to Christopher.

3. Christopher was not in a special relationship with Amaya

[564] Staff asked the Panel to infer that Christopher knew or ought to have known that Kitmitto was a person in a special relationship with Amaya based on their close personal relationship, Christopher's awareness of Kitmitto's employment, the specific information known by Kitmitto, and Christopher's uncharacteristic trading in Amaya. I refuse to draw such an inference.

[565] There is no dispute that Christopher had a personal relationship with Kitmitto. They had known each other since 2004 and were roommates from June 2011 until January 2015. They were also friends and occasionally socialized together.

[566] The majority of the Panel rely on the fact that they were roommates and conclude it is more likely than not that Kitmitto shared the Amaya MNPI with Christopher. In their analysis of whether Christopher was in a special relationship with Amaya, the majority relies on the following factors: (a) Christopher's close, personal relationship with Kitmitto; (b) the opportunities that resulted from their relationship and their living arrangements for Christopher to learn about the Amaya MNPI from Kitmitto; and (c) the timely, uncharacteristic, risky and profitable nature of Christopher's trading in Amaya.

[567] That conclusion is unsupported by the mosaic of circumstantial evidence in this case. Based on the following, I find that Christopher was not in a special relationship with Amaya. There is no direct evidence before me that Kitmitto passed MNPI on to Christopher. When I consider the evidence that is before me, I draw an inference that Christopher relied on his own research and did not obtain information or seek advice from Kitmitto prior to his purchase of Amaya.

[568] Kitmitto introduced Christopher to Amaya in late 2013 based on Christopher's interest in gaming and sports betting and Christopher waited six months before purchasing Amaya. There were plenty of online positive news and commentary about Amaya that Christopher could have relied on for information about Amaya instead of obtaining it from Kitmitto. I find that while Kitmitto introduced Amaya to Christopher, Christopher's interest in and decision to purchase Amaya was independent of Kitmitto. Christopher's trades were consistent with his trading pattern both before and after his Amaya trades and were not riskier than his trades in other stocks. I discuss Christopher's trading in more detail below.

[569] There is also insufficient evidence to conclude that Christopher knew Kitmitto was an access person at Aston Asset Management who had access to MNPI as part of his job. Christopher had limited knowledge of Kitmitto's employment. Christopher testified that he knew Kitmitto was an analyst at Aston Asset Management, which he understood to mean that Kitmitto researched companies in the gaming and tech industry and provided recommendations to fund managers. The fact that Christopher knew that Kitmitto was an analyst that covered Amaya does not lead to the conclusion that he knew Kitmitto participated in deal-planning with Amaya or had confidential information about Amaya. Second, Christopher lacked investment industry knowledge or qualifications. Although Christopher had a business degree and was an entrepreneur, he had never worked in the securities industry and was not an investment professional nor a particularly experienced investor. I find there is insufficient evidence to conclude that Christopher received MNPI from Kitmitto or was aware that Kitmitto had access to the alleged Amaya MNPI.

4. Christopher's insider trading allegations are not proven

[570] The timing and nature of Christopher's trades do not match up with being dependent on the alleged Amaya MNPI from Kitmitto. It is equally as likely that Christopher's long time interest in gaming and sports betting, his independent research

[108] *Hutchinson* at para 145
[109] *Walton* at para 31

where he found numerous positive news items and commentary about Amaya, and the momentum in both the gaming and tech sectors at the time led to Christopher's purchase of Amaya. Specifically:

a. In late 2013, over four months before Kitmitto was approached about any meeting relating to Amaya, Christopher was introduced to Amaya by Kitmitto. Christopher testified that Kitmitto thought Christopher might be interested in Amaya because he had always been interested in gaming and sports betting, and in a sector that seemed to be picking up momentum.

b. On December 16, 2013, Christopher saw a Cantech article (described above) which listed Amaya as a finalist for the TSX tech stock of the year and noted that Amaya was a key force in the legalization of online gambling in the United States.

c. On April 24, 2014, Christopher saw a Globe and Mail article (described above) which noted that Amaya looked poised to generate substantial growth over the long term and that the company was in a position to make another large acquisition. The article also referred to several analysts who rated Amaya stock as a "buy" or a "strong buy".

d. On May 8, 2014, Christopher transferred $5,000 from his joint line of credit with Claudio to his BMO InvestorLine account and purchased $5,404 worth of Amaya shares.

e. On May 9, 2014, Christopher saw a Stockhouse post (described above) that referred to commentary by an investment analyst who recommended Amaya and predicted that it was "looking at big, big profits later on".

f. On May 15, 2014, Christopher saw Amaya's press release about its first quarter financial statements (described above), that commented on the company's history of successful acquisitions, strong year-over-year growth in revenues, an increasing market share in online and mobile games and that the company had acquired new debt and was offering $15 warrants. That same day, Christopher saw a Stockhouse post which commented that the $15 convertible floor of the warrants meant that "they think the real potential upside is way north of that … and [it's] quite possible that the extra cash is going to be used for yet another acquisition in the middle of the year or so."

g. On May 16, 2014, Christopher received $10,500 in dividends from Claudio's corporation. On May 20, 2014, Christopher repaid the $5,000 advanced from the joint line of credit and on May 21, 2014, he purchased $5,386 worth of Amaya shares with the remaining funds.

h. On September 9 2014, three months after the announcement of the PokerStars acquisition, Christopher sold his Amaya shares.

i. Christopher invested the entire proceeds from his Amaya trade in the warrants of the Intertain Group Limited, another gaming company listed on the TSX, and subsequently continued to invest in technology and gaming companies.

[571] The majority found that Christopher's trading was timely, uncharacteristic and risky, and that this supported their finding that Kitmitto tipped Christopher with Amaya MNPI and Christopher traded with knowledge of that information. With respect, I disagree. Christopher's trading in Amaya was not uncharacteristic but rather entirely consistent with his trading pattern both before and after the Amaya trades, which involved betting all his funds on one stock (or maximum two) and holding it for several months before selling and moving on to another stock. The fact that Christopher had never purchased gaming stock before is also not conclusive, as he had an interest in gaming, sports betting and technology stocks for a long time prior to buying Amaya. For instance, on April 3, 2014, Kitmitto emailed Christopher a corporate overview deck about Blackbook Technologies, a technology startup, because he knew Christopher was interested in technology stocks. As well, after Christopher sold his Amaya shares, he continued to invest in other technology and gaming companies, including Intertain, evidencing a sustained interest in these sectors beyond an interest in Amaya.

[572] Christopher started, in 2009, investing the dividends received from his father's business into his TFSA, contributing annually a maximum of $5,000 to $5,500, which was not a large amount of money. Christopher's investment in Amaya was consistent with his demonstrated appetite for high risk speculative stocks, such as junior mining issuers, whose stocks can be volatile, but have big potential upside. The new and exciting gaming sector had a similar promise of high risk and high rewards, was constantly in the news and gaining momentum, and could become the next "big thing". Christopher's investment in Amaya was also no riskier than his previous investments in mining stocks where, during the mining economic cycle between 2011 and 2014, Christopher lost money while trading mining stocks. He was not necessarily one to buy and hold, waiting for a cycle to change, though his submissions indicate that he did not sell two of his mining stock holdings.

[573] Amaya was a company that had seen a significant amount of growth, had been a finalist for tech stock of the year, and was one of the few gaming companies listed on the TSX. There was plenty of positive publicly available information about

Amaya that could have prompted Christopher to purchase its stock and feel confident about his choice, with many analysts calling Amaya a "buy". I have concluded that Amaya was not a "risky" stock, but even if Christopher's Amaya trading was a bit risky, it was not excessively so for someone who thought a stock was poised for growth, and had a real business, revenue and versatile technology assets, so it was not likely to drop as precipitously as the prior mining exploration (potentially no revenue) investments he had invested in had done when the market turned.

[574] The fact that Christopher had not purchased stocks for three years prior to his purchase of Amaya can be equally explained by the fact that he had, on paper at least, lost a significant amount of money in previous investments; and Claudio's business was not doing as well financially and he was unable to pay dividends to Christopher. Thus Christopher did not have the funds to invest. By the time he purchased Amaya shares on May 8, 2014, Christopher knew that Claudio's financial circumstances had improved and a dividend was imminent, although he did not know exactly when it would arrive.

[575] Christopher's investment in Amaya was also not especially timely or consistent with him having knowledge of the alleged Amaya MNPI. Instead of buying Amaya at an earlier stage soon after Kitmitto's April 29, 2014 meeting, with all the funds he had available in the joint line of credit with Claudio, Christopher bought Amaya shares much later on May 8, 2014 and May 21, 2014. Christopher borrowed only $5,000 for the first purchase of Amaya shares on May 8, 2014 and then repaid it as soon as he received the dividend. On May 16, 2014, Christopher received $10,500 in dividends from Claudio's corporation. On May 20, 2014, Christopher promptly repaid the $5,000 advanced from the joint line of credit and on May 21, 2014, he purchased $5,386 worth of Amaya shares with the remaining funds. The logical inference is that he was not certain of the success of his trade and was not planning to sell Amaya in the near future, which is inconsistent with the actions of a person who knew that Amaya's stock was about to double in price on the news of a major acquisition. This inference is further supported by the fact that Christopher did not sell his Amaya shares until September 9, 2014. The fact that Christopher held Amaya stock for three months after the announcement supports his explanation that he bought it because he liked what the company was doing and their future prospects rather than on any knowledge of a major acquisition.

5. Christopher did not tip Claudio with the alleged Amaya MNPI

[576] I agree with the majority's finding that Staff has not established, on a balance of probabilities, that Christopher tipped Claudio about the Amaya MNPI. It follows that Staff has not proven that Claudio traded Amaya with the benefit of the alleged Amaya MNPI. While I agree with the majority, I also share my own analysis to highlight the facts in the mosaic of circumstantial evidence that support that Christopher did not tip Claudio.

[577] It is not disputed that Claudio and Christopher were close. They were not just father and son, they were best friends. Claudio trusted Christopher's investment knowledge and tended to purchase the same stocks Christopher did. Unlike Christopher, Claudio was not an avid follower of capital market news and tended to just follow his son's recommendations.

[578] There is no direct evidence of Christopher being in possession of the alleged Amaya MNPI nor passing MNPI to Claudio. It is not disputed that Claudio purchased Amaya shares because Christopher recommended them to him. However, "recommendations" or "advice" that do not include the passing of MNPI are not sufficient to establish either insider trading or tipping.

[579] I accept Claudio's evidence that when purchasing Amaya shares, he relied on Christopher's research and was influenced by Christopher's enthusiasm for the new and exciting gaming sector. This is also consistent with Claudio's trading history as he often bought many of the same stocks that Christopher did.

[580] Claudio's trading history also demonstrates that his Amaya purchase was entirely consistent with his prior investments. Claudio held four self-directed investment accounts that he used for speculative trading. He had a history of investing in high risk, high reward speculative stocks. Moreover, the amount he spent on Amaya stock ($9,818 on May 16, 2014) was fairly conservative, considering that he usually spent between $15,000 and $20,000 and up to over $50,000 on risky and speculative stocks. For Claudio, who had access to over $250,000 in cash and at least $160,000 in available credit at the time, approximately $10,000 was an amount that he felt comfortable investing after the three year long hiatus in trading, in part due to the resource sector downturn.

[581] As well, the fact that Claudio had access to a lot more funds in May 2014, but chose to limit his Amaya purchase to $10,000, also demonstrates that, like Christopher, he was not certain of the success of his investment in Amaya. This action is inconsistent with the actions of a person who knew that Amaya was about to announce a major acquisition and that their stock price would likely double. This inference is supported by the fact that Claudio did not sell his Amaya shares until September 9, 2014, three months after the PokerStars acquisition announcement. It also provides support for Claudio's explanation that he purchased Amaya shares because of its prospects and because of his interest in the new and exciting gaming sector and not because he knew that Amaya was about to announce the acquisition of PokerStars.

6. Christopher did not mislead Staff

[582] I agree with the majority's finding that Christopher did not mislead Staff during his compelled interview on September 8, 2016 by stating that he made his first purchase of Amaya shares with a dividend from Claudio and by denying that he had a line of credit. While I agree with the majority in part, I also share my own analysis to highlight the facts in the mosaic of circumstantial evidence that support that Christopher did not mislead Staff.

[583] Staff did not present sufficient evidence to establish on a balance of probabilities that that Christopher misled Staff in any material respect. At his compelled interview with Staff, Christopher was aware that Staff had access to all his banking and financial records. There was nothing to be gained by him from lying about the information Staff already had access to.

[584] Christopher stated during his compelled interview with Staff that he made his first purchase of Amaya shares with a dividend from Claudio's professional corporation when in fact he used funds from his joint line of credit with Claudio. It is evident from the fact that the money Christopher advanced from the joint line of credit was repaid only a week later, with the dividend from Claudio, that Christopher likely did not intend to rely on the funds from the joint line of credit to make an investment in Amaya. It is at least as plausible that Christopher simply forgot, two and a half years after making the transfers, the details of the mechanics of the transfers and how he made his first purchase of Amaya.

[585] Christopher also stated during his compelled interview with Staff that he did not have a line of credit when in fact he did have a joint line of credit with Claudio. This statement is consistent with both Christopher and Claudio's evidence during the hearing. Christopher testified at the hearing that he did not believe that the joint line of credit belonged to him; that instead it was one of Claudio's lines of credit that he was given access to, to manage his personal and business cash flows at the time. Claudio also testified at the hearing that he was the primary borrower and guarantor for the joint line of credit, that he segmented off $50,000 from his larger personal line of credit to support Christopher's cash flow management and that he considered the joint line of credit to be his. Given this evidence, it is at least as plausible that Christopher's denial that he had a line of credit was based on his understanding of the structure and ownership of the debt – not on his intention to mislead Staff.

7. Conclusion

[586] First of all, I conclude that it is more likely than not that Christopher did not receive MNPI from Kitmitto and therefore it was impossible for him to tip Claudio and engage in insider trading. I find that Staff did not prove the insider trading and tipping allegations against Christopher. I accept Christopher's evidence that he relied on his own research before purchasing Amaya shares and only learned about the PokerStars acquisition from the press release published on June 12, 2014. Secondly, I also find that Staff did not prove the allegation that Christopher misled Staff.

C. Claudio

[587] As I have found above, there was deal uncertainty and while it is unclear when the deal became material, I found that Kitmitto never passed the alleged Amaya MNPI to Christopher. I also found that Christopher was not in a special relationship. Therefore it follows that since Christopher was never in possession of the alleged Amaya MNPI and was not in a special relationship, he could not have tipped Claudio. Therefore, I dismiss Staff's allegation of insider trading brought against Claudio.

D. Goss

[588] As stated above, Staff did not prove on a balance of probabilities that it is more likely than not that Kitmitto tipped Goss with the alleged Amaya MNPI. Considered as a whole, the mosaic of circumstantial evidence shows that Goss had good reason to trade Amaya and that his trading and communications line up with the use of public information only.

1. Goss's credibility

[589] I disagree with the majority's finding that Goss was not credible, in particular, the finding that on cross-examination by Staff, Goss's answers were intransigent and self-serving and often implausible. Overall I found Goss to be credible. I find that Goss gave credible and consistent testimony to the best of his ability during the hearing. I accept Goss's submission that a perfect memory cannot be the standard for any witness. Memories fade over time and a long time has elapsed since the events in this proceeding took place in 2014. Six years later it is normal that a witness may forgot something, provide inconsistent answers and may need to have their memory refreshed. Memory is also not retained as a "recording" or a "transcript" in the brain. We can remember different things at different times when something "twigs" us to remember a different piece from the past. It is not surprising to me that Goss provided different or more fulsome answers at the hearing compared to his earlier interviews with Staff, as he had time to prepare for the merits hearing and refresh his memory as part of preparing his defense. It is perfectly understandable that significant work on memory and research to prepare for the merits hearing was done by respondents, such as Goss, as their initial interactions with Staff went along, and as they came to realize this was not a misunderstanding, but Staff intended to bring a full investigation and allegations

against them. I accept Goss's submission that, unlike his compelled interview by Staff, which he was told would be about Amaya but was actually about many other topics, Goss was able to properly prepare in advance of the merits hearing, including by refreshing his memory with documents. Therefore, I find that Goss was able to give more detailed evidence at the hearing than during his compelled interview. There is not sufficient reason here to find Goss not credible. In addition, I note that Staff has never alleged Goss misled Staff.

2. Goss had an early interest in Amaya and this was not based on a tip from Kitmitto

[590] Goss was (i) recommending Amaya to a number of individuals and (ii) buying Amaya for himself and clients weeks before anyone approached Kitmitto about a meeting regarding Amaya. The evidence supports, on a balance of probabilities, that Goss and his clients had an interest in Amaya before Kitmitto even learned about the potential Amaya transaction.

[591] I accept Goss's evidence and submissions that his interest in the gaming industry, and his investment in it, began long before April 2014. In 2006, Goss invested in Ethoca, which was then an online gaming company. Goss followed Cryptologic, Amaya's predecessor, where his friend and client AE had been employed and in which Fielding had invested; as well as Las Vegas Sands and WYNN, which had well-established land-based operations, and of which WYNN was a potential competitor for the PokerStars purchase. In late 2013, Goss invested $100,000 in Intertain, a then-private online gaming company (of which Fielding was a director), on the basis that "the space was going to be quite exciting". In early 2014, Goss also invested more than $200,000 in World Gaming, another private online gaming company in which Fielding had invested.

[592] With respect to Amaya, on October 23, 2013 Goss recommended and bought 5,000 shares for his long-time and sophisticated client JU, because Goss believed it was a growth stock and because the U.S. market was opening up to online gaming. This is consistent with the chronology I have set out above that lists publicly available information in the fall of 2013 that would entice investment in Amaya. Once JU purchased Amaya, Goss followed Amaya and set up his quote screen to get notifications of new research and information about Amaya. As explained by Goss, "once a client owns a stock, I own it", and so Goss reviewed Amaya's public disclosures, news sources, analyst reports and online commentary, especially by solarman2013 on Stockhouse.

[593] On October 24, 2013, one day after Goss began to follow Amaya closely, solarman2013 commented about Amaya as follows: "This company is a takeout at $20 by end of next year". On October 29, 2013, solarman2013 wrote: "we can see the takeout of this stock at well into $20s in a couple of years". On November 29, 2013, he wrote: "I do agree with 20$ by end of next year". This information was available on the internet. Goss first learned about the $20 target price at this time. He did not learn of it from a tip from Kitmitto.

[594] On April 10, 2014, two weeks before anyone contacted Kitmitto about the possibility of a meeting relating to Amaya, and after Goss was following the gaming industry and Amaya specifically for months (since October 2013), Goss promoted the stock in an e-mail to a number of his friends and clients. The following day, April 11, 2014, while continuing to promote the stock in an e-mail to another client, Goss purchased 30,000 Amaya shares for himself (~$195,000) and 30,000 for Fielding (~$195,000). That day, Goss also asked Fakhry to begin researching Amaya.

[595] Goss bought Amaya for himself on April 11, 2014, because the stock had declined as a result of its earnings miss (it had dropped from about $9 to about $6 per share) and the gaming space was "opening up" in the U.S., with significant potential. Goss began to invest for himself and his clients because the price of Amaya had fallen significantly in April 2014, so he believed it was an opportune time to invest. This purchase by Goss was in line with positions he had taken in other stocks in the past and followed his pattern of attempting to "get in" when he believed a stock was "cheap" after following it for a little while. Fielding decided to buy Amaya on April 11, 2014 with the benefit of his own independent knowledge in light of his investment in Amaya's predecessor, Cryptologic and his direct involvement in Intertain, World Gaming, and Gaming Nation. Fielding's purchase was in line with his investment style.

[596] On April 15, 2014, Global Maxfin published a report which noted that the price of Amaya stock had fallen further and recommended it as a "strong buy". That day, still ten days before anyone contacted Kitmitto about a potential meeting relating to Amaya, Goss made another purchase for a different client, AE, to whom Goss had promoted Amaya days earlier.

[597] On April 17, 2014, more than a week before Kitmitto was asked if he wanted to meet about Amaya, Goss and Fakhry were exchanging e-mails about the price of the stock. On April 24, 2014, the day before Kitmitto was first contacted about the meeting, the Globe and Mail published an article about Amaya which reiterated the strong endorsements of a number of analysts that Goss followed. Specifically, that article noted that "Of the nine analysts covering Amaya's stock, eight rate it a "buy" at an average share price target of $9.58" and a positive outlook was based on long term growth related to services for casinos, while capitalizing on the increased popularity and adoption of online gambling in the United States. The article also specifically referred to "the cash on the balance sheet and access to debt capital to buy something pretty large".

[598] Goss also purchased Amaya for clients on April 15 (AE) and April 28 (CS), 2014.

[599] Prior to April 29, 2014, Goss was highly knowledgeable about the gaming space, was researching Amaya specifically, and was following Amaya on a daily basis. Goss and Fakhry undertook significant research and detailed technical analysis on Amaya before Kitmitto was first approached about Amaya, and Goss traded and made his recommendations based on that information, which included:

a. numerous analyst reports, which were highly positive about Amaya, indicated that the stock was a "buy" or a "strong buy", and always had a very high price target;

b. numerous online news websites, as well as traditional news sources such as The Globe and Mail;

c. online post on the popular website Stockhouse, and in particular posts by a commenter known as "solarman2013"; and

d. an online German news article dated November 8, 2013 and its English translation entitled "Online Poker USA: No License for Pokerstars? (Update)", which Fakhry found during the course of his research for Goss (the details of which are set out in paragraphs 467 h. and 470 above), which I find to be significant, showing there was European interest in, and coverage of Amaya and this indicated that interest had expanded beyond Canada and the United States.

[600] All these facts from back to October 2013 and leading up to April 29, 2014 demonstrate that there was information and positive news available on the internet with respect to Amaya and the gaming sector. These facts support my inferences leading to the conclusion that it is equally likely and even more likely that Goss relied on this information and such information was the catalyst for his decision to buy Amaya shares for himself, his clients and to recommend Amaya to his clients. Goss's interest in Amaya did not come from "out of the blue". It did not come from a tip from Kitmitto. Goss had his eye on Amaya for his clients and himself since October 2013 and this is supported by the evidence presented at the hearing.

3. Goss was not in a special relationship with Amaya

[601] I find that Goss is an experienced stock broker, business person, husband and father. As a former competitive swimmer, he won two silver medals in the Olympics, one in 1984 and one in 1988. Staff asked the Panel to infer guilt from the existence of a collegial workplace, collaboration in business dealings, trust among friends, thoughtful trading, and success. I cannot draw such an inference.

[602] Kitmitto, Goss and Fielding worked together on numerous private company investments and would personally invest; and Goss would introduce the investment opportunities to Aston Asset Management and his other clients. There is no dispute that Goss had a professional and personal relationship with Kitmitto. They worked together on investments in numerous private companies and Kitmitto provided Goss with analyst reports relating to public companies when asked. They were also friends and socialized occasionally.

[603] The majority of the Panel rely on this friendship and concluded it is more likely than not that Kitmitto would have shared the Amaya MNPI with Goss. In their analysis of whether Goss was in a special relationship with Amaya, the majority relies on the following: (a) Goss's and Kitmitto's personal and professional relationship and Goss's knowledge of Kitmitto's role at Aston Asset Management; (b) the opportunities that Goss had to learn about the Amaya MNPI from Kitmitto; and (c) the timely, profitable and extensive trading in Amaya by Goss, Fakhry and Goss's and Fakhry's clients.

[604] Based on the facts in evidence presented at the hearing, which form part of the mosaic of circumstantial evidence, I am unable to conclude that Goss was in a special relationship with Amaya. There was insufficient evidence to demonstrate that Goss knew or ought to have known of Kitmitto's special relationship with Amaya. Goss could only be in a special relationship with Amaya if he knew or reasonably should have known that Kitmitto was in such a relationship when Kitmitto communicated with him about Amaya. There is a lack of evidence of specific communications between Kitmitto and Goss relating to Amaya and where Kitmitto acknowledged that he did discuss Amaya with others, such as Goss, I accept his testimony that he understood his confidentiality obligations and only discussed information that was public. Such discussions about investments and companies in the regular course of their professional and personal relationships is not sufficient to alert Goss that Kitmitto was in a special relationship. Goss and Kitmitto had reason to discuss many different companies and investment opportunities at the time, and in my view it is a stretch and speculation to jump to the conclusion that any discussion of Amaya at the time signalled to Goss or ought to have signalled to Goss that Kitmitto was in a special relationship. When I consider the evidence before me, such as Goss's early interest in Amaya, and the abundance of information relating to Amaya available on the internet starting October 2013 (that Goss found himself or was provided to him by Fakhry) leading up to the announcement of the transaction on June 12, 2014, I infer that it was equally or even more likely that Goss learned information about Amaya from sources on the internet (including the target price of $20). Goss was unaware of Kitmitto's knowledge of the alleged Amaya MNPI and Goss was not aware of Kitmitto's special relationship with Amaya. Seeing how their communications were not out of the ordinary at this time there would be nothing to trigger that Goss ought to have been aware of Kitmitto's special relationship.

[605] I find that the chronology of available information about Amaya on the internet, going back to October 2013, and Goss's early interest in Amaya to be highly persuasive. For example, Goss's written submissions state "With regard to Amaya specifically, on October 23, 2013 Goss recommended and bought 5,000 shares for his long-time and sophisticated client JU because Goss believed it was a growth stock and because the U.S. market was opening up to online gaming. As a result of purchasing Amaya for JU, "AYA" was added to the top of Goss's quote screen, which would notify him if there was new research or information available about Amaya. Goss followed Amaya from the date of the trade for JU – "once a client owns a stock, I own it" – which entailed reviewing Amaya's public disclosures, news sources, analyst reports from Global Maxfin (Ralph Garcea), Industrial Alliance (Peter Hodson), Canaccord, and 5i Research, and online commentary, especially by solarman2013 on StockHouse".

[606] I conclude that Goss relied on his own research and had an interest in Amaya and the gaming sector since October 2013 and that his personal and professional relationships with Kitmitto did not factor into his interest in Amaya. As set out in the chronology above, there were online sources of information Goss could have relied on with respect to information regarding Amaya rather than relying on Kitmitto. I find that Goss's interest in Amaya was independent of Kitmitto. Goss's trades were not unusual or riskier than his trades in other stocks, his holdings in Amaya did not represent an unusual percentage of his portfolio; he did not attempt to conceal his trading or communications (rather, he knew both were monitored); and his Chief Compliance Officer was fully aware that Goss was trading in Amaya at all relevant times. He was not an "access person", so he was not restricted from trading Amaya when others at Aston Asset Management, Aston Financial and elsewhere were, which also accounts for why his relative trading volume percentage was high and appeared opportunistic. I discuss Goss's trading in detail further in the section below.

4. Goss did not engage in insider trading, tipping and recommending

[607] The timing of Goss's trades, recommendations and communications with clients and other activities do not match up with being dependent on the alleged Amaya MNPI from Kitmitto. Specifically, the following are important facts in the Goss timeline of events that demonstrate this:

a. On April 10, 2014, two weeks before Kitmitto was approached about any meeting relating to Amaya, Goss promoted Amaya in an email to a number of his friends and clients.

b. On April 11, 2014, Goss continued to promote Amaya in an email to a client, purchased 30,000 Amaya shares for himself (~$195,000) and 30,000 Amaya shares for Fielding, taking advantage of a decline in Amaya's share price resulting from an earnings miss (dropping from about $9 per share to about $6 per share) as he saw significant potential in Amaya upside based on his independent knowledge and research. This was Goss's largest single-day purchase occurring two weeks before Kitmitto was first approached about the Amaya meeting.

c. On April 15, 2014, Goss became aware of the Global Maxfin report (described above) which recommended Amaya as a strong buy and on that same day Goss purchased Amaya for a client (AE).

d. On April 17, 2014, Goss and Fakhry exchanged emails about the price of Amaya shares and continued their research into Amaya.

e. On April 24, 2014, Goss became aware of the Global and Mail article (described above) that specifically referred to "the cash on the balance sheet and access to debt capital to buy something pretty large".

f. On April 25, 2014, Kitmitto was asked to attend the meeting about Amaya with Amaya's CEO and Canaccord representatives but no materials or slide deck were provided at this time. Meanwhile on April 25, 2014, Goss and Fakhry continued to follow Amaya closely. Goss sold some of his position in Amaya on April 25, 2014 (20,000 shares) but continued to recommend Amaya to a prospective client (BB), who ultimately purchased Amaya the next week.

g. On April 27, 2014, Goss sold 20,000 shares of Amaya for himself.

h. On April 28, 2014, Goss continued to recommend Amaya to clients and purchased approximately $70,000 for a client (CS).

i. On April 29, 2014, the date of Kitmitto's meeting with Amaya's CEO and Canaccord representatives at 1:00 p.m., Goss bought 10,000 Amaya shares for Fielding (on an unsolicited basis), and 10,000 shares in Amaya for himself. There was insufficient evidence to demonstrate that these purchases were a result of anything that Kitmitto learned at the meeting and there was no evidence provided to show that Kitmitto was in communication with Goss between the time that the meeting ended and Goss made his first trade. While Goss did email Kitmitto "What's up" at 3:25 p.m., the evidence did not demonstrate on a balance of probabilities that this was related to the 1:00 p.m. meeting. This email could have equally been in relation to other things, such as the evening plans to hang out at the Carbon Bar. Further, the evidence demonstrated that Fielding's instructions for Goss to purchase Amaya shares for him came in at least 30 minutes prior to Goss's email to Kitmitto. In addition, there

was no evidence that, at the Carbon Bar dinner that day, Kitmitto discussed Amaya with anyone in attendance. Staff's witness Killeen, the President of Aston Asset Management and Chief Operating Officer of Aston Financial who was in attendance at the Carbon Bar, did not claim otherwise.

j. On April 30, 2014, Goss did not purchase Amaya for himself, but he did continue to promote Amaya to clients and he purchased shares (40,000 shares at 10:08 a.m. and another 10,000 shares at 3:40 p.m.) for his client Fielding (on an unsolicited basis).

k. On May 1, 2014, Goss did not purchase Amaya for himself, but he did purchase Amaya shares for a number of his clients.

l. On May 2, 2014, Amaya announced that its subsidiary Cadillac Jack had received approval from the New Jersey gaming enforcement to use this slot machine platform throughout the state and Global Maxfin reported on that press release. Following this positive news, and his research with Fakhry, Goss purchased Amaya shares for himself and for six of his clients (three of these clients had also previously purchased Amaya shares through Goss weeks earlier). These purchases for clients were in line with the investment portfolio strategies and risk tolerances.

m. Between May 3 and 12, 2014, Goss did not buy any Amaya shares for himself or his clients, with the exception of an unsolicited purchase for Fielding on May 6, 2014 (30,000 shares).

n. On May 8, 2014, Goss sold Amaya shares (10,000 shares).

o. On May 9, 2014, Goss's client Fielding sold Amaya shares (70,000 shares) on an unsolicited basis.

p. On May 13, 2014, Goss sold Amaya shares (10,000 shares).

q. On May 14, 2014, Goss's client Fielding bought Amaya shares (100,000 shares) on an unsolicited basis.

r. On May 14, 2014, Goss sold Amaya shares (10,000 shares).

s. On May 20, 2014, Goss bought Amaya shares (7,000 shares).

t. On May 24, 2014, the CalvinAyre.com article (described above and reviewed by Goss) is published on the internet and discussed the rumour of Amaya purchasing PokerStars.

u. On May 26, 2014, Goss bought Amaya shares (7,000 shares) with order placed before market opening.

v. On May 27, 2014, Goss bought Amaya shares (2,600 and 2,100 shares for himself in two separate accounts, and shares for two family members – 1,000 Amaya shares each).

w. On May 28, 2014, Goss bought Amaya shares (10,000 shares).

x. On May 29, 2014, Goss bought Amaya shares (6,000 shares and 4,000 shares in two different accounts).

y. On May 30, 2014, Goss and or his spouse bought Amaya shares and appear to have sold shares as well so the net purchases total for the day is not clear.

z. On June 2, 2014, Goss purchased Amaya shares (4,300 shares).

aa. On June 3, 2014 Goss received a fax from FH with a markup of the Amaya non-denial denial press release, "Amaya Comments on Trading Activity" published May 26, 2014, and on June 4, 2014 Goss received another fax from FH including a May 29, 2014 article from www.poker-online.com titled "Rumored Amaya - PokerStars Merger Might Not Happen". Goss had no idea how FH had received these items, but he complied with FH's request to purchase a relatively small number of Amaya shares for FH in a situation where it was apparent neither Goss nor FH were acting on MNPI.

bb. On June 3, 2014, Goss purchased Amaya shares (1,000 shares).

cc. On June 4, 2014, Goss purchased Amaya shares (5,000 shares and 1,700 in two separate accounts) and sold Amaya shares (5,000).

[608] Considering all the facts set out above, Staff has not shown on a balance of probabilities that Goss's actions in trading Amaya, purchasing Amaya for clients or recommending Amaya to clients was based on MNPI from Kitmitto. Looking at the facts set out above, it more likely that Goss relied on (1) his and Fakhry's research; (2) the publicly available information that existed at the time online, especially the May 24, 2014 CalvinAyre.com article, as well as other internet

rumors on Stockhouse; and (3) his knowledge of the gaming and tech sector. Goss had other sources of information available to him independent of Kitmitto, which are set out in the chronology at paragraph 467. For example, with respect to Goss's client AE's purchases on June 4, I noted above in paragraph 490 d. that on June 4 there were rumours circulating online on Stockhouse about a possible acquisition and on June 3 and 4 another client of Goss, FH was emailing Goss Amaya's recent non-denial denial press release of May 26 and another internet article from May 29.

[609] Further, I disagree with Staff's submission that Goss was "loading up" on Amaya shares based on MNPI from Kitmitto. If that were the case, then Goss would not have been selling Amaya shares during the Relevant Period. I find that Goss's conduct was entirely inconsistent with what one would expect of someone exploiting MNPI. Staff's argument that the delay of announcing the transaction motivated Goss's behavior does not hold up for the following reasons:

a. I accept Goss's and Kitmitto's evidence that Kitmitto did not communicate with Goss on April 29, 2014 between the time Kitmitto's meeting ended and when Goss traded, or between April 30 and May 2, 2014 when Goss next bought Amaya shares, or between May 3 and 8, 2014 when Goss then sold Amaya shares. I note that there was no evidence of email or phone exchanges between Kitmitto and Goss on April 30, May 1 and 2, 2014. Around the same time that Kitmitto attended the meeting on April 29, 2014, there was also positive news published about Amaya.

b. Goss sold 10,000 Amaya shares on May 8, 2014. This selling of shares is inconsistent with the assumption that Goss knew a transaction was coming or was likely to be announced in the near future.

c. I note the evidence that Goss and Kitmitto spoke over coffee on either May 9 or 13, 2014, and on May 13 Goss sold shares in Amaya. Goss also placed a call to Kitmitto on May 14, 2014 (which may or may not have been picked up), and the only Amaya trade that Goss made on May 14, 2014 after that call was a sale. Goss and Kitmitto corresponded about Amaya on May 15, 2014 (regarding its quarterly results), but their e-mails clearly did not contain MNPI and Goss did not buy Amaya again until May 20, 2014. As mentioned above, I accept Kitmitto's evidence that he understood what MNPI was and conducted himself accordingly. He understood that he could only share it with those entitled to the information. If asked about Amaya he would answer in general terms and not disclose confidential information.

d. May 12, 2014 was the initially expected date for the Amaya-Oldford-PokerStars announcement, but Goss did not "load up" on Amaya shares at this time. Between May 3 and 12, 2014, Amaya shares were only purchased for his client Fielding on an unsolicited basis.

e. Between May 3 and May 21, 2014, Goss only bought shares for four clients (two who previously already held Amaya shares prior to April 29, 2014), and Goss sold a client's entire position in that period. He also sold his own Amaya shares on May 13, 2014 (10,000) and May 14, 2014 (10,000). This behavior is inconsistent with being aware of the alleged Amaya MNPI as it does not make sense to sell prior to the announcement of a business growth transaction.

f. On May 15, 2014 Amaya announced that it had issued 4 million warrants with an exercise price of $15 per share in connection with a massive financing. This was important to Goss and Fakhry for 2 reasons: (i) it meant Amaya thought the real potential upside in the stock price was for it to go higher than $15 and (ii) the extra cash could be used for yet another acquisition in the middle of the 2014 year or so.

g. Goss's purchase activity of Amaya shares started increasing after the publication of the May 24, 2014 CalvinAyre.com article (described above). This article specifically mentioned the rumour "As unlikely as it may sound, sources have told CalvinAyre.com that an agreement is in place that would see Amaya assume ownership of the Isle of Man-based online poker colossus, thereby clearing the way for the Stars brand to return to regulated US markets." In my view, if Goss had been in possession of the alleged Amaya MNPI, he could have bought significantly more Amaya shares prior to the May 24, 2014 CalvinAyre.com article, as Amaya shares were much cheaper before May 24, 2014. Goss bought most of his Amaya shares after the publication of the May 24, 2014 CalvinAyre.com article. Specifically, between April 25 and May 25, Goss was a net purchaser of only 1,700 shares and between May 26 and June 4 (the date of Goss's last trade, a sale, before the announcement on June 12) Goss was a net purchaser of 52,710 shares. I find that it is more likely that Goss was influenced by the May 24, 2014 CalvinAyre.com article to purchase Amaya shares and these purchases were not based on MNPI from Kitmitto.

h. After the May 24, 2014 CalvinAyre.com publication, Goss continued to buy Amaya shares in late May and early June as set out in the timeline above. These purchases were not related to updates from Kitmitto, who was out of the office beginning on May 28, 2014 for two weeks and there was no evidence of calls between Goss and Kitmitto during this period. Specifically, I note that:

    i. Kitmitto was told about changes in timing on May 23, 27 and 28 but did not communicate with Goss between May 23 and May 28;

ii. On the evening of May 28, 2014, Goss reviewed a Stockhouse post from the previous day May 27, 2014 stating: "if we do not see some major move 'formally' announced this week, then we will see it next week". I find that rumours of the transaction were circulating on the internet and Goss was aware of these internet rumours;

iii. Kitmitto was told about a change in the timing on May 29 and he spoke with Goss that day, but their conversation took place after Goss had already traded in Amaya;

iv. Kitmitto was told about a change in timing on June 1, but did not communicate with Goss between June 1 and June 3, when Goss bought shares in Amaya;

v. Kitmitto and Goss spoke over the telephone on June 4, but their conversation took place after Goss had purchased Amaya earlier that day, and a couple of hours after that conversation Goss sold 3,300 Amaya shares, notwithstanding that, at the time, Kitmitto expected the acquisition to be announced the following day; and

vi. During the full MNPI Period, Goss was a net purchaser of only 30,000 shares. Goss was working as traders and advisors do, buying and selling shares – trading in the market.

[610] Staff also relied on the frequency of calls between Kitmitto, Goss and Fielding, assuming that the subject of the calls must have been related to Amaya MNPI. First of all, while I accept that Kitmitto, Goss and Fielding were in regular contact, I note that Staff did not obtain all of their relevant phone records. During the investigation, Staff's Senior Investigator, George, collected only a partial sample of the cell phone records and as a result only the partial sample was in evidence. In my view, this highlights the incompleteness of the mosaic of circumstantial evidence before me. With such gaps in the evidence, I cannot reach the conclusion that the incomplete pattern of communication demonstrates it was likely that communications were related to the alleged Amaya MNPI.

[611] Secondly, Staff's assumption that the communications were related to Amaya MNPI is flawed. Kitmitto, Goss and Fielding had many reasons to communicate. In my view, nothing in the evidence suggested that the frequency of their communications throughout the Relevant Period was not uncharacteristically high or unusual at all. As I found in paragraphs 488 and 602 above, Kitmitto, Fielding and Goss worked on several potential investment opportunities, which included Intertain (gaming), Synaptive (medical), Park Lane Farms (medicinal cannabis), Patient Home Monitoring (tele-health), World Gaming (gaming) and Orthogonal (medical field). All were private companies except for Intertain and Patient Home Monitoring. They were in regular communication in relation to the various investment opportunities they were considering. Further, Kitmitto was on the board of directors for the company Ethoca (a private fintech company specializing in fraud prevention, a growing industry at the time) and Fielding was the chair of the board. As a result, they were in contact about Ethoca-related matters. The regularity of communications among the three of them, the equal likelihood that they could have been discussing potential investment opportunities listed above, and companies where they were on the boards of, undercuts the inference that the interactions suggest tipping the alleged Amaya MNPI. Further, Staff's Senior Investigator George, acknowledged during cross-examination that "I don't know what was discussed on these calls. Whether it was Synaptive or Amaya, I don't know"[110], and when asked if she even believed that the calls were about Amaya, she responded "I have no idea" and admitted she did not listen to any of the calls.[111] Therefore, I find that Staff has not proven on a balance of probabilities that it is more likely than not that the communications between Kitmitto, Goss and Fielding related to the alleged Amaya MNPI.

[612] In addition, I disagree with the majority's finding in paragraph 290 to the extent that it suggests Goss's interest in Amaya at that time was *only* short-term, related to the price drop on the earnings release. While the price drop did provide a good entry point to investment, I find that Goss had a long term outlook based on the following:

a. Goss was highly knowledgeable about the gaming industry in general and Amaya specifically, and he and Fakhry were researching Amaya, following the price, and analyzing the technical charts;

b. Goss was following the trading of Fielding who was a professional businessman and knowledgeable in the electronic gaming and horse racing gambling sectors. Given Fielding was putting money into Amaya and not selling, Goss had every reason to take a longer-term interest in Amaya. Goss followed a philosophy that if a client owned a stock, then he owned the stock and followed it; and

c. Goss was also encouraging many of his clients to look at Amaya, because he had a positive outlook, based on his own research and Fakhry's research, and a number of his clients (20 in total) did invest.

[613] Looking at Goss's trading as a whole, I conclude that, on a balance of probabilities, Goss was trading based on research he and Fakhry conducted and on public information available on the internet. Specifically I note that Goss was a net

[110] Hearing Transcript, Kitmitto (Re), October 15, 2020 at 67 lines 26-27
[111] Hearing Transcript, Kitmitto (Re), October 21, 2020 at 58 line 21 to 59 line 15

purchaser of Amaya shares when the market was saturated with rumours about Amaya's prospective acquisition of PokerStars after the May 24, 2014 CalvinAyre.com article was posted. If Goss had been in possession of MNPI, he could have bought significantly more Amaya, previously, when the shares were much cheaper before May 24, 2014. In fact, I find Goss's sales of Amaya shares in May 2014 were incredibly untimely when viewed in relation to the timing of the planned announcement of the transaction. In particular, Goss sold Amaya shares before the original transaction announcement date of May 12, 2014 (on May 8, 2014 he sold 10,000 shares). He also sold more shares than he bought between the original May 12, 2014 announcement date and the second planned announcement date of May 21, 2014 (and up to the date of the CalvinAyre.com article on May 24, 2014), purchasing 17,000 shares, but selling 20,000 shares in that period. This behavior indicates to me that Goss was not in possession of the alleged Amaya MNPI and his net accumulation of Amaya shares was based on information he learned from the CalvinAyre.com article, newspapers and other online material.

5. Conclusion

[614] As I have found above, there was deal uncertainty and while it is unclear exactly when the deal became material, I found that Kitmitto never passed the alleged Amaya MNPI to Goss. I accept Goss's evidence that he learned about the Amaya transaction from the press release published on June 12, 2014, which publication was accompanied by Amaya's filing of a material change report, with the consequential conclusion that he did not receive MNPI from Kitmitto or anyone else and dismiss all the allegations against him. In my view, there is no clear, convincing, and cogent evidence that Goss was tipped or that Goss tipped or recommended to others based on the alleged Amaya MNPI, and neither the timing and nature of his trades nor the timing and nature of his communications suggest insider trading or tipping or recommending Amaya to clients based on MNPI. The circumstantial evidence shows that Goss had good reason to trade Amaya and that his trading and communications line up with information and rumours that were publicly available, and found on the internet through Goss's and Fakhry's research. As mentioned above, I also find that Goss was not in a special relationship and therefore, in the absence of being in a special relationship he cannot be found to have insider traded or tipped others.

E. Fakhry

1. Fakhry's credibility

[615] Staff has asserted that Fakhry lied to the Panel and fabricated his entire justification for purchasing Amaya. I disagree with Staff's assertion and I find Fakhry to be credible. I find that Fakhry gave credible and consistent testimony to the best of his ability during the hearing.

[616] I note that the majority of the Panel found, at paragraph 311, "Fakhry to be straightforward and generally credible". However, they also found that, in certain instances, Fakhry's evidence was inconsistent with other evidence. I disagree with those findings. A significant reason the majority of the Panel found Fakhry had traded on the basis of Amaya MNPI was that they did not fully trust his explanations. I found Fakhry's evidence to be detailed, traceable back to publications and records, reasonable and very believable. When his boss Goss became interested in Amaya, monitoring the stock and researching it became part of his day job, not merely a personal interest/hobby. The majority of the Panel found at paragraph 315 that "Fakhry's explanation was contrived to explain, after the fact, why he provided two articles to Goss that specifically referred to Amaya and PokerStars". In my view this evidence was not contrived. The evidence presented at the hearing demonstrated that Goss had clients invested in Amaya as early as October 2013 and Goss had been following Amaya since that time. Fakhry was Goss's administrative assistant. He prepared client paperwork, opened accounts, answered calls, took messages, inputted and checked trades for accuracy, ensured commissions were correctly marked and assisted Goss with research when asked. Specifically, Fakhry monitored Amaya's price and volume movements which were constantly on his desktop monitors and pursued every available source of public information including, for example: Amaya public announcements; analyst and research reports; blogs such as Stockhouse; online publications from gambling sector experts; and reports of large institutional investor holdings as well as the short interest in Amaya.

[617] Fakhry's relationship with Goss was strictly professional and he was a loyal employee to Goss. Specifically, when Fakhry went to work at Aston Securities, Fakhry's first priority was to work to transition Goss's book. Fakhry was being paid by Goss so 100% of his efforts were directed to ensuring the book was transferred smoothly and correctly. Fakhry prioritized work for Goss over his own clients, many of which he lost in the move to Aston Securities as a result, and also conducted research for Goss.

[618] The majority of the Panel relies on the fact that Goss did not mention in his testimony that he requested Fakhry dig up information on Amaya and that Fakhry did not mention the research on these articles during Aston Securities's internal investigation. As I mentioned above in paragraph 589, a perfect memory cannot be the standard for any witness. In my opinion and experience, memories fade over time. While preparing for a merits hearing, it is natural that a respondent would review material and refresh their memory, and accordingly they may provide different responses compared to when they were earlier asked a question during the investigation stage when they did not have the opportunity to adequately prepare.

[619] Further, the majority of the Panel rely on the fact that when requested to dig up information for Goss on April 11, 2014 (which I note is two weeks prior to Kitmitto's April 29, 2014 meeting with Canaccord) Fakhry did not provide "Amaya's March 31, 2014 announcement of their 2013 annual results, seven analyst reports and a Stockhouse post with a forecast based on nine polled analysts rating Amaya as a "buy", none of which Fakhry appears to have provided to Goss in response to Goss's request for information." I accept Fakhry's evidence that he did research Amaya and did update Goss on his research as requested. Goss asked Fakhry to do some research and see what he could dig up on Amaya. I accept Fakhry's evidence that he understood Goss to be asking him to do a bit of looking around for things about Amaya that Goss would not have ready access to. Goss and Fakhry were able to access public filings and see what analysts following Amaya were saying, and Fakhry conducted research to find information for Goss beyond this. Goss did not normally ask Fakhry to provide Goss with public, regulatory filings on SEDAR (e.g. annual financial statements). The release of annual financial statements gets financial media disclosure and coverage. Goss was asking Fakhry to do research to find information that was harder to find and not already included in the public disclosure documents.

[620] In addition, the majority of the Panel did not accept Fakhry's explanation that his decision to start buying Amaya shares on May 2, 2014 was based on Amaya's May 2, 2014 press release about New Jersey approving the slot machines of Amaya's subsidiary, Cadillac Jack. The majority of the Panel did not find this to be credible on the basis that there are no contemporaneous comments by Fakhry about the May 2 press release and that Fakhry did not mention this during Aston Securities's internal review. I cannot come to the same conclusion. Fakhry testified that in addition to the May 2, 2014 press release, he also looked at Stockhouse and at various other press releases that he had read in terms of conducting research on Amaya and the Globe and Mail article of April 24, 2014. In my view, Fakhry's evidence provided a consistent account of his research methodology and demonstrated the work he put in to learn information about Amaya. In my view there is no reason to infer that Fakhry did not rely on his research and the May 2, 2014 press release when making his decision to invest in Amaya. Overall I find Fakhry to be credible.

2. Fakhry was not in a special relationship with Amaya

[621] At paragraph 383, the majority finds that it is more likely than not that Fakhry was in a special relationship with Amaya. I disagree. In my view, the information connection - that Fakhry learned about the alleged Amaya MNPI from Goss and he knew that Goss was in a special relationship and heard the information from Kitmitto - has not been proven on a balance of probabilities. As stated above, at paragraph 604, I find that Goss was not in a special relationship. It is insufficient to rely on Goss's friendship with Kitmitto to establish the special relationship. I could not conclude that Goss was in a special relationship, because based on the evidence before me it is equally or more likely that Goss learned about Amaya from other sources and not Kitmitto as I set out above. There was also insufficient evidence to demonstrate that Goss knew or ought to have known of Kitmitto's special relationship with Amaya.

[622] A person who is "tipped", and knows or ought to know that the source of the information is in a special relationship, also becomes a person in a special relationship. The same consequences apply down a chain of tipping to everyone who ought to know that the source of the information was a person in a special relationship.[112] In the present case, the tipping chain is broken, as I have found that Kitmitto did not tip Goss and I have also found that Goss was not in a special relationship. Therefore, it follows that Fakhry cannot be in a special relationship either. Since I found that Kitmitto did not tip Goss, it is therefore impossible that Goss tipped Fakhry. I agree with Fakhry's submission that if I conclude Kitmitto did not tip Goss (which I did so conclude), then I must dismiss all allegations against Fakhry.

3. Fakhry conducted his own research on Amaya and this was not based on a tip from Goss

[623] While I find that Staff did not prove the allegations against Fakhry, I want to highlight that the evidence at the hearing also demonstrated that Fakhry conducted his own extensive research on Amaya and he learned about Amaya from various sources on the internet. None of this research was related to a tip from Goss.

[624] I also note that at the hearing Fakhry provided evidence of public information sources that he relied upon that Staff omitted from their chronology and evidence. In my view, this demonstrates that Staff "cherry picked" the evidence to fit Staff's narrative and ignored available information that supported the narrative of the respondents, such as Fakhry.

[625] Specifically, Exhibit 226, entitled "Staff's Amaya Information Chronology - Information Reviewed by F. Fakhry at the Material Time", indicates the following sources of information about Amaya that Fakhry relied upon but that Staff omitted from the chronology that Staff filed in evidence:

a. December 20, 2013 Amaya Press Release, "Amaya Announces Refinancing of Cadillac Jack Credit Facilities",

b. February 11, 2014, Amaya Press Release, "Amaya Announces Closure of Sale of WagerLogic",

[112] *Walton* at para 15

c. February 19, 2014, Amaya Press Release, “Maryland Lottery Awards 5-Year ITLM Contract to Amaya’s Diamond Game Enterprises”,

d. March 7, 2014, Amaya Press Release, “National Instrument 62-103 Early Warning Report”,

e. March 31, 2014, Amaya Press Release, “Amaya Gaming Group Announces its 2013 Fourth Quarter and Full Year Financial Results”,

f. April 1, 2014 posts by “solarman2013” on Stockhouse, which is notable because the post from 1:43 p.m. predicts a $20 share price for Amaya,

g. April 15, 2014, April 15, 2014, Amaya Press Release “Notice of Amaya Annual General and Special Meeting date”,

h. April 16, 2014, Amaya Press Release, “Amaya Announces Agreements for Gaming Machine Shipments in United States”,

i. April 17, 2014, posts by “solarman2013” on Stockhouse, which predicts price recovery for Amaya,

j. April 22, 2014, post by “retiredcf” on Stockhouse, which mentions Amaya’s strategy is to continue to make acquisitions,

k. May 2, 2014, May 2, 2014, Amaya Press Release, “Amaya Announces Lab Approval for Slot Machines in New Jersey”,

l. May 2, 2014, online Motley Fool article recommending Amaya and discussing that online gaming is the next big growth area,

m. May 3, 2014, post by “ozphoenix” on Stockhouse, referring to the April 29, 2014 CalvinAyre.com article,

n. May 5, 2014, analyst report from Clarus Securities Inc.,

o. May 5, 2014, research update from Industrial Alliance Securities Inc.,

p. May 13, 2014, research update from Industrial Alliance Securities Inc.,

q. May 14, 2014, post by “solarman2013” on Stockhouse predicting a price above $9,

r. May 15, 2014, Amaya Press Release, “Amaya Gaming Group Announces its 2014 First Quarter and Full Year Financial Results”,

s. May 15, 2014, post by “ferret_ca” on Stockhouse, acknowledging great results,

t. May 16, 2014, post by “retiredcf” on Stockhouse, discussing insider purchases,

u. May 16, 2014, post by “drd8” on Stockhouse discussing Amaya had been growing organically and by acquisitions,

v. May 20, 2014, research update from Industrial Alliance Securities Inc., discussing the possibility of acquisitions,

w. May 22, 2014, posts by “ozphoenix”, on Stockhouse hinting at a promising announcement,

x. May 23, 2014, posts on Stockhouse by “goldencalf”, “ferret_ca”, “drd8”, “solarma2013” and “Tobuyornot”, relating to goldencalf’s comment about a rumour that Amaya may be buying PokerStars,

y. May 24, 2014, post by “therivercard” on Stockhouse speculating about Amaya and PokerStars,

z. May 26, 2014, online article from USpoker.com which hinted at a potential purchase for Amaya,

aa. May 26, 2014, post by “ozphoenix” on Stockhouse mentioning rumours about Amaya and PokerStars,

bb. May 26, 2014, Amaya Press Release, “Amaya Comments on Trading Activity”,

cc. May 26, 2014, Financial Post article, which discussed the possibility of Amaya looking to acquire another company,

dd. May 26, 2014, post by “goldencalf” on Stockhouse sharing the Financial Post article dated May 26, 2014,

ee. May 27, 2014, posts on Stockhouse by “goldencalf”, “retiredcf”, “ozphoenix”, “ferret_ca” and “drd8” discussing Amaya transaction rumours,

ff. May 27, 2014, online article from CantechLetter.com, “Amaya Gaming roars to all-time highs on acquisition rumors”,

gg. May 27, 2014, online article from gaming-awards.com, “Amaya Gaming stock rises on rumours”,

hh. May 30, 2014, online article from CardChat.com discussing the Amaya acquisition rumours,

ii. May 31, 2014, post by “ozphoenix” on Stockhouse sharing an article from www.poker-online.com about uncertainty about the transaction rumours,

jj. June 1, 2014, posts by “ozphoenix” and “retiredcf” on Stockhouse mentioning something big is happening with Amaya, whether or not it is PokerStars or something else,

kk. June 2, 2014 posts by “ozphoenix” and “solarman2013”, discussing Amaya rumours,

ll. June 4 and 6 2014, posts by “therivercard” and “solarman2013” discussing that an Amaya/PokerStars transactions would be logical,

mm. June 8, 2014, post by “solarman2013” discussing Amaya rumours, and

nn. June 8, 2014 online article from OnlineCasino.org discussing Amaya’s recent performance and a future announcement that could include PokerStars.

[626] Fakhry reviewed 106 articles in total, including public filings/news releases, analyst/research reports and Stockhouse posts from, among others, Global Maxfin Capital Inc. (Ralph Garcea), 5i Research, CalvinAyre.com, Clarus Securities Inc., Industrial Alliance Securities Inc., Canaccord Genuity, Cantech, solarman2013, goldencalf, retiredcf, ozphoenix, drd8 and therivercard.

[627] Stockhouse was an important website that Fakhry consulted when following stocks. Specifically, as early as October 24, 2013 “solarman2013” commented about Amaya as follows: “This company is a takeout at $20 by end of next year”. In addition, on October 29, 2013, solarman2013 wrote: “we can see the takeout of this stock at well into $20s in a couple of years”. On November 29, 2013, he wrote: “I do agree with 20$ by end of next year”. This information was available on the internet. I found that Goss first learned about the $20 target price at this time and it follows that Fakhry who worked for Goss would also have been aware of this information as well.

[628] Further, contemporaneous emails sent or received by Fakhry during the Relevant Period show Fakhry was actively seeking and reading public information about Amaya and the gambling/gaming sector from numerous sources and it was this public information that he shared with others:

a. Fakhry subscribed on May 4, 2014, to OnlinePokerReport.com which regularly provided a newsletter with online gambling news and links to relevant articles and during the Relevant Period, Fakhry received emails from OnlinePokerReport.com on May 7, 12, 13, 19, 26 and June 10. Fakhry forwarded the emails on May 7 and 19, 2014 to Goss.

b. CG sent Fakhry an email on May 13, 2014 with a link to an article from Yahoo.com regarding the pending announcement of Amaya’s earnings on May 15, 2014.

c. Fakhry dialed into the analyst’s conference call on Amaya’s Q1 2014 earnings on May 16, 2014 from Italy.

d. Fakhry sent emails to Goss, CB, TP and CG on May 22, 2014 with information from Canaccord’s Daily Letter about Amaya’s earnings.

e. Fakhry forwarded the CalvinAyre.com article “PokerStars and Amaya Gaming Talking Acquisition” on May 24, 2014, to Goss, CG, NG and MH.

f. Fakhry sent emails to Goss and Kitmitto with an article from USpoker.com on May 26, 2014 and Amaya’s May 26, 2014 press release “Amaya Comments on Trading Activity”.

g. Fakhry sent an email to Goss on May 27, 2014 from the iGaming Post entitled “Amaya Gaming Stock rises on rumours” with the subject line “More news”.

h. Fakhry sent an email to CG and NG on May 27, 2014, with a Cantech letter entitled “Amaya Gaming roars to all-time highs on acquisition rumours”.

i. Fakhry received an email from CG on June 5, 2014 with a link to an article regarding Amaya renewing a licensing agreement.

j. Fakhry received a further email from CG on June 8, 2014 from OnlineCasino.org regarding Amaya clinching another iGaming deal.

k. Fakhry emailed AT, who worked on the mutual fund side of Aston Asset Management on June 2, 2014 and requested information about the top institutional/corporate holders of Amaya because as explained by Fakhry, a review of the top holders and the amounts they were holding "can give you some conviction on the stock". AT provided Fakhry with a spreadsheet which revealed that at the end of March 2014, the three top holders sold some of their position in Amaya while remaining heavily invested (Sprott Inc., Franklin Resources, and Front St. Capital). The spreadsheet showed that since March 31, 2014, only one of the top holders sold any shares - Manulife Financial Corp. sold 1,314 shares, but continued to hold more than 730,000 shares. All other position changes by the top holders since the end of March 2014 were purchases of Amaya (i.e., additions to their position).

l. Fakhry emailed AT again on June 4, 2014, and requested the short interest report on Amaya. The information showed that the short interest ratio was a relatively small percentage of the Amaya float. I find that Fakhry kept track of top institutional holders in Amaya, as indicators of what conviction other investors had and short interest in Amaya.

[629] Overall, there was an abundance of information available online that Fakhry relied on. It is more likely that Fakhry relied on this information and his research instead of a tip from Goss.

4. Fakhry's insider trading, tipping and recommending allegations are not proven

[630] I do not find that Goss tipped Fakhry, but given that the majority of the Panel did find that Goss tipped Fakhry and that Fakhry tipped and recommended to others based on Amaya MNPI in this section I address the evidence that supports the equally or even more likely inference that Fakhry relied on information based on his online research and technical analysis when he decided to purchase Amaya for himself, his clients and/or family members and when recommending Amaya.

[631] I find that the timing of Fakhry's trades, recommendations and communications with clients and other activities do not match up with being dependent on the alleged Amaya MNPI from Goss. I note that there is no allegation that anyone other than Goss tipped Fakhry.

[632] Fakhry has been trading in the stock market for nearly 20 years, He previously invested in the gambling sector and routinely invested with borrowed funds. Fakhry traded in stocks, options, highly leveraged ETFs, and large amounts similar to or in excess of the $90,764 he invested in Amaya during the Relevant Period. Throughout his trading history, Fakhry frequently traded on margin and used a personal line of credit. Fakhry also traded in options extensively. In my view, the amount he invested in Amaya was not out of the ordinary for him or a departure from his trading style and risks he took when investing.

[633] In my view, it is equally or more likely that Fakhry relied on research he gathered, requested and monitored as set out in the chronology of available information discussed above in paragraphs 489, 625 and 628. Fakhry accessed public filings, analyst reports and conducted research on the internet using google. Fakhry understood the details of the Amaya chart as he had completed courses in, among other things, chart formations and technical analysis from the Canadian Securities Institute.

[634] Fakhry's analysis of price and volume movements of Amaya along with his research, for Goss and himself, are consistent with and explain his trading patterns, recommendations and communications with clients and family members. Fakhry also reviewed and considered the details of Amaya's technical chart. Specifically, prior to Kitmitto being contacted by Canaccord and learning anything about Amaya:

a. Fakhry first became aware of Amaya when his boss Goss first purchased Amaya for a client in October 2013.

b. Fakhry was also aware that Goss participated in a private placement in Intertain in February 2014 and that Amaya took part ownership in Intertain.

c. In April 2014, Goss purchased Amaya for himself and Dark Bay, Fielding's company. Fakhry saw these trades on the blotter and at the same time on April 11, 2014 Goss asked Fakhry to dig up information on Amaya. This is when Fakhry found a German article dated November 8, 2013 and its English translation entitled "Online Poker USA: No License for Pokerstars? (Update)" (the details of which are set out in paragraph 467 h. above), which I find to be significant because there was European interest in, and coverage of, Amaya and this indicated that interest in Amaya had expanded beyond Canada and the United States.

d. Fakhry first became interested in Amaya for himself around the same time as the April 24, 2014 Globe and Mail article, which provided a positive outlook on Amaya.

[635] Even after April 29, 2014, Fakhry had reason to be interested in Amaya independent of the alleged Amaya MNPI.

[636] On May 2, 2014 Fakhry reviewed a positive press release (the details of which are set out above in paragraph 467 ss. "Amaya Announces Lab Approval for Slot Machines in New Jersey") in the morning announcing that the New Jersey gambling regulator had approved the use of Amaya subsidiary Cadillac Jack's class III slot machines. As set out in the May 2, 2014, Analyst Report from Global Maxfin Capital Inc. for Amaya (found at paragraph 467 uu.), New Jersey is the third largest commercial casino market. Fakhry also reviewed a daily comment from Global Maxfin which discussed the development in a positive light. Upon reviewing this information and based on his knowledge of Amaya's technical chart, Fakhry purchased 4,000 Amaya shares at $7.15 on May 2, 2014. I note that the majority of the Panel did not find Fakhry's explanation that he relied on the May 2, 2014 press release credible. I, on the other hand, found that development to be materially positive. While May 2, 2014 was Fakhry's first Amaya purchase, I find this purchase was reasonable as the announcement that New Jersey approved the slot machines of Amaya's subsidiary, Cadillac Jack, signaled new growth for the company. As mentioned previously, Fakhry watched the gambling sector and noted the collapse of Cryptologic after the US government criminalized the taking of online bets from U.S. citizens, known in the sector as "Black Friday". This is important to note, because it explains why Fakhry would have been so enthusiastic that New Jersey at last approved Cadillac Jack's machines on May 2, 2014, and why he purchased that date. The majority of the Panel found that Fakhry's trading was risky and they pointed to the fact that the amount of Fakhry's investment in Amaya was four times his net worth at the time and more than his entire 2013 income and that $65,000 of his investment in Amaya (70%) was made on credit. In my view the "riskiness" of an investment is not a determinative factor and it must be looked at in the context of the rest of the mosaic of circumstantial evidence. Fakhry's May 2, 2014 Amaya purchase reflected an interest Fakhry had in some interesting but risky stocks and this investing behaviour was not out of the norm for Fakhry and at the time of the Amaya trades Fakhry had a full time salaried job and regular source of income. For example, as far back as 1996 Fakhry took risks in trading, like when he purchased more than $200,000 in Bre-X shares at a time when he'd just finished university and was not working, funding the purchase from some mutual funds he held and his line of credit. History shows how that investment went. This is in comparison to his 2005-2006 purchase of Apple options where he realized a US$55,000 gain. Fakhry's evidence also revealed that he traded significant amounts in several investments including various high risk, leveraged ETFs. In my view, Fakhry was no stranger to taking risks in his trading.

[637] I also accept Fakhry's evidence that he closely monitored the stock he held and its price in the context of his adjusted cost base in order to mitigate risk and if necessary implement an exit strategy.

[638] It is important to note that after Fakhry's first Amaya trade on May 2, 2014, the majority of Fakhry's trading, 7,000 of 11,000 shares (or over 60%), occurred on and after May 20, 2014, following Fakhry's participation in the company's analyst conference call on Friday, May 16, 2014. The breakdown of Fakhry's subsequent trades is as follows:

a. May 20, 2014 – 3,500 shares at $8.10,

b. May 21, 2014 – 2,000 shares at $8.72,

c. May 26, 2014 – 500 shares at $11.04,

d. May 28, 2014 – 1,000 shares at $10.62.

[639] What's notable at the time of these trades is that Fakhry was aware of information independent of Goss. Specifically, on May 15, 2014, Amaya announced its Q1 2014 results. On May 16, 2014, Amaya hosted a conference call to discuss its 2014 first quarter results. Even though Fakhry was on vacation in Italy at the time he listened in to the conference call. I accept Fakhry's evidence that this conference call was key to Fakhry's thinking on Amaya and its prospects. Amaya's CEO and CFO, as well as key analysts who followed Amaya and the gambling sector participated in the call. Fakhry described the tone of the call as "exciting", "upbeat" and "giddy". There were many positive takeaways from the conference call. Amaya was applying for Class III gaming licenses in US states. Amaya had raised a significant amount of money, and was likely on the acquisition trail. I note that Staff did not provide any evidence to counter Fakhry's description of the call, and the transcript of the call was not in evidence. However, based on the content of Amaya's press release and that the news was positive for Amaya at this time, I have no reason to doubt Fakhry's recollection of the call.

[640] Prior to May 20, 2014 there was also a lot of chatter online about Amaya rumours. From May 14, 2014 to May 20, 2014 there were a number of posts on Stockhouse from "solarman2013", "ferret_ca" and "retiredcf" that had a positive outlook on Amaya. In addition, in the days following the Amaya conference call on May 16, 2014, numerous analysts published reports on Amaya's outlook. Specifically, Exhibit 226, entitled "Staff's Amaya Information Chronology - Information Reviewed by F. Fakhry at the Material Time", lists analysis reports from Canaccord Genuity, Clarus Securities Inc., Cormark Securities Inc. and Industrial Alliance that Fakhry reviewed.

[641] In addition, it is important to note that May 16, 2014 was a Friday and due to the Victoria Day Monday the next trading day was May 20, 2014. I find the timing reasonable that Fakhry purchased more shares after the Victoria long weekend, based on the information from the Amaya conference call, and subsequent analyst reports following the conference call. With respect to Fakhry's purchase on May 26, 2014, I note the evidence of internet posts on Stockhouse by "goldencalf", "ferret_ca", "drd8", "solarma2013" and "Tobuyornot", relating to rumours of an Amaya and PokerStars transaction between May 22, 2014 and May 26, 2014. Notably, on May 24, 2014, there was also the online article from CalvinAyre.com that also discussed the possibility of Amaya merging with PokerStars. Even the Financial Post reported on May 26, 2014 about the possibility of Amaya looking to acquire another company. In my view, it is equally or more likely that Fakhry relied on this information when deciding to trade on May 26, 2014 and this decision to trade was not based on MNPI from Goss.

[642] With respect to Fakhry's purchase on May 28, 2014, I note further evidence of internet posts on Stockhouse by "goldencalf", "retiredcf", "ozphoenix", "ferret_ca" and "drd8" discussing the Amaya transaction rumours and predictions or a major move in the near future. Also on May 27, 2014, online articles were published by CantechLetter.com and gamining-awards.com which also hinted at a potentially transformative transaction, the latter even speculating about PokerStars. In my view, it is equally or more likely that Fakhry relied on this information when deciding to trade on May 28, 2014 and this decision to trade was not based on MNPI from Goss. While there was an email on May 28, 2014, Goss's evidence is that he merely told Fakhry by email: "I hear AYA news is next week." There is insufficient evidence in my view to support that this email was based on Amaya MNPI that Goss received from Kitmitto. I accept both Goss's and Fakhry's evidence and submission on this point that this email was in reference to the online Stockhouse posts (of which there were many as I have described above).

[643] As I set out at paragraphs 462 and 464, there was evidence that Aston Asset Management employees did talk about the Amaya transaction and that others could overhear, providing an opportunity that individuals could have overheard information about Amaya. I disagree with the majority Panel's finding not to accept Fakhry's testimony about the information he overheard from DT. Specifically, the majority did not accept Fakhry's evidence that Aston Securities's office manager DT had stepped out of his office and made a statement about Blackstone's involvement in the transaction, saying that he had seen this in a Bloomberg scroll. I note along with the majority that no party provided any evidence of a Bloomberg statement. However, there is no evidence to demonstrate that DT or Fakhry lied about the Bloomberg scroll. I find that DT's statement was an enthusiastic announcement of something that he learned at the time. I also find Fakhry to be truthful and I accept Fakhry's testimony that he overheard the potential price for Amaya and information about Blackstone from DT. When Fakhry heard this information being announced publicly in the office by DT, he had no reason to believe that this was MNPI. Further, Staff never made an allegation that DT tipped Fakhry.

[644] Therefore, I find that Fakhry did not engage in insider trading.

[645] Since I have found that Fakhry never received the alleged Amaya MNPI from Goss and was not in a special relationship, it is therefore impossible for Fakhry to have tipped or recommended Amaya to anyone else. However, since the majority of the Panel did make findings about Fakhry tipping and recommending, I will address this as well.

[646] Specifically, Staff have alleged that Fakhry tipped CB, NG and CG with the details and timing of the Acquisition. I note that the majority of the Panel found that Fakhry did not tip CG and I agree that Staff did not prove on a balance of probabilities that Fakhry tipped CG. However, the majority of the Panel found that Fakhry tipped CB and NG, and I disagree.

[647] Fakhry admits to recommending Amaya to CB after listening to the May 16, 2014 Amaya Q1 result analyst conference call. In my view there is nothing improper with this. The recommendation was not based on MNPI. It was based on information in the financial statements and from an analysts's conference call. The majority of the Panel came to the conclusion that on a balance of probabilities Fakhry had told CB during their weekend discussion about the Amaya MNPI and that May 21 was when it would be announced. At paragraph 394, the majority finds that CB's urgency to purchase shares was to take advantage of an expectation of an imminent announcement that would generate a quick profit. I disagree. Upon looking at the mosaic of circumstantial evidence, I find that it is equally likely or more likely that Fakhry's recommendation to CB was based on the positive and upbeat information from the analyst call and recent analyst commentary, the Globe and Mail article (as discussed in paragraph 467 mm. above) about the possibility of Amaya making another acquisition (given its cash on hand) and rumours posted online on Stockhouse. In my view, it is not uncommon to make investment decisions based on positive news from an analyst conference call or news articles and other online information. It is also not uncommon to take a position and invest on short notice to jump on to an investing trend and take advantage of positive news reported in the media and online. Therefore, I find that Staff did not prove on a balance of probabilities that Fakhry tipped CB.

[648] I also find that Fakhry did not tip NG. NG purchased Amaya shares on May 6, 7, 14, 26, 28 and 29, 2014. I note that on all of these dates there was already positive news about Amaya and rumours circulating online (see for example paragraphs 467 bbb. and ooo. to rrr.) which could equally or more likely have been relied upon as a reason to invest in Amaya in anticipation of further positive news and forward momentum in Amaya's share price. I note that NG purchased

the bulk of his shares 9,200 of 11,800 (or 78%) on May 26, 28 and 29, after Fakhry forwarded the CalvinAyre.com article (which was readily available and searchable on the internet) to him on May 24, 2014. Staff's case relies on a text discussion between NG and TP on May 28, 2014 as proof that Fakhry had inside information. However, I agree with Fakhry that this text exchange cannot support the inference that Fakhry had the alleged Amaya MNPI. In my view it is equally likely that the information in the texts could have been based on multiple sources online. Specifically, the texts refer to a merger and the term "merger" was used throughout a number of online Stockhouse posts (see for example paragraphs 467 ooo., xxx. and zzz. ii.). I note that in reality there was never a merger and instead it was an acquisition, which Kitmitto knew about, but none of Fakhry, TP or NG had communications that mentioned an acquisition and they were all sophisticated enough to tell the difference between a merger and an acquisition, though they may not have thought the difference was material. Their communications discussed a "merger" because this was the specific language used in the online sources on Stockhouse that they reviewed. I accept the evidence that Fakhry and NG and TP were following online rumours on Stockhouse and I note that on May 27, 2014 a rumour was posted by "drd8" stating "They buy pokerstars and it may be a 20 dollar bill." I find that Staff did not prove on a balance of probabilities that Fakhry tipped NG, as it is more likely that NG relied on online sources relating to Amaya rumours (see for example the information available on the internet listed at paragraph 467 ooo., ppp., qqq., rrr., sss. and ttt.) and that Fakhry's communications with NG were based on online information he found through his diligent research.

[649] Staff have also alleged that Fakhry made recommendations, based on Amaya MNPI, to MG, ST and TP. Fakhry admits that he did recommend Amaya to MG, ST and TP, but this was not based on the alleged Amaya MNPI and I agree.

[650] I note that ST and TP were generally more active traders. These clients of Fakhry liked the style of trading Fakhry offered as a result of his technical analysis. They were interested in investing in momentum stocks. ST was an active trader whose trading history was characterised by big bets on margin and ST tended to invest heavily in one stock at a time. Their trading was not uncharacteristic.

[651] Fakhry recommended Amaya to ST on May 2, 2014. On this same day there was an Amaya press release announcing Amaya's subsidiary had approval from the New Jersey government to supply slot machines and there was a positive online Motley Fool article suggesting that online gaming is the next big growth area in the industry and investors should look at Amaya. It is equally or more likely that this information was the catalyst for the decision to invest in Amaya and was not based on the alleged Amaya MNPI. I note that all of ST's other trades were not solicited by Fakhry and there was a wealth of online sources and rumours that ST could have been relying on when giving Fakhry instructions to purchase Amaya.

[652] At paragraph 418, the majority finds that Fakhry's evidence about his uncle and client, MG, was that he always accepted Fakhry's recommendations, without question. Fakhry's evidence was that he did not recommend Amaya to MG until after Amaya's May 16 analyst call. MG bought shares of Amaya on May 20, May 27 and June 4. Where I disagree with the majority of the Panel is that, in my view, there is nothing problematic about this recommendation, because it is not based on the alleged Amaya MNPI. It is equally or more likely that the decision to invest in Amaya on May 20, 2014, was based on the positive information and outlook from the Amaya analysts conference call, rumours posted on Stockhouse on May 16, 2014 and the May 20, 2014 positive research update from Industrial Alliance on Amaya which mentioned a significant acquisition could be coming and most likely a poker platform. In addition, with respect to the May 27 and June 4, 2014 purchases; there was also contemporaneous positive information available online such as the May 24, 2014 CalvinAyre.com article, May 24, 2014 post on Stockhouse and multiple posts on Stockhouse about Amaya rumours posted between May 31, 2014 and June 4, 2014 (for example see paragraph 467 above). While MG did earn a significant profit from his Amaya purchases, Staff's over-emphasis on profit is insufficient to support that a trade was based on the alleged Amaya MNPI and profit is not a determinative factor and should not be weighted excessively when considering all the facts.

[653] With respect to TP, the majority of the Panel found at paragraph 416 that TP's purchases of Amaya shares for either himself or his sister (on May 2, 20, 21, 22 and 29, 2014) flowed from Fakhry's recommending Amaya to TP on May 2. Again, there was nothing problematic with Fakhry's recommendation as Staff has not proven on a balance of probabilities that this recommendation was based on the alleged Amaya MNPI. It is equally or more likely that the decision to purchase Amaya shares was based on information and rumours contemporaneously available. As mentioned above, there was a positive Amaya news release on May 2, 2014, as well as a Motley Fool article on that same day. May 20, 2014 was the first trading day after the May 16, 2014 Amaya analysts conference call and there were rumours posted on Stockhouse on May 16, 2014 and a May 20, 2014 positive research update from Industrial Alliance on Amaya which mentioned a significant acquisition could be coming and most likely a poker platform. On May 22, 2014 there were further posts on Stockhouse hinting at a promising announcement. Between May 23 and May 29, 2014 there were numerous posts on Stockhouse about Amaya rumours as well as some articles published on the internet (see paragraph 467 above) and notably an article in the Financial Post dated May 26, 2014, commenting on Amaya's press release of the same day which was essentially a non-denial denial statement about increased trading activity and transaction potential. The news article also commented on speculation of a potential takeover that "Amaya is looking to 'trade up' to a larger poker platform."

[654] Therefore, I find that Staff has not proven on a balance of probabilities that Fakhry made recommendations based on the alleged Amaya MNPI. Based on the mosaic of circumstantial evidence, other equally likely inferences can be drawn based on the information, media articles and rumours on the internet at that time.

5. Conclusion

[655] As I have found above, there was deal uncertainty and while it is unclear when the deal became material, I found that Kitmitto never passed the alleged Amaya MNPI to Goss. Since Goss never came into possession of the alleged Amaya MNPI, it was impossible for him to pass on any Amaya MNPI to Fakhry. Since Fakhry never came into possession of the alleged Amaya MNPI and since I have found that Fakhry was not in a special relationship, I therefore find that Staff did not prove all the insider trading, tipping and recommending allegations against Fakhry. In my view, there is no clear, convincing, and cogent evidence that Fakhry was tipped or that Fakhry tipped or recommended to others based on the alleged Amaya MNPI, and neither the timing and nature of his trades nor the timing and nature of his communications suggest insider trading or tipping or recommending Amaya to clients based on MNPI. The circumstantial evidence shows that Fakhry had good reason to trade Amaya and that his trading and communications line up with information and rumours that were publicly available, and found on the internet through Fakhry's research. As mentioned above, I also find that Fakhry was not in a special relationship and therefore, in the absence of being in a special relationship he cannot be found to have insider traded, tipped or made recommendations based on MNPI to others.

F. Fielding

[656] The majority of the Panel found that Goss did not tip Fielding with Amaya MNPI or make a recommendation to Fielding based on Amaya MNPI during the Relevant Period. I also find that Fielding was not tipped and Fielding never came into possession of the alleged Amaya MNPI. Therefore, I find that Staff did not prove the allegation of insider trading brought against Fielding. Below, I have set out my reasoning for this conclusion.

[657] As I have found above, there was deal uncertainty, and while it is unclear when the deal became material, I found that Kitmitto never passed the alleged Amaya MNPI to Goss. I also found that Goss was not in a special relationship. Therefore it follows that since Goss was never in possession of the alleged Amaya MNPI and was not in a special relationship, he could not have tipped Fielding or made recommendations based on the alleged Amaya MNPI. While Goss made recommendations to Fielding (and other clients), none of these recommendations were problematic as they were not based on the alleged Amaya MNPI.

[658] I note there was no allegation from Staff that anyone else tipped Fielding with the alleged Amaya MNPI. I agree with the majority's finding at paragraph 142 that the Statement of Allegations used vague language which was insufficient to support a conclusion that Fielding received updates about the Acquisition from Kitmitto. As a result, Staff only alleged that Goss tipped or made recommendations based on MNPI to Fielding and I have found that Staff have not proven these allegations on a balance of probabilities.

[659] Fielding was Goss's client, and he followed Goss's advice. Goss was "bullish" on Amaya. The evidence showed that Fielding regularly relied on his broker, Goss. His trading in Amaya was not uncharacteristic. Further, Fielding had an early interest in Amaya. I accept Fielding's evidence that Fielding invested in Amaya before Kitmitto knew Amaya planned to acquire PokerStars.

[660] I find that Fielding's long-standing interest in the gaming industry and in Amaya was the basis for his trading before, during and after the Relevant Period. As far back as 2010, Fielding invested in Intertain, World Gaming, and Cryptologic. Fielding bought and held shares in Cryptologic in 2010 and 2011. Cryptologic was the predecessor of Amaya. Fielding also invested in Gaming Nation on Goss's recommendation. Goss recommended Amaya to multiple clients in 2013 and in early April of 2014. Fielding first invested in Amaya on April 11, 2014. This was before anyone at Aston Asset Management learned of a potential Amaya acquisition.

[661] Fielding was also a founding investor and Chairman of the Board of Ethoca, an e-commerce fraud prevention technology company. In 2014, Fielding sat on the boards of Woodbine Entertainment (horse racing), Ethoca, Intertain, and Aston Financial. He joined the Board of Aston Financial in February 2014. Fielding was also on the board of advisors for the Armstrong Partnership.

[662] Fielding and Goss were also friends. However, it is insufficient to rely on Goss's friendship with Fielding to establish a special relationship or that tipping or recommending based on the alleged Amaya MNPI occurred. Goss and Fielding communicated frequently, however there is insufficient evidence to establish that such communications were related to the alleged Amaya MNPI. For example, in 2014 they spoke many times a day about personal interests, investments, and Fielding's brokerage account. Goss kept an eye out for investments that matched Fielding's risk tolerance and interests. It is equally or even more likely that Goss and Fielding discussed other companies and not the alleged Amaya MNPI. In the first half of 2014, Fielding, Kitmitto and Goss shared interests in Ethoca, Intertain, Synaptive, Park Lane Farms, Orthogonal, Patient Home Monitoring, and World Gaming. They communicated frequently about these non-Amaya investment opportunities. While there was opportunity for Goss and Fielding to communicate, as explained by the Alberta

Court of Appeal, "Evidence of opportunity, by itself, cannot realistically prove anything more than opportunity. Evidence of multiple meetings and communications during the relevant period does not change that; opportunity is still no more than opportunity."[113] The case law has also found previously that friendship is not evidence of a breach of the Act and that evidence of friendship is no more consistent with having been involved in a scheme than innocence.[114]

[663] In addition, I note that phone record evidence provided by Staff was incomplete and was only a partial record of Fielding's cellphone records. I accept that Goss and Fielding communicated frequently, but with partial phone records, the circumstantial evidence does have some gaps and I cannot make the inferences that Staff asks, which is that communications were related to the alleged Amaya MNPI. When Staff's evidence is weak or incomplete, they have not met the balance of probabilities threshold and there is insufficient evidence for me to make an inference that the partial sample of phone calls provided related to the alleged Amaya MNPI.

[664] Fielding was also an aggressive trader. He described his account as 90% risk and this trading account as "discretionary spending" and he used margin. His Amaya trading was consistent with his established trading patterns and habits. Fielding liked high risk investments and he liked high concentration in his investments. He would concentrate on three or four plays at a time. Fielding was also a superstitious trader who liked to trade in even numbers to build positions. He was also a very active trader.

[665] While Fielding's trading in Amaya was profitable, Fielding made many profitable investments and his profits on Amaya were not uncharacteristic for him.

[666] I agree with the majority's findings at paragraphs 323 and 329 that Fielding was not in a special relationship and their conclusions in paragraph 332 that Staff has not established on a balance of probabilities that Goss gave MNPI about Amaya to Fielding. While Goss recommended Amaya to Fielding, in my view this recommendation was not based on the alleged Amaya MNPI and was prior to the Relevant Period. Therefore, I also find that Staff did not prove the insider trading allegation against Fielding.

X. CONCLUSION

[667] As set out in the case law, "if the circumstantial evidence equally supports two opposing inferences, one in favour of Staff and one in favour of a respondent, Staff will not have met its burden of proof."[115] To quote another case, separate but related to the Amaya circumstances in this case, *Cheng (Re)*, "Staff has the onus of proving each of these matters on a balance of probabilities. If it is necessary to draw inferences, both the facts on which the inferences are based and the facts inferred must satisfy this same standard of proof; it must be more likely than not that they occurred."[116] For the reasons set out above, I find that a number of different inferences which are equally likely can be drawn from the mosaic of circumstantial evidence and therefore Staff has not met its burden of proof on a balance of probabilities. As a result, I find that Staff did not prove the allegations against any of the respondents and my findings are that:

a. There was deal uncertainty, and while it is unclear when the deal became material, I found that in any event, Kitmitto did not tip Vannatta, Christopher, and Goss about the alleged Amaya MNPI;

b. Given that the insider trading, tipping and/or recommending allegations of Vannatta, Christopher, and Goss depend on having first received the alleged Amaya MNPI from Kitmitto, these other allegations only flow-through if Kitmitto tipped them with the alleged Amaya MNPI. Given that I find that Kitmitto did not tip Vannatta, Christopher and Goss, this breaks the tipping chain and the cascade of allegations that all stem from Kitmitto allegedly passing on the alleged Amaya MNPI. I therefore find that:

   i. Vannatta never received the alleged Amaya MNPI, did not engage in insider trading, and did not tip CV, DU, NU and KU;

   ii. Christopher never received the alleged Amaya MNPI, did not engage in insider trading and did not tip Claudio;

   iii. Claudio never received the alleged Amaya MNPI and did not engage in insider trading;

   iv. Goss never received the alleged Amaya MNPI, did not engage in insider trading, did not tip Fakhry, Fielding and FH, and did not make recommendations to clients while in possession of MNPI;

113 *Walton* at para 31
114 *Hutchinson* at para 145
115 *Hutchinson* at para 62
116 *Cheng* at para 30

v. Fakhry never received the alleged Amaya MNPI, did not engage in insider trading, did not tip clients and relatives, and did not make recommendations to clients and relatives while in possession of MNPI; and

vi. Fielding never received the alleged Amaya MNPI and did not engage in insider trading;

c. Christopher did not mislead Staff;

d. Vannatta did not mislead Staff; and

e. Vannatta did not conceal his trading in Amaya from his employer.

[668] I thank the parties for their detailed, thorough and helpful oral and written submissions on this complex case.

Dated at Toronto this 26th day of May, 2022.

“Heather Zordel”

B. Ontario Securities Commission

B.2
Orders

B.2 Orders

B.2.1 Green Environmental Technologies Inc. – s. 144

Headnote

Application by an issuer for a revocation of a cease trade order issued by the Commission – cease trade order issued because the issuer had failed to file certain continuous disclosure materials required by Ontario securities law – defaults subsequently remedied by bringing continuous disclosure filings up-to-date – cease trade order revoked.

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 127 and 144.

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED
(the "Act")

AND

IN THE MATTER OF
GREEN ENVIRONMENTAL TECHNOLOGIES INC.

ORDER
(section 144 of the Act)

WHEREAS the securities of Green Environmental Technologies Inc. (the **Applicant**) are subject to a cease trade order (the **Ontario Cease Trade Order**) dated November 18, 2005 issued by the Director of the Ontario Securities Commission (the **Commission**) pursuant to paragraph 2 of subsection 127(1) of the Act, it was ordered that trading in the securities of the Applicant cease until the order is revoked by the Director.

AND WHEREAS the Ontario Cease Trade Order was made on the basis that the Applicant was in default of certain filing requirements under Ontario securities law as described in the Ontario Cease Trade Order and below;

AND WHEREAS the Applicant has applied to the Commission pursuant to section 144 of the Act to revoke the Ontario Cease Trade Order;

AND UPON the Applicant having represented to the Commission that:

1. The Applicant was incorporated under the name "The E21 Group Inc." on October 1, 1994, under the *Business Corporations Act* (Ontario). The Articles of the Applicant were amended to change the name to Green Environmental Technologies Inc. on August 14, 2003.

2. The Applicant's registered head office is located at 31 Sunset Trail, Toronto, Ontario, M9M 1J4.

3. The Applicant is a reporting issuer in Ontario, British Columbia, and Alberta and is not a reporting issuer in any other jurisdiction in Canada. The Applicant's principal regulator is the Commission.

4. The Applicant's authorized capital consists of an unlimited number of common shares (the **Common Shares**), of which approximately 23,216,258 Common Shares are issued and outstanding.

5. The Applicant has no other securities, including debt securities, issued and outstanding.

6. The Common Shares are not listed, quoted, or traded on any exchange, marketplace or other facility in Canada or elsewhere.

7. The Ontario Cease Trade Order was issued as a result of the Applicant's failure to file its audited annual financial statements for the year ended September 30, 2004, related management's discussion and analysis (**MD&A**) and related certificates as required under National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (**NI 52-109 Certificates**)

8. In addition to the Ontario Cease Trade Order, the Applicant's securities are also subject to a cease trade order issued by the British Columbia Securities Commission (**BCSC**), dated December 13, 2005 (the **BC Cease Trade Order**) and subject to a cease trade order by the Alberta Securities Commission (**ASC**), dated September 13, 2006 (the **Alberta Cease Trade Order**) (collectively with the Ontario Cease Trade Order, the **Cease Trade Orders**).

9. The Applicant has concurrently applied to the BCSC and the ASC for a full revocation of the BC Cease Trade order and Alberta Cease Trade Order, respectively.

10. The Applicant subsequently failed to file other continuous disclosure documents with the Commission within the prescribed timeframe in accordance with the requirements of Ontario securities law, including the following:

(a) all audited financial statements, accompanying MD&A and related NI 52-109 Certificates for the years ended September 30, 2005 to September 30, 2020;

(b) all unaudited interim financial statements, accompanying MD&A and related NI 52-109 Certificates for the interim periods ended December 31, 2004 to June 30, 2021;

(c) disclosure required by Form 51-102F6V *Statement of Executive Compensation - Venture Issuers* (**Form 51-102F6V**) for the years ended September 30, 2004 to September 30, 2021;

(d) disclosure required by Form 52-110F2 *Disclosure by Venture Issuers* (**Form 52-110F2**), for the years ended September 30, 2005 to September 30, 2020, including the audit committee charter not filed for the year ended September 30, 2004; and

(e) disclosure required by Form 58-101F2 *Corporate Governance Disclosure (Venture Issuers)* (**Form 58-101F2**), for the years ended September 30, 2005 to September 30, 2020.

11. Since the issuance of the Cease Trade Orders, the Applicant has filed the following continuous disclosure documents with the Commission:

(a) audited financial statements, accompanying MD&A and related NI 52-109 Certificates for the years ended September 30, 2021, September 30, 2020 and September 30, 2019;

(b) unaudited interim financial statements, accompanying MD&A and related NI 52-109 Certificates for the interim periods ended December 31, 2020, March 31, 2021, June 30, 2021 and December 31, 2021;

(c) disclosure required by Form 51-102F6V for the years ended September 30, 2020 and September 30, 2021;

(d) disclosure required by Form 52-110F2, as at September 30, 2021; and

(e) disclosure required by Form 58-101F2, as at September 30, 2021.

12. The Applicant has not filed the following:

(a) audited financial statements, accompanying MD&A and related NI 52-109 Certificates for the years ended September 30, 2005 to September 30, 2018;

(b) unaudited interim financial statements, accompanying MD&A and related NI 52-109 Certificates for the interim periods ended December 31, 2004 to June 30, 2020;

(c) disclosure required by Form 51-102F6V for the years ended September 30, 2004 to September 30, 2019;

(d) disclosure required by Form 52-110F2, for the years ended September 30, 2005 to September 30, 2020; and

(e) disclosure required by Form 58-101F2, for the years ended September 30, 2005 to September 30, 2020

(collectively, the **Outstanding Filings**).

13. The Applicant has filed with the Commission all continuous disclosure that it is required to file under Ontario securities law, except for the Outstanding Filings and any other continuous disclosure that the Commission elected not to require as contemplated under sections 6 and 7 of National Policy 12-202 *Revocation of a Compliance-related Cease Trade Order* (**NP 12-202**).

14. Except for the failure to file the Outstanding Filings, the Applicant (i) is up-to-date with all of its other continuous disclosure obligations; (ii) is not in default of any of its obligations under the Cease Trade Orders, except for the possible contraventions of the Ontario Cease Trade Order described in paragraph 15 below; and (iii) is not in default of any requirements under the Act or the rules and regulations made pursuant thereto.

15. While the Ontario Cease Trade Order was in effect, the Applicant entered into loan agreements with Dominique Monardo, the CEO and a director of the Applicant. Since the loan agreements are evidence of indebtedness of the Applicant, each loan agreement may, in the circumstances, be a "security" as that term is defined under applicable securities legislation. Insofar as the loan agreements may have been securities, entering into the loan agreements may have contravened the terms of the Ontario Cease Trade Order. However, no other securities of the Applicant were issued after the date of the Ontario Cease Trade Order and the Applicant did not enter into any agreements contemplating the issuance of other securities after the date of the Ontario Cease Trade Order.

16. As of the date hereof, the Applicant has paid all outstanding activity, participation and late filing fees that are required to be paid to the Commission and has filed all forms associated with such payments.

17. As of the date hereof, the Applicant's profiles on the System for Electronic Document Analysis and Retrieval (**SEDAR**) and the System for Electronic

Disclosure by Insiders (**SEDI**) are current and accurate.

18. Since the issuance of the Cease Trade Orders, there have been no material changes in the business, operations or affairs of the Applicant which have not been disclosed by news release and/or material change report and filed on SEDAR.

19. Other than the Cease Trade Orders, and the temporary cease trade order issued by the Director of the Commission on November 8, 2005 which expired and was replaced with the Ontario Cease Trade Order, the Applicant has not previously been subject to a cease trade order issued by any securities regulatory authority.

20. The Applicant is not considering nor is it involved in any discussions relating to a reverse take-over, merger, amalgamation or other form of combination or transaction similar to any of the foregoing.

21. The Applicant has given the Commission a written undertaking that:

(a) the Applicant will hold an annual meeting of shareholders within three months after the date on which the Ontario Cease Trade Order is revoked; and

(b) the Applicant will not complete

(i) a restructuring transaction involving, directly or indirectly, an existing or proposed, material underlying business which is not located in Canada,

(ii) a reverse takeover with a reverse takeover acquirer that has a direct or indirect, existing or proposed, material underlying business which is not located in Canada, or

(iii) a significant acquisition involving, directly or indirectly, an existing or proposed, material underlying business which is not located in Canada,

unless

(1) the Applicant files a preliminary prospectus and a final prospectus with the Commission and obtains receipts for the preliminary and final prospectus from the Director under the Act,

(2) the Applicant files or delivers with the preliminary prospectus and the final prospectus the documents required by Part 9 of National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**) including a completed personal information form and authorization in the form set out in Appendix A of NI 41-101 for each current and incoming director, executive officer and promoter of the Applicant, and

(3) the preliminary prospectus and final prospectus containing the information required by applicable securities legislation, including the information required for a probable restructuring transaction, reverse takeover or significant acquisition (as applicable).

22. Upon the revocation of the Ontario Cease Trade Order, the Applicant will issue a news release and concurrently file a material change report on SEDAR announcing the revocation of the Ontario Cease Trade Order and outlining the Applicant's future plans.

AND UPON considering the Application and the recommendation of the staff of the Commission;

AND UPON the Director being satisfied that it would not be prejudicial to the public interest to revoke the Ontario Cease Trade Order;

IT IS ORDERED pursuant to section 144 of the Act that the Ontario Cease Trade Order is revoked.

DATED at Toronto this 2nd day of May, 2022.

"Marie-France Bourret"
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2021/0465

B.2.2 British Telecommunications Plc

Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – Application for an order that the issuer is not a reporting issuer under applicable securities laws – requested relief granted.

Cease to be a reporting issuer in BC – The issuer's securities are traded only on a market or exchange outside of Canada – The only publicly held securities of the issuer are debt securities listed on a foreign exchange; the issuer is not able to accurately determine beneficial ownership of the debt securities; the debt securities were not marketed to Canadians; the filer provided alternative evidence to support that Canadian residents hold a de minimis number of the filer's securities and represent a de minimis number of the total number of debt holders; the issuer has no present intention of conducting a public offering of its securities to Canadian residents; the issuer is subject to the reporting requirements of the securities laws of an acceptable foreign jurisdiction and has undertaken to provide any Canadian security holders the same disclosure it is required to provide its security holders in its home jurisdiction.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(10)(a)(ii).

May 26, 2022

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA AND
ONTARIO
(the Jurisdictions)

AND

IN THE MATTER OF
THE PROCESS FOR CEASE TO BE
A REPORTING ISSUER APPLICATIONS

AND

IN THE MATTER OF
BRITISH TELECOMMUNICATIONS PLC
(the Filer)

ORDER

Background

¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application dated April 7, 2021 from the Filer for an order under the securities legislation of the Jurisdictions (the Legislation) that the Filer has ceased to be a reporting issuer in all jurisdictions of Canada in which it is a reporting issuer (the Order Sought).

Under the Process for Cease to be a Reporting Issuer Applications (for a dual application):

(a) the British Columbia Securities Commission is the principal regulator for this application;

(b) the Filer has provided notice that section 4C.5(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Nova Scotia; and

(c) this order is the order of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

¶ 2 Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this order, unless otherwise defined.

Representations

¶ 3 This order is based on the following facts represented by the Filer:

1. the Filer is a company incorporated under the laws of England and Wales, with its head office in London, England;

2. the Filer is a reporting issuer in each of British Columbia, Ontario and Nova Scotia (collectively, the Reporting Jurisdictions);

3. BT Group plc (BT Group), a company incorporated under the laws of England and Wales, with its head office in London, England, is the indirect parent company of the Filer; all of the issued and outstanding equity securities of the Filer are indirectly owned and controlled by BT Group through two wholly-owned subsidiaries of BT Group;

4. while two indirect subsidiaries of BT Group have operations and customers in the Reporting Jurisdictions, neither BT Group nor the Filer directly has a head office, management, assets or operations in Canada;

5. the British Columbia Securities Commission was selected as principal regulator for the application because more registered shareholders of BT Group (the Filer's indirect parent company) are listed as having an address in British Columbia than in any other jurisdiction of Canada; BT Group concurrently applied to cease to be a reporting issuer in British Columbia and all other jurisdictions of Canada where BT Group is a reporting issuer and on March 22, 2022 was granted an order

that it had ceased to be a reporting issuer in all jurisdictions of Canada where it was a reporting issuer;

6. the Filer is subject to securities laws in the United Kingdom, the rules and policies of the Financial Conduct Authority, including its Listing Rules, the Companies Act 2006, the EU Market Abuse Regulation and the Disclosure Guidance and Transparency Rules (collectively, UK Securities Laws); the Filer is not in default of UK Securities Laws;

7. the Filer completed a demerger transaction in 2001 (the Demerger); prior to the Demerger, the Filer was a reporting issuer in British Columbia, Nova Scotia, Québec and Ontario; as part of the Demerger, ordinary shares of BT Group were listed on the London Stock Exchange (LSE) and the Filer became an indirect wholly-owned subsidiary of BT Group; in connection with the Demerger, the shares of the Filer ceased to be publicly listed; following the Demerger, the Filer continued to be a reporting issuer in British Columbia, Nova Scotia and Ontario;

8. the Filer is a "designated foreign issuer" within the meaning of National Instrument 71-102 *Continuous Disclosure and Other Exemptions Related to Foreign Issuers*;

9. since all of the issued and outstanding equity securities of the Filer are owned by affiliates of the Filer, there are no holders of equity securities of the Filer held by securityholders listed as having an address in Canada;

10. neither the number of debt securities of the Filer held by securityholders listed as having an address in Canada, nor the number of debt securityholders of the Filer with an address in Canada are believed to be significant;

11. since January 1, 2000, which is the earliest date that the National Storage Mechanism for the storage of regulated information in the United Kingdom has records, the Filer has not made a direct distribution of equity securities in Canada;

12. the Filer has 27 series of bonds (the Bonds) that are listed on the LSE;

13. the Bonds are held through depositaries by institutional nominees; because the institutional nominees are not obligated to disclose the identity of the beneficial holders on whose behalf they are holding the Bonds, the Filer does not currently have information regarding whether any of the Bonds are beneficially held by Canadians; to obtain such information would entail substantial time and resources and the information would not be entirely accurate as it would rely on the institutional holders responding to the request;

14. the records for the series of Bonds issued prior to 2016 are unavailable (the Pre-2016 Bonds); of the 23 series of Bonds issued in 2016 and later for which information regarding the initial purchasers is available (the Recent Bonds), three of those series (the Subject Bonds) had one purchaser with an address in Canada at the time of the initial offering of such Bonds;

15. the Canadian purchaser of the three series of the Subject Bonds was an institutional investor; there were over 100 purchasers for each series of Subject Bonds, such that the Canadian purchaser represented less than 1% of the number of purchasers of each series of the Subject Bonds worldwide; the aggregate principal amount of the three series of Subject Bonds purchased by the Canadian purchaser represented 0.07%, 0.1% and 0.4%, respectively, of the outstanding principal amount for each series of Subject Bonds;

16. the Recent Bonds were not marketed in Canada and the offering materials for the Recent Bonds did not disclose that the Filer is a reporting issuer in Canada; holders of the Bonds have online access to annual reports and accounts and half-year results of the Filer that are published on the Filer's website and announced via the UK's Regulatory News Service and filed with the UK National Storage Mechanism, as well as other disclosure documents of the Filer that are published on the website for BT Group, the indirect parent company of the Filer;

17. while the Filer does not have information on the initial purchasers of the four series of Pre-2016 Bonds, the Filer did not actively solicit Canadian investors for the Pre-2016 Bonds; similar to the offerings of the Recent Bonds, the offerings of the Pre-2016 Bonds were aimed at US and European investors and the applicable offering documents did not refer to Canadians being able to participate in such offerings; accordingly, the Filer has no reason to believe the distributions of the Pre-2016 Bonds were any different

than the distributions of the Recent Bonds or that the Pre-2016 Bonds would have a greater proportion of Canadian holdings than the Recent Bonds;

18. in the last twelve months, the Filer has not conducted a prospectus offering in Canada and has not taken steps to create a market for its securities in Canada; the Filer has no current intention to conduct any offerings of its securities in Canada; no securities of the Filer, including debt securities, are traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation* and the Filer does not intend to have its securities listed, traded or quoted on such a marketplace in Canada;

19. the Filer is applying for a decision that the Filer has ceased to be a reporting issuer in all of the jurisdictions of Canada in which it is a reporting issuer;

20. the Filer is not in default of securities legislation in any jurisdiction other than the filing of the annual report and annual financial statements of BT Group for the fiscal year ended March 31, 2021, which were not filed because they became due after the Filer filed the application to cease to be a reporting issuer;

21. the Filer issued a news release on January 17, 2022 announcing it had submitted an application to the Decision Makers for a decision that it is not a reporting issuer and, if that decision is granted, the Filer will no longer be a reporting issuer in any jurisdiction of Canada;

22. the Filer has provided an undertaking to the Decision Makers to concurrently deliver to any Canadian resident securityholder all disclosure materials the Filer is required to deliver to securityholders in the United Kingdom under UK Securities Laws;

23. Canadian holders of the Bonds will continue to receive the same continuous disclosure documents that they received prior to the granting of the Order Sought;

24. the Filer is not eligible to use the simplified procedure under National Policy 11-206 *Process for Cease to be a Reporting Issuer Applications* (NP 11-206) as its outstanding securities are beneficially owned by more than 51 securityholders worldwide;

25. the Filer is not eligible to use the modified procedure under NP 11-206 because it does not file continuous disclosure reports under U.S. securities laws and its securities are not listed on a U.S. exchange;

26. the Filer is not an electronic filer in the Reporting Jurisdictions; and

27. upon granting of the Order Sought, the Filer will no longer be a reporting issuer in any jurisdiction in Canada.

Order

¶ 4 Each of the Decision Makers is satisfied that the order meets the test set out in the Legislation for the Decision Maker to make the order.

The decision of the Decision Makers under the Legislation is that the Order Sought is granted.

"Noreen Bent"
Chief, Corporate Finance Legal Services
British Columbia Securities Commission

OSC File #: 2021/0200

B.2.3 Logica Ventures Corp.

Headnote

Application by an issuer for a revocation of a cease trade order issued by the Commission – cease trade order issued because the issuer failed to file certain continuous disclosure materials required by Ontario securities law – defaults subsequently remedied by bringing continuous disclosure filings up-to-date – cease trade order revoked.

LOGICA VENTURES CORP.

REVOCATION ORDER

Under the securities legislation of Ontario
(the Legislation)

BACKGROUND

1. Logica Ventures Corp. (the **Issuer**) is subject to a failure-to-file cease trade order (the **FFCTO**) issued by the Ontario Securities Commission (the **Principal Regulator**) on May 6, 2021.

2. The Issuer has applied to the Principal Regulator under National Policy 11-207 *Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions* (**NP 11-207**) for an order revoking the FFCTO.

INTERPRETATION

3. Terms defined in National Instrument 14-101 *Definitions* or National Policy 11-207 have the same meaning if used in this order, unless otherwise defined.

REPRESENTATIONS

4. This decision is based on the following facts represented by the Issuer:

   a. The Issuer was incorporated on March 6, 2019 pursuant to the provisions of the *Business Corporations Act* (Ontario). The Issuer is a Capital Pool Company, as such term is defined in TSX Venture Exchange Inc. (**TSXV**) Policy 2.4. The principal business of the Issuer is the identification and evaluation of assets or businesses with a view to completing a Qualifying Transaction (as such term is defined in TSXV Policy 2.4). The Issuer has not commenced commercial operations and has no assets other than a minimum amount of cash acquired from the subscription of common shares in the capital of the Issuer (the **Common Shares**).

   b. The Issuer 's registered office is located at 365 Bay Street, Suite 800, Toronto, Ontario M5H 2V1 and its head office is located at 365 Bay Street, Suite 800, Toronto, Ontario M5H 2V1.

   c. The Issuer is a reporting issuer under the securities legislation of the provinces of Ontario, British Columbia and Alberta. The Issuer is not a reporting issuer in any other jurisdiction in Canada.

   d. The authorized capital of the Issuer consists of an unlimited number of Common Shares. The Issuer currently has 6,740,000 Common Shares issued and outstanding. In addition, the Issuer has 324,000 stock options to acquire Common Shares outstanding.

   e. The Issuer 's Common Shares are listed on the TSXV under the symbol “LOG.P”.

   f. The FFCTO was issued as a result of the Issuer’s failure to file the following continuous disclosure materials (collectively, the **Required Annual Filings**) as required by Ontario securities law:

      i. audited annual financial statements for the year ended December 31, 2020;

      ii. management’s discussion and analysis relating to the audited annual financial statements for the year ended December 31, 2020; and

      iii. certification of the foregoing filings as required by National Instrument 52-109 *Certification of Disclosure in Issuers’ Annual and Interim Filings* (**NI 52-109**).

   g. The Required Annual Filings were not filed due to several factors including (i) the resignations of a director, Chief Executive Officer and Chief Financial Officer, as disclosed in a press release dated March 25, 2021; (ii) the extended delays in seeking potential acquisition targets in order to complete a

Qualifying Transaction due in part to the effects of the COVID-19 pandemic and related travel restrictions, all of which occurred during the period that the Issuer would otherwise be completing the Required Annual Filings.

h. Subsequent to the issuance of the FFCTO, the Issuer also failed to file all unaudited interim financial statements, together with accompanying MD&As, as required under NI 51-102 and certifications required by NI 52-109 for the interim periods ended March 31, 2021 to September 30, 2021 (together with the Required Annual Filings, the **Required CD Filings**).

i. The Issuer is seeking a full revocation of the FFCTO now that the Required CD Filings have been filed, which filing occurred on March 22, 2022.

j. The Issuer is: (i) up-to-date with all of its continuous disclosure obligations; (ii) not in default of any of its obligations under the FCCTO; and (iii) not in default of any requirements under the Legislation or the rules and regulations made pursuant to the Legislation.

k. The Issuer has given the Principal Regulator a written undertaking that the Issuer will not complete:

i. a restructuring transaction involving, directly or indirectly, an existing or proposed, material underlying business which is not located in Canada;

ii. a reverse takeover with a reverse takeover acquirer that has a direct or indirect, existing or proposed, material underlying business which is not located in Canada; or

iii. a significant acquisition involving, directly or indirectly, an existing or proposed, material underlying business which is not located in Canada; unless

a) the Issuer files a preliminary prospectus and a final prospectus with the Ontario Securities Commission and obtains receipts for the preliminary prospectus and the final prospectus from the Director under the Securities Act (Ontario);

b) the Issuer files or delivers with the preliminary prospectus and the final prospectus the documents required by Part 9 of National Instrument 41-101 General Prospectus Requirements (**NI 41-101**) including a completed personal information form and authorization in the form set out in Appendix A of NI 41-101 for each current and incoming director, executive officer and promoter of the Issuer; and

c) the preliminary prospectus and final prospectus contain the information required by applicable securities legislation, including the information required for a probable restructuring transaction, reverse takeover or significant acquisition (as applicable).

l. The Issuer has paid all outstanding activity, participation and late filing fees that are required to be paid.

m. The Issuer's profile on the System for Electronic Document Analysis and Retrieval (**SEDAR**) is up-to-date and the Issuer's profile on the System for Electronic Disclosure by Insiders will be made up-to-date as soon as practicable following the revocation of the FFCTO.

n. Since the issuance of the FFCTO, there have been no material changes in the business, operations or affairs of the Issuer which have not been disclosed by news release and/or material change report and filed on SEDAR.

o. Upon revocation of the FFCTO, the Issuer will disseminate a press release announcing the full revocation of the FFCTO and outlining the Issuer's future plans. The Issuer will not be filing a material change report relating to the full revocation of the FFCTO on the basis that the Issuer has not ceased to carry out its business purpose and does not consider the full revocation of the FFCTO to be a material change.

ORDER

5. The Principal Regulator is satisfied that the order to revoke the FFCTO meets the test set out in the Legislation for the Principal Regulator to make the decision.

6. The decision of the Principal Regulator under the Legislation is that the FFCTO is revoked.

DATED this 27th day of May, 2022.

"Marie-France Bourret"
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2022/0162

B.2.4 Aequitas Innovations Inc. et al. – ss. 21, 144

Headnote

Subsection 144(1) of the Securities Act (Ontario) – application for order varying the Commission's order recognizing Aequitas Innovations Inc. and Neo Exchange Inc. as exchanges – variation required to reflect the acquisition of Aequitas Innovations Inc. by Cboe Canada Holdings, ULC – requested order granted.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 21, 144(1).

May 27, 2022

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, CHAPTER S.5, AS AMENDED
(the "Act")

AND

IN THE MATTER OF
AEQUITAS INNOVATIONS INC.

AND

NEO EXCHANGE INC.

AND

IN THE MATTER OF
CBOE GLOBAL MARKETS, INC.

ORDER
(Sections 21 and 144 of the Act)

WHEREAS the Ontario Securities Commission (**Commission**) issued an order dated November 13, 2014, effective as at March 1, 2015, which was varied on February 27, 2015, September 29, 2015, February 8, 2019 and August 31, 2020, recognizing Aequitas Neo Exchange Inc. and its sole shareholder, Aequitas Innovations Inc. (**Aequitas**), as exchanges pursuant to section 21 of the Act (**Recognition Order**);

AND WHEREAS on January 15, 2019, the name Aequitas Neo Exchange Inc. was changed to Neo Exchange Inc. (**Neo Exchange**);

AND WHEREAS the Commission considers the proper operation of exchanges as essential to investor protection and maintaining a fair and efficient capital market, and therefore requires that any conflicts of interest in the operation of exchanges be dealt with appropriately, the fairness and efficiency of the market not be impaired by any anti-competitive activity, and that systemic risks are monitored and controlled;

AND WHEREAS on June 1, 2022, Cboe Canada Holdings, ULC (**Cboe Canada)** purchased all of the issued and outstanding share capital of Aequitas;

AND WHEREAS Aequitas, Neo Exchange and Cboe Global Markets, Inc. (**Cboe**) have agreed to the applicable terms and conditions set out in the Schedules to the Recognition Order;

AND WHEREAS the Commission has received a request under schedule 3 section 22 of the Recognition Order to approve the purchase by Cboe Canada of all the issued and outstanding shares in the capital of Aequitas;

AND WHEREAS the Commission has received an application under section 144 of the Act to vary and restate the Recognition Order to reflect the Commission's approval of and changes required in connection with Cboe Canada's purchase of Aequitas (**Application**);

AND WHEREAS based on the Application and the representations that Cboe, Aequitas and Neo Exchange have made to the Commission, the Commission has determined that:

(a) Aequitas and Neo Exchange continue to satisfy the recognition criteria set out in Schedule 1 to the Recognition Order,

(b) it is in the public interest to continue to recognize each of Aequitas and Neo Exchange as an exchange pursuant to section 21 of the Act, and

(c) it is not prejudicial to the public interest to vary and restate the Recognition Order pursuant to section 144 of the Act;

IT IS ORDERED, pursuant to section 144 of the Act, that the Application to vary and restate the Recognition Order is granted.

IT IS ORDERED, pursuant to section 21 of the Act, that:

(a) Aequitas continues to be recognized as an exchange,

(b) Neo Exchange continues to be recognized as an exchange, and

(c) Cboe Canada's purchase of Aequitas is approved,

provided that Cboe, Aequitas and Neo Exchange comply with the terms and conditions set out in the Schedules to the Recognition Order, as applicable.

DATED this 27th day of May 2022, to take effect June 1, 2022.

"D. Grant Vingoe"
CEO and Board Director

"Frances Kordyback"
Board Director

SCHEDULE 1

CRITERIA FOR RECOGNITION

PART 1 COMPLIANCE WITH NI 21-101 AND NI 23-101

1.1 Compliance with NI 21-101 and NI 23-101

The exchange complies with the requirements set out in National Instrument 21-101 *Marketplace Operation* (**NI 21-101**) and in National Instrument 23-101 *Trading Rules*, each as amended from time to time, which include requirements relating to:

(a) access;

(b) marketplace operations;

(c) exchange rules, policies and other similar instruments;

(d) order and trade transparency;

(e) transparency of marketplace operations;

(f) record keeping;

(g) marketplace systems and business continuity planning;

(h) confidentiality of information;

(i) outsourcing;

(j) clearing and settlement;

(k) fair and orderly markets;

(l) the management of conflicts of interest; and

(m) filing of financial statements.

PART 2 GOVERNANCE

2.1 Governance

The governance structure and governance arrangements of the exchange ensure:

(a) effective oversight of the exchange;

(b) that business and regulatory decisions are in keeping with the exchange's public interest mandate;

(c) fair, meaningful and diverse representation on the board of directors (Board) and any committees of the Board, including:

  (i) appropriate representation of independent directors, and

  (ii) a proper balance among the interests of the different persons or companies using the services and facilities of the exchange;

(d) the exchange has policies and procedures to appropriately identify and manage conflicts of interest; and

(e) there are appropriate qualifications, remuneration, limitation of liability and indemnity provisions for directors, officers and employees of the exchange.

2.2 Fitness

The exchange has policies and procedures under which it will take reasonable steps, and has taken such reasonable steps, to ensure that each director and officer is a fit and proper person.

PART 3 ACCESS

3.1 Fair Access

(a) The exchange has established appropriate written standards for access to its services including requirements to ensure participants are appropriately registered under Ontario securities laws, or exempted from these requirements.

(b) The access standards and the process for obtaining, limiting and denying access are fair, transparent and applied reasonably.

PART 4 REGULATION OF PARTICIPANTS AND ISSUERS ON THE EXCHANGE

4.1 Regulation

The exchange has the authority, resources, capabilities, systems and processes to allow it to perform its regulation functions, whether directly or indirectly through a regulation services provider, including setting requirements governing the conduct of participants and issuers, monitoring their conduct, and appropriately disciplining them for violations of exchange requirements.

PART 5 RULES AND RULEMAKING

5.1 Rules and Rulemaking

(a) The exchange has rules, policies, and other similar instruments (**Rules**) that are designed to appropriately govern and regulate the operations and activities of participants and issuers.

(b) In addition to meeting the requirements of NI 21-101 relating to market operations and exchange rules, policies and other similar instruments as referred to in paragraphs 1.1(b) and (c) of this Schedule, respectively, the Rules are also designed to

(i) ensure a fair and orderly market; and

(ii) provide a framework for disciplinary and enforcement actions.

PART 6 DUE PROCESS

6.1 Due Process

For any decision made by the exchange that affects a participant or issuer, or an applicant to be a participant or issuer, including a decision in relation to access, listing, exemptions, or discipline, the exchange ensures that:

(a) parties are given an opportunity to be heard or make representations, and

(b) it keeps a record of, gives reasons for and provides for appeals or reviews of its decisions.

PART 7 CLEARING AND SETTLEMENT

7.1 Clearing and Settlement

The exchange has appropriate arrangements for the clearing and settlement of trades.

PART 8 SYSTEMS AND TECHNOLOGY

8.1 Information Technology Risk Management Procedures

The exchange has appropriate risk management procedures in place including those that handle trading errors, trading halts and circuit breakers.

PART 9 FINANCIAL VIABILITY

9.1 Financial Viability

The exchange has sufficient financial resources for the proper performance of its functions and to meet its responsibilities.

PART 10 FEES

10.1 Fees

(a) All fees imposed by the exchange are reasonable and equitably allocated and are consistent with the requirements in Ontario securities laws, including those requirements listed in paragraphs 1.1(a) and (e) of this Schedule.

(b) The process for setting fees is fair and appropriate, and the fee model is transparent.

PART 11 INFORMATION SHARING AND REGULATORY COOPERATION

11.1 Information Sharing and Regulatory Cooperation

The exchange has mechanisms in place to enable it to share information and otherwise co-operate with the Commission, recognized self-.regulatory organizations, other recognized or exempt exchanges, clearing agencies, investor protection funds, and other appropriate regulatory bodies.

SCHEDULE 2

TERMS AND CONDITIONS APPLICABLE TO NEO EXCHANGE

1. DEFINITIONS AND INTERPRETATION

(a) For the purposes of this Schedule:

"accounting principles" means accounting principles as defined in National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*;

"affiliated entity" has the meaning ascribed to it in section 1.3 of National Instrument 21-101 *Marketplace Operation*;

"associate" has the meaning ascribed to it in subsection 1(1) of the Act;

"Board" means the board of directors of Aequitas or Neo Exchange, as the context requires;

"Canadian affiliated entity" means any affiliated entity that is incorporated, formed or created under the laws of Canada or a province or territory of Canada;

"Competitor" means a person whose consolidated business, operations or disclosed business plans are in competition, to a significant extent, with the listing functions, trading functions, market data services or other material lines of business of Neo Exchange or its Canadian affiliated entities;

"criteria for recognition" means all the criteria for recognition set out in Schedule 1 to the Order;

"dealer" means "investment dealer", as that term is defined in section 1.1 of National Instrument 31-103 *Registration Requirements*;

"IIROC" means the Investment Industry Regulatory Organization of Canada;

"Lead Director" means an independent director who will chair all meetings of the independent directors of the Board and serve as a liaison between the chair of the Board and the independent directors;

"marketplace" has the meaning ascribed to it in subsection 1(1) of the Act;

"marketplace participant" has the meaning ascribed to it in section 1.1 of NI 21-101;

"Neo Exchange issuer" means a person or company whose securities are listed on Neo Exchange;

"Neo Exchange marketplace participant" means a marketplace participant of Neo Exchange;

"Nominating Committee" means the committee established by Neo Exchange pursuant to section 7 of this

Schedule or by Aequitas pursuant to section 26 of Schedule 3, as the context requires;

"officer" has the meaning ascribed to it in subsection 1(1) of the Act;

"Regulatory Oversight Committee" means the committee established by Neo Exchange pursuant to section 8 of this Schedule;

"Rule" means a rule, policy, or other similar instrument of Neo Exchange;

"shareholder" means a person or company that holds any class or series of voting shares of Aequitas;

"significant shareholder" means a person or company that:

(i) beneficially owns or exercises control or direction over more than 10% of the outstanding shares of Cboe or Aequitas provided, however, that the ownership of or control or direction over Cboe shares in connection with the following activities will not be included for the purposes of determining whether the 10% threshold has been exceeded:

(A) investment activities on behalf of the person or company or its affiliated entity where such investments are made (I) by a bona fide third party investment manager with discretionary authority (subject to such retained discretion in order for the person or company or its affiliated entity to fulfil its fiduciary duties); or (II) by an investment fund or other pooled investment vehicle in which the person or company or such affiliated entity has directly or indirectly invested and which is managed by a third party who has not been provided with confidential, undisclosed information about Cboe,

(B) acting as a custodian for securities in the ordinary course,

(C) normal course trading (including proprietary client facilitation trading) and wealth management activities (including, for greater certainty, in connection with the management of any mutual funds, pooled funds, trust accounts, estate portfolios and other investor funds and portfolios), including electronic securities trading, conducted for or on behalf of clients of the person or company, provided that any fund manager with discretionary authority carrying out such activities on behalf of such clients, or such clients, have not been provided with confidential, undisclosed information about Cboe,

(D) the acquisition of Cboe shares in connection with the adjustment of index-related portfolios or other "basket" related trading,

(E) making a market in securities to facilitate trading in shares of Cboe by third party clients or to provide liquidity to the market in the person or company's capacity as a designated market maker for shares of Cboe securities, in the person or company's capacity as designated market maker for derivatives on Cboe shares, or in the person or company's capacity as market maker or "designated broker" for exchange traded funds which may have investments in shares of Cboe, in each case in the ordinary course, (which, for greater certainty, will include acquisitions or other derivative transactions undertaken in connection with hedging positions of, or in relation to, Cboe shares), or

(F) providing financial services to any other person or company in the ordinary course of business of its and their banking, securities, wealth and insurance businesses, provided that such other person or company has not been provided with confidential, undisclosed information about Cboe,

and subject to the conditions that the ownership of or control or direction over Cboe shares by a person or company in connection with the activities listed in (A) through (F) above:

(G) is not intended by that person or company to facilitate evasion of the 10% threshold set out in clause (i), and

(H) does not provide that person or company the ability to exercise voting rights over more than 10% of the voting shares of Cboe in a manner that is solely in the interests of that person or company as it relates to that person or company's ownership of or control or direction over the subject shares, except where the ability to exercise voting rights over more than 10% of the voting shares arises as a result of the activities listed in (E) above in which case the person or company must not exercise its voting rights with respect to those voting shares; or

(ii) is a shareholder whose nominee is on the Board of Neo Exchange or Aequitas, for as long as the nominee of that shareholder remains on the Board of Neo Exchange or Aequitas; and

“unaudited non-consolidated financial statements” means financial statements that are prepared in the same manner as audited consolidated financial statements, except that

(i) they are not audited; and

(ii) investments in subsidiary entities, jointly controlled entities and associates are accounted for as specified for separate financial statements in International Accounting Standard 27 Separate Financial Statements.

(b) For the purposes of this Schedule, an individual is independent if the individual is “independent” within the meaning of section 1.4 of National Instrument 52-110 *Audit Committees*, as amended from time to time, but is not independent if the individual:

(i) is a partner, officer, director or employee of a Neo Exchange marketplace participant or an associate of that partner, officer or employee;

(ii) is a partner, officer, director or employee of an affiliated entity of a Neo Exchange marketplace participant who is responsible for or is actively engaged in the day-to-day operations or activities of that Neo Exchange marketplace participant;

(iii) is an officer or an employee of Aequitas or any of its affiliates;

(iv) is a partner, officer or employee of a significant shareholder or any of its affiliated entities or an associate of that partner, officer or employee;

(v) is a director of a significant shareholder or any of its affiliated entities or an associate of that director;

(vi) is a person who owns or controls, or is the officer or employee of a person or company that owns or controls, directly or indirectly, more than 10% of the shares of Aequitas;

(vii) is the director of a person or company that beneficially owns or controls, directly or indirectly, more than 10% of any class or series of voting shares of Aequitas;

(viii) is a director that was nominated, and as a result appointed or elected, by a significant shareholder; or

(ix) has, or has had, any relationship with a significant shareholder that could, in the view of the Nomination Committee, having regard to all relevant circumstances, be reasonably perceived to interfere with the exercise of his or her independent judgment as a director of Aequitas or Neo Exchange.

(c) For the purposes of paragraph (b), the Nominating Committee may waive the restrictions set out in subparagraphs (b)(v), (b)(vii) and (viii) provided that:

(i) the individual being considered does not have, and has not had, any relationship with a shareholder that could, in the view of the Nominating Committee, having regard to all relevant circumstances, be reasonably perceived to interfere with the exercise of his or her independent judgement as a director of Neo Exchange;

(ii) Neo Exchange publicly discloses the use of the waiver with reasons why the particular candidate was selected;

(iii) Neo Exchange provides advance notice to the Commission, at least 15 business days before the public disclosure in sub-paragraph (c)(ii) is made, and

(iv) the Commission does not object within 15 business days of its receipt of the notice provided under sub-paragraph (c)(iii) above.

2. PUBLIC INTEREST RESPONSIBILITIES

(a) Neo Exchange must conduct its business and operations in a manner that is consistent with the public interest.

(b) The mandate of the Board must expressly include regulatory and public interest responsibilities of Neo Exchange.

3. SHARE OWNERSHIP RESTRICTIONS

(a) Without the prior approval of the Commission, and subject to terms and conditions considered appropriate by the Commission, no person or company and no combination of persons or companies acting jointly or in concert may beneficially own or exercise control or direction over:

(i) more than 10% of any class or series of voting shares of Neo Exchange and, thereafter,

(ii) more than 50% of any class or series of voting shares of Neo Exchange.

(b) The articles of Neo Exchange must contain the share ownership restrictions and provisions respecting the enforcement of such restrictions which, without limiting the foregoing, may provide for the filing of declarations, the suspension of voting rights, the forfeiture of dividends, the refusal of the issue or registration of voting shares and the sale or redemption of voting shares held contrary to the restrictions and payment of net proceeds of the sale or redemption to the person entitled thereto.

4. RECOGNITION CRITERIA

Neo Exchange must continue to meet the criteria for recognition set out in Schedule 1 to the Order.

5. FITNESS

In order to ensure that Neo Exchange operates with integrity and in the public interest, Neo Exchange will take reasonable steps to ensure that each director or officer of Neo Exchange is a fit and proper person. As part of those steps, Neo Exchange will consider whether the past conduct of each director or officer affords reasonable grounds for the belief that the director or officer will perform their duties with integrity and in a manner that is consistent with Neo Exchange's public interest responsibilities.

6. BOARD OF DIRECTORS

(a) Neo Exchange must ensure that at least 50% of its Board members are independent.

(b) The chair of the Board must be independent or, if this is not the case, the Board will have appointed a Lead Director.

(c) In the event that Neo Exchange fails to meet the requirements under (a) or (b), it must immediately advise the Commission and take appropriate measures to promptly remedy such failure.

(d) Neo Exchange must ensure that its Board is subject to requirements that the quorum for the Board consists of a majority of the Board members, with at least 50% being independent.

7. NOMINATING COMMITTEE

Neo Exchange must maintain a Nominating Committee of the Board that, at a minimum:

(a) is made up of at least three directors, at least 50% of which must be independent;

(b) confirms the status of a nominee to the Board as independent before the individual is appointed to the Board or the name of the individual is submitted to the shareholder(s) of Neo Exchange as a nominee for election to the Board, whichever comes first;

(c) confirms, on an annual basis, that the status of the directors that are independent has not changed;

(d) assesses and approves all nominees of management to the Board; and

(e) has a requirement that the quorum consist of at least 50% of independent directors.

8. REGULATORY OVERSIGHT COMMITTEE

(a) Neo Exchange must establish and maintain a Regulatory Oversight Committee that, at a minimum:

(i) is made up of at least three directors, a majority of which must be independent;

(ii) reviews and decides, or makes recommendations to the Board, on proposed regulation and rules that must be submitted to the OSC for review and approval under Schedule 5 Process for the Review and Approval of Rules and the Information Contained in Form 21-101F1 and the Exhibits Thereto of this Order;

(iii) considers real or perceived conflicts of interest that may arise, including but not limited to the following contexts:

(A) ownership interests in Aequitas by any Neo Exchange marketplace participant with representation on the Board of Aequitas or the Board of Neo Exchange,

(B) significant changes to the ownership of Aequitas, and

(C) the profit-making objective and the public interest responsibilities of Neo Exchange, including general oversight of the management of the regulatory and public interest responsibilities of Neo Exchange;

(iv) oversees the establishment of mechanisms to avoid and appropriately manage conflicts of interest or potential conflicts of interest, perceived or real, including any policies and procedures that are developed by Neo Exchange, including those that are required to be established pursuant to the Schedules of the Order;

(v) reviews the effectiveness of the policies and procedures regarding conflicts of interest on a regular, and at least annual, basis;

(vi) reports in writing directly to the Commission on any matter that the Regulatory Oversight Committee deems appropriate or that is required by the Commission without first requiring Board approval for such reporting.

(b) The Regulatory Oversight Committee must provide such information as may be required by the Commission from time to time.

9. CONFLICTS OF INTEREST AND CONFIDENTIALITY

(a) Neo Exchange must establish, maintain and require compliance with policies and procedures that:

(i) require that confidential information regarding Neo Exchange marketplace operations, Neo Exchange regulation functions, a Neo Exchange marketplace participant or a Neo Exchange issuer that is obtained by a partner, director, officer or employee of a significant shareholder through that individual's involvement in the management or oversight of marketplace operations or regulation functions of Neo Exchange:

(A) be kept separate and confidential from the business or other operations of the significant shareholder, except with respect to information regarding marketplace operations where disclosure is necessary to

carry out the individual's responsibilities for the management or oversight of marketplace operations and the individual can and does exercise due care in his or her disclosure of the information, and

(B) not be used to provide an advantage to Aequitas or Cboe or Cboe's affiliated entities;

provided that nothing in this section will be construed to limit Aequitas or Neo Exchange from providing to Cboe and its affiliated entities necessary information.

(b) Neo Exchange must establish, maintain and require compliance with policies and procedures that identify and manage conflicts of interest or potential conflicts of interest arising from the listing of the shares of any significant shareholder or an affiliate of a significant shareholder on Neo Exchange.

(c) Neo Exchange must regularly review compliance with the policies and procedures established in accordance with (a) and (b) and must document each review, and any deficiencies, and how those deficiencies were remedied.

10. ACCESS

Neo Exchange's requirements must provide access to the facilities of Neo Exchange only to properly registered investment dealers that are members of IIROC and satisfy reasonable access requirements established by Neo Exchange.

11. REGULATION OF NEO EXCHANGE MARKETPLACE PARTICIPANTS AND NEO EXCHANGE ISSUERS

(a) Neo Exchange must establish, maintain and require compliance with policies and procedures that effectively monitor and enforce the Rules against Neo Exchange marketplace participants and Neo Exchange issuers, either directly or indirectly through a regulation services provider.

(b) Neo Exchange has retained and will continue to retain IIROC as a regulation services provider to provide, as agent for Neo Exchange, certain regulation services that have been approved by the Commission.

(c) Neo Exchange must perform all other regulation functions not performed by IIROC, and must maintain adequate staffing, systems and other resources in support of those functions. Neo Exchange must obtain prior Commission approval before outsourcing such regulation functions to any party, including affiliated entities or associates of Neo Exchange.

(d) Neo Exchange must notify the Commission of any violations of Ontario securities law of which it becomes aware in the ordinary course of its business or otherwise.

12. FEES, FEE MODELS AND INCENTIVES

(a) Neo Exchange must not, through any fee schedule, any fee model or any contract, agreement or other arrangement with any marketplace participant or any other person or company, provide:

(i) any discount, rebate, allowance, price concession or other similar arrangement that is accessible only to, whether as designed or by implication, a particular marketplace participant or any other particular person or company, or

(ii) any discount, rebate, allowance, price concession or other similar arrangement for any service or product offered by Neo Exchange or Cboe and its affiliated entities and significant shareholders that is conditional upon:

(A) the requirement to have Neo Exchange be set as the default or first marketplace a marketplace participant routes to, or

(B) the router of Neo Exchange being used as the marketplace participant's primary router.

(b) Except with the prior approval of the Commission, Neo Exchange must not, through any fee schedule, any fee model or any contract, agreement or other arrangement with any marketplace participant or any other person or company, provide:

(i) any discount, rebate, allowance, price concession or other similar arrangement on any services or products offered by Neo Exchange or Cboe and its affiliated entities and significant shareholders that is conditional upon the purchase of any other service or product provided by Neo Exchange or Cboe or any affiliated entity, or

(ii) any discount, rebate, allowance, price concession or other similar arrangement that is accessible only to, whether as designed or by implication, a class of marketplace participants or of any other persons or companies.

(c) Neo Exchange must obtain prior Commission approval before implementing any new, or amendments to, fees and fee models, including any new, or amendments to any, incentives relating to arrangements that provide for equity ownership in Aequitas for marketplace participants or their affiliated entities based on trading volumes or values on Neo Exchange.

(d) Except with the prior approval of the Commission, Neo Exchange must not require another person or company to purchase or otherwise obtain products or services from Neo Exchange or Cboe and its affiliated entities and significant shareholders as a condition of Neo Exchange supplying or continuing to supply a product or service.

(e) If the Commission considers that it would be in the public interest, the Commission may require Neo Exchange to submit for approval by the Commission a fee, fee model or incentive that has previously been submitted to and/or approved by the Commission.

(f) Where the Commission decides not to approve the fee, fee model or incentive submitted under (e), any previous approval for the fee, fee model or incentive must be revoked, if applicable, and Neo Exchange will no longer be permitted to offer the fee, fee model or incentive.

13. ORDER ROUTING

Neo Exchange must not support, encourage or incent, either through fee incentives or otherwise, Neo Exchange marketplace participants, Cboe affiliated entities or significant shareholders to coordinate the routing of their orders to Neo Exchange.

14. FINANCIAL REPORTING

Neo Exchange must deliver to the Commission its annual financial budget, together with the underlying assumptions, that has been approved by its Board, within 30 days from the commencement of each fiscal year.

15. FINANCIAL VIABILITY MONITORING

(a) Neo Exchange must maintain sufficient financial resources for the proper performance of its functions and to meet its responsibilities.

(b) Neo Exchange must calculate the following financial ratios monthly:

(i) a current ratio, being the ratio of current assets to current liabilities;

(ii) a debt to cash flow ratio, being the ratio of total debt (including any line of credit draw downs, and the current and long-term portions of any loans, but excluding accounts payable, accrued expenses and other liabilities) to EBITDA (earnings before interest, taxes, stock-based compensation, depreciation and amortization) for the most recent 12 months; and

(iii) a financial leverage ratio, being the ratio of total assets to shareholders' equity,

in each case following the same accounting principles as those used for the unaudited non consolidated financial statements of Neo Exchange.

(c) Neo Exchange must report quarterly in writing to the Commission the monthly calculations for the previous quarter of the financial ratios as required to be calculated under paragraph (b).

(d) If Neo Exchange determines that it does not have, or anticipates that, in the next twelve months, it will not have sufficient financial resources for the proper performance of its functions and to meet its responsibilities, it will immediately notify the Commission along with the reasons and any impact on the financial viability of Neo Exchange.

(e) Upon receipt of a notification made by Neo Exchange under (d), the Commission may, as determined appropriate, impose additional terms and conditions on Neo Exchange.

16. ADDITIONAL INFORMATION

(a) Neo Exchange must provide the Commission with:

(i) the information set out in Appendix A to this Schedule**,** as amended from time to time; and

(ii) any information required to be provided by Neo Exchange to IIROC, including all order and trade information, as required by the Commission.

17. GOVERNANCE REVIEW

(a) At the request of the Commission, Neo Exchange must engage an independent consultant, or independent consultants acceptable to the Commission to prepare a written report assessing the governance structure of Neo Exchange (Governance Review).

(b) The written report must be provided to the Board of Neo Exchange promptly after the report's completion and then to the Commission within 30 days of providing it to the Board.

(c) The scope of the Governance Review must be approved by the Commission.

18. PROVISION OF INFORMATION

(a) Neo Exchange must, and must cause its Canadian affiliated entities to, promptly provide to the Commission, on request, any and all data, information and analyses in the custody or control of Neo Exchange or any of its affiliated entities, without limitations, redactions, restrictions or conditions, including, without limiting the generality of the foregoing:

(i) data, information and analyses relating to all of its or their businesses; and

(ii) data, information and analyses of third parties in its or their custody or control.

(b) Neo Exchange must share information and otherwise cooperate with other recognized or exempt exchanges, recognized self-regulatory organizations, recognized or exempt clearing agencies, investor protection funds, and other appropriate regulatory bodies.

19. COMPLIANCE WITH TERMS AND CONDITIONS

(a) Neo Exchange must certify in writing to the Commission, in a certificate signed by its CEO and either its general counsel or another executive officer, within one year of the effective date of its recognition as an exchange pursuant to this Order and every year subsequent to that date, or at any times required by the Commission, that it is in compliance with the terms and conditions applicable to it in the Order and describe in detail:

(i) the steps taken to require compliance;

(ii) the controls in place to verify compliance;

(iii) the names and titles of employees who have oversight of compliance.

(b) If Neo Exchange or any of its directors, officers or employees become aware of a breach or a possible breach of any of the terms and conditions applicable to the Neo Exchange under the Schedules to the Order, such person must, within two business days after becoming aware of the breach or possible breach, notify the Regulatory Oversight Committee of the breach or possible breach. The director, officer or employee of the recognized exchange must provide to the Regulatory Oversight Committee details sufficient to describe the nature, date and effect (actual and anticipated) of the breach or possible breach.

(c) The Regulatory Oversight Committee must, within two business days after being notified of the breach or possible breach, notify the Commission and confirm that the breach or possible breach is under investigation as required by (d).

(d) The Regulatory Oversight Committee must promptly cause to be conducted an investigation of the breach or possible breach reported under (b). Once the Regulatory Oversight Committee has made a determination as to whether there has been a breach, or that there is an impending breach, of any terms and conditions applicable to Neo Exchange under the Schedules to the Order, the Regulatory Oversight Committee must, within two business days of such determination, notify the Commission of its determination and must provide details sufficient to describe the nature, date and effect (actual and anticipated) of the breach or impending breach, and any actions that will be taken to address it.

APPENDIX A

Additional Reporting Obligations

1. Ad Hoc

(a) Immediate notification of a decision to enter into a definitive agreement (including a binding letter of intent), memorandum of understanding or other similar agreement with any governmental or regulatory body, self-regulatory obligation, clearing agency, stock exchange, other marketplace or market, except in the case where the agreement or arrangement: (i) is primarily intended to restrict the use or disclosure of confidential information, (ii) is primarily for the purpose of facilitating discussions in connection with a possible definitive agreement, (iii) is necessary to support the provision of the existing exchange services, or (iv) relates to the provision of the existing exchange services and is also subject to the standard form agreements of the exchange (for example, listing agreements, data subscription agreements, etc.).

(b) Immediate notification if Neo Exchange:

(i) becomes the subject of any order, directive or similar action of a governmental or regulatory authority;

(ii) becomes aware that it is the subject of a criminal or regulatory investigation; or

(iii) becomes, or it is notified in writing that it will become, the subject of a material lawsuit.

(c) Any strategic plan for Neo Exchange, within 30 days of approval by the Board.

(d) Any information submitted by Neo Exchange to a Canadian securities regulatory authority under a requirement of a recognition order, exemption order or NI 21-101, provided concurrently.

(e) Copies of all notices, bulletins and similar forms of communication that Neo Exchange sends to the Neo Exchange marketplace participants or Neo Exchange issuers.

(f) Prompt notification of any suspension or delisting of a Neo Exchange issuer, including the reasons for the suspension or delisting.

(g) Prompt notification of any initial listing application received from a significant shareholder or any of its affiliates.

(h) Prompt notification of any initial listing application received from a Competitor.

(i) Prompt notification of any application for exemption or waiver from requirements received from a significant shareholder or any of its affiliates.

2. Quarterly Reporting

(a) A quarterly report summarizing all exemptions or waivers granted during the period pursuant to the Rules to any Neo Exchange marketplace participant or Neo Exchange issuer, which must include the following information:

(i) the name of the Neo Exchange marketplace participant or Neo Exchange issuer;

(ii) the type of exemption or waiver granted during the period;

(iii) the date of the exemption or waiver; and

(iv) a description of the recognized exchange's reason for the decision to grant the exemption or waiver.

(b) A quarterly report regarding initial listing applications containing the following information:

(i) the name of any Neo Exchange issuer whose initial listing application was conditionally approved, the date of such approval, the type of listing, the category of listing and, if known, whether the issuer was denied an application to list its securities on another marketplace;

(ii) the name of any issuer whose initial listing application was rejected and the reasons for rejection, by category of listing; and

(iii) the name of any issuer whose initial listing application was withdrawn or abandoned and, if known, the reasons why the application was withdrawn or abandoned, by category of listing.

The information required by section 2(b)(i) above should disclose whether the issuer is an Emerging Market Issuer, whether the listing involved an agent, underwriter or Canadian Securities Regulatory Authority, and any

additional requirements imposed by Neo Exchange pursuant to sections 2.10 and 2.11 of the Neo Exchange Listing Manual.

(c) A quarterly report summarizing all significant incidents of non-compliance by Neo Exchange issuers identified by Neo Exchange during the period, together with a summary of the actions taken to address and resolve the incidents of non-compliance.

(d) A quarterly report listing all the Competitors listed on Neo Exchange.

(e) A quarterly report summarizing instances where conflicts of interest or potential conflicts of interest with respect to Competitors have been identified by Neo Exchange and how such conflicts were addressed.

(f) A quarterly report, the scope of which must be approved by the Commission, relating to compliance with the use of certain designations by marketplace participants, including the results of reviews of marketplace participants' use of such designations and a description of the actions taken to address and resolve instances of non-compliance.

3. Annual Reporting

At least annually, or more frequently if required by the Commission, an assessment of the risks, including business risks, facing Neo Exchange and the plan for addressing such risks.

SCHEDULE 3

TERMS AND CONDITIONS APPLICABLE TO AEQUITAS

20. DEFINITIONS AND INTERPRETATION

Terms used in this Schedule have the same meanings and interpretation as in section 1 of Schedule 2.

21. PUBLIC INTEREST RESPONSIBILITIES

(a) Aequitas must conduct its business and operations in a manner that is consistent with the public interest.

(b) The mandate of the Board must expressly include Aequitas' regulatory and public interest responsibilities.

22. SHARE OWNERSHIP RESTRICTIONS

(a) Without the prior approval of the Commission, and subject to terms and conditions considered appropriate by the Commission, no person or company and no combination of persons or companies acting jointly or in concert may beneficially own or exercise control or direction over:

(i) more than 10% of any class or series of voting shares of Aequitas and, thereafter,

(ii) more than 50% of any class or series of voting shares of Aequitas.

(b) The articles of Aequitas must contain the share ownership restrictions and provisions respecting the enforcement of such restrictions which, without limiting the foregoing, may provide for the filing of declarations, the suspension of voting rights, the forfeiture of dividends, the refusal of the issue or registration of voting shares and the sale or redemption of voting shares held contrary to the restrictions and payment of net proceeds of the sale or redemption to the person entitled thereto.

23. RECOGNITION CRITERIA

Aequitas must continue to meet the criteria for recognition set out in Schedule 1 to the Order.

24. FITNESS

Aequitas must take reasonable steps to ensure that each director or officer of Aequitas is a fit and proper person. As part of those steps, Aequitas will consider whether the past conduct of each director or officer affords reasonable grounds for the belief that the director or officer will perform their duties with integrity and in a manner that is consistent with Aequitas's public interest responsibilities.

25. BOARD OF DIRECTORS

(a) Aequitas must ensure that at least one third of its Board members are independent.

(b) In the event that Aequitas fails to meet the requirements under (a), it must immediately advise the Commission and take appropriate measures to remedy such failure.

(c) Aequitas must ensure that the Board is subject to requirements that the quorum for the Board consists of a majority of the Board members, with at least two directors being independent.

26. NOMINATING COMMITTEE

Aequitas must maintain a Nominating Committee that, at a minimum:

(a) is made up of at least three directors, at least 50% of which must be independent;

(b) confirms the status of a nominee to the Board as independent before the individual is appointed to the Board or the name of the individual is submitted to shareholders as a nominee for election to the Board, whichever comes first;

(c) confirms, on an annual basis, that the status of the directors that are independent has not changed;

(d) assesses and approves all nominees of management to the Board; and

(e) has a requirement that the quorum consist of at least 50% of independent directors.

27. CONFIDENTIALITY PROCEDURES

(a) Aequitas must establish, maintain and require compliance with policies and procedures that:

(i) require that confidential information regarding Neo Exchange marketplace operations, Neo Exchange regulation functions, a Neo Exchange marketplace participant or a Neo Exchange issuer that is obtained by a partner, director, officer or employee of a significant shareholder through that individual's involvement in the management or oversight of the marketplace operations or regulation functions of Neo Exchange:

(A) be kept separate and confidential from the business or other operations of the significant shareholder, except with respect to information regarding marketplace operations where disclosure is necessary to carry out the individual's responsibilities for the management or oversight of marketplace operations and the individual can and does exercise due care in his or her disclosure of the information, and

(B) not be used to provide an advantage to Aequitas or Cboe or Cboe's affiliated entities;

provided that nothing in this section will be construed to limit Aequitas or Neo Exchange from providing to Cboe and its affiliated entities necessary information.

(b) Aequitas must regularly review compliance with the policies and procedures established in accordance with (a) and must document each review and any deficiencies and how those deficiencies were remedied.

28. ALLOCATION OF RESOURCES

(a) Aequitas must, for so long as Neo Exchange carries on business as an exchange, allocate sufficient financial and other resources to Neo Exchange to ensure that Neo Exchange can carry out its functions in a manner that is consistent with the public interest and in compliance with Ontario securities law.

(b) Aequitas must notify the Commission immediately upon being aware that it is or will be unable to allocate sufficient financial and other resources, as required under (a), to Neo Exchange.

29. FEES, FEE MODELS AND INCENTIVES

(a) Aequitas must ensure that its affiliated entities, including Neo Exchange or Cboe and its affiliated entities, do not, through any fee schedule, any fee model or any contract, agreement or other arrangement with any marketplace participant or any other person or company, provide:

(i) any discount, rebate, allowance, price concession or other similar arrangement that is accessible only to, whether as designed or by implication, a particular marketplace participant or any other particular person or company, or

(ii) any discount, rebate, allowance, price concession or other similar arrangement for any service or product offered by the affiliated entity, including Neo Exchange or Cboe and its affiliated entities and significant shareholders, that is conditional upon:

(A) the requirement to have Neo Exchange be set as the default or first marketplace a marketplace participant routes to; or

(B) the router of Neo Exchange being used as the marketplace participant's primary router.

(b) Aequitas must ensure that its affiliated entities, including Neo Exchange, do not, through any fee schedule, any fee model or any contract, agreement or other arrangement with any marketplace participant or any other person or company, provide:

(i) any discount, rebate, allowance, price concession or other similar arrangement on any services or products offered by the affiliated entity, including Neo Exchange or Cboe and its affiliated entities and significant shareholders that is conditional upon the purchase of any other service or product provided by the affiliated entity; or

(ii) any discount, rebate, allowance, price concession or other similar arrangement that is accessible only to, whether as designed or by implication, a class of marketplace participants or of any other persons or companies,

unless prior approval has been granted by the Commission.

(c) Aequitas must ensure that Neo Exchange obtains prior Commission approval before implementing any new, or amendments to, fees and fee models, including any new, or amendments to any, incentives relating to arrangements

that provide for equity ownership in Aequitas for marketplace participants or their affiliated entities based on trading volumes or values on Neo Exchange.

(d) Aequitas must ensure that Neo Exchange does not require a person or company to purchase or otherwise obtain products or services from Neo Exchange or Cboe and its affiliated entities and significant shareholders as a condition of Neo Exchange supplying or continuing to supply a product or service unless prior approval has been granted by the Commission.

(e) Aequitas must ensure that Neo Exchange or Cboe and its affiliated entities and significant shareholders do not require another person, significant shareholder or company to obtain products or services from Neo Exchange as a condition of the affiliated entity supplying or continuing to supply a product or service.

30. ORDER ROUTING

Aequitas must not support, encourage or incent, either through fee incentives or otherwise, Neo Exchange marketplace participants, Cboe affiliated entities or significant shareholders to coordinate the routing of their orders to Neo Exchange.

31. FINANCIAL REPORTING

Aequitas must deliver to the Commission its annual financial budget, together with the underlying assumptions, that has been approved by its Board, within 30 days from the commencement of each fiscal year.

32. REPORTING REQUIREMENTS

Aequitas must provide the Commission with the information set out in Appendix A to this Schedule, as amended from time to time.

33. GOVERNANCE REVIEW

(a) At the request of the Commission, Aequitas must engage an independent consultant, or independent consultants, acceptable to the Commission to prepare a written report assessing the governance structure of Aequitas (**Aequitas Governance Review**).

(b) The written report must be provided to the Board of Aequitas promptly after the report's completion and then to the Commission within 30 days of providing it to the Board.

(c) The scope of the Aequitas Governance Review must be approved by the Commission.

34. PROVISION OF INFORMATION

(a) Aequitas must, and must cause its Canadian affiliated entities to promptly provide to the Commission, on request, any and all data, information and analyses in the custody or control of Aequitas or any of its affiliated entities, without limitations, redactions, restrictions or conditions, including, without limiting the generality of the foregoing:

(i) data, information and analyses relating to all of its or their businesses; and

(ii) data, information and analyses of third parties in its or their custody or control.

(b) Aequitas must share information and otherwise cooperate with other recognized or exempt exchanges, recognized self-regulatory organizations, recognized or exempt clearing agencies, investor protection funds, and other appropriate regulatory bodies.

35. COMPLIANCE WITH TERMS AND CONDITIONS

(a) Aequitas must certify in writing to the Commission, in a certificate signed by its CEO and either its general counsel or another executive officer, within one year of the effective date of its recognition as an exchange pursuant to this Order and every year subsequent to that date, or at any times required by the Commission, that it is in compliance with the terms and conditions applicable to it in the Order and describe in detail:

(i) the steps taken to require compliance;

(ii) the controls in place to verify compliance; and

(iii) the names and titles of employees who have oversight of compliance.

(b) If Aequitas or any of its directors, officers or employees become aware of a breach or a possible breach of any of the terms and conditions applicable to Aequitas under the Schedules to the Order, such person must, within two business

days after becoming aware of the breach or possible breach, notify the Board or committee designated by the Board and approved by the Commission of the breach or possible breach. The director, officer or employee of the recognized exchange must provide to the Board or committee designated by the Board details sufficient to describe the nature, date and effect (actual and anticipated) of the breach or possible breach.

(c) The Board or committee designated by the Board must, within two business days after being notified of the breach or possible breach, notify the Commission and confirm that the breach or possible breach is under investigation as required under (d).

(d) The Board or committee designated by the Board must promptly cause to be conducted an investigation of the breach or possible breach reported under (b). Once the Board or committee designated by the Board has made a determination as to whether there has been a breach, or that there is an impending breach, of any terms and conditions applicable to Aequitas under the Schedules to the Order, the Board or committee designated by the Board must, within two business days of such determination, notify the Commission of its determination and must provide details sufficient to describe the nature, date and effect (actual and anticipated) of the breach or impending breach, and any actions that will be taken to address it.

APPENDIX A

Additional Reporting Obligations

1. Ad Hoc

(a) Immediate notification of a decision to enter into a definitive agreement (including a binding letter of intent), memorandum of understanding or other similar agreement with any governmental or regulatory body, self-regulatory obligation, clearing agency, stock exchange, other marketplace or market, except in the case where the agreement or arrangement: (i) is primarily intended to restrict the use or disclosure of confidential information, (ii) is primarily for the purpose of facilitating discussions in connection with a possible definitive agreement, (iii) is necessary to support the provision of the existing exchange services, (iv) relates to the provision of the existing exchange services and is also subject to the standard form agreements of the exchange (for example, listing agreements, data subscription agreements, etc.), or (v) relates to a business line other than exchange services.

(b) Immediate notification if Aequitas:

  (i) becomes the subject of any order, directive or similar action of a governmental or regulatory authority;

  (ii) becomes aware that it is the subject of a criminal or regulatory investigation; or

  (iii) becomes, or it is notified in writing that it will become, the subject of a material lawsuit.

(c) Immediate notification if any shareholder or any affiliate of a shareholder of Aequitas becomes, or it is notified in writing that it will become, the subject of a criminal, administrative or regulatory proceeding.

(d) Any strategic plan for Aequitas and its subsidiaries, within 30 days of approval by the Board.

(e) Any information submitted by Aequitas to a Canadian securities regulatory authority under a requirement of a recognition order, exemption order or NI 21-101, provided concurrently.

2. Annual Reporting

At least annually, or more frequently if required by the Commission, an assessment of the risks, including business risks, facing Aequitas and its subsidiaries and the plan for addressing such risks.

SCHEDULE 4

TERMS AND CONDITIONS APPLICABLE TO CBOE

36. DEFINITIONS AND INTERPRETATION

Terms used in this Schedule have the same meanings and interpretation as in section 1 of Schedule 2.

37. PUBLIC INTEREST RESPONSIBILITIES

Cboe shall ensure that Neo Exchange and Aequitas conduct the business and operations of recognized exchanges in a manner that is consistent with the public interest.

38. ALLOCATION OF RESOURCES

(a) To ensure Neo Exchange and Aequitas can carry out their functions in a manner that is consistent with the public interest and in compliance with Ontario securities law, Cboe shall, for so long as Neo Exchange and Aequitas carry on business as exchanges, facilitate the allocation of sufficient financial and non-financial resources for the operations of these exchanges.

(b) Cboe shall notify the Commission immediately upon being aware that it is or will be unable to allocate sufficient financial or other resources to Neo Exchange or Aequitas, as required under paragraph (a).

39. PROVISION OF INFORMATION

Cboe shall promptly provide to the Commission, on request, any and all data, information, and analyses in its custody or control related to the business and operations of Neo Exchange or Aequitas without limitations, redactions, restrictions, or conditions, provided that nothing in this section will be construed to abrogate solicitor-client privilege or any similar doctrines that may apply to communications with and work product produced by counsel.

SCHEDULE 5

PROCESS FOR THE REVIEW AND APPROVAL OF RULES AND THE INFORMATION CONTAINED IN FORM 21-101F1 AND THE EXHIBITS THERETO

1. Purpose

This Protocol sets out the procedures a recognized exchange (Exchange) must follow for any Rule or Change, both as defined in section 2 below, and describes the procedures for their review by Commission Staff (Staff) and approval by the Commission or the Director. This Protocol also establishes requirements regarding the time at which an Exchange may begin operations following recognition by the Commission.

2. Definitions

For the purposes of this Protocol:

(a) *Change* means a Fee Change, a Housekeeping Change or a Significant Change.

(b) *Director* means "Director" as defined in subsection 1(1) of the Securities Act (Ontario).

(c) *Fee Change* means any new fee or fee model of the Exchange and any amendment to a fee or fee model.

(d) *Fee Change subject to Public Comment* means a Fee Change that, in Staff's view, may have a significant impact on the Exchange, its market structure, members, issuers, investors or the Canadian capital markets or otherwise raises regulatory or public interest concerns and should be subject to public comment.

(e) *Housekeeping Change* means an amendment to the information in Form 21-101F1 that

(i) does not have a significant impact on the Exchange, its market structure, members, issuers, investors or the Canadian capital markets, or

(ii) is of a housekeeping or administrative nature and is comparable to the types of housekeeping changes listed in subsection 6.1(5)(b) of Companion Policy 21-101CP.

(f) *Housekeeping Rule* means a new Rule or an amendment to a Rule that

(i) does not have a significant impact on the Exchange, its market structure, members, issuers, investors or the Canadian capital markets, or

(ii) is of a housekeeping or administrative nature and is comparable to the types of housekeeping changes listed in subsection 6.1(5)(b) of Companion Policy 21-101CP.

(g) *Public Interest Rule* means a Rule or an amendment to a Rule that is not a Housekeeping Rule.

(h) *Rule* includes a rule, policy and other similar instrument of the Exchange.

(i) *Significant Change* means an amendment to the information in Form 21-101F1 other than

(i) a Housekeeping Change,

(ii) a Fee Change, or

(iii) a Rule,

and for greater certainty includes the matters listed in subsection 6.1(4) of Companion Policy 21-101 CP.

(j) *Significant Change subject to Public Comment* means a Significant Change that

(i) is listed in paragraphs 6.1(4)(a) or (b) of Companion Policy 21-101 CP, or

(ii) in Staff's view, may have a significant impact on the Exchange, its market structure, members, issuers, investors or the Canadian capital markets or otherwise raises regulatory or public interest concerns and should be subject to public comment.

3. Scope

The Exchange and Staff will follow the process for review and approval set out in this Protocol for all Changes, new Rules and Rule amendments.

4. Board Approval

The Exchange's board of directors, or a duly authorized committee of the board, must approve all Rules prior to their submission under this Protocol.

5. Waiving or Varying the Protocol

(a) The Exchange may submit a written request with Staff to waive or vary any part of this Protocol. The request must provide reasons why granting the waiver is appropriate in the circumstances.

(b) Staff will use their best efforts to provide to the Exchange within five business days of receipt of its request either:

(i) written notice that Staff object to granting the waiver or variation; or

(ii) written notice that the waiver or variation has been granted by Staff.

6. Commencement of Exchange Operations

The Exchange must not begin operations until a reasonable period of time after the Exchange is notified that it has been recognized by the Commission.

7. Materials to be Submitted and Timelines

(a) Prior to the implementation of a Fee Change, Public Interest Rule or Significant Change, the Exchange will provide Staff with the following materials:

(i) a cover letter that, together with the notice for publication submitted under paragraph (a)(ii), if applicable, fully describes:

(A) the proposed Fee Change, Public Interest Rule or Significant Change;

(B) the expected date of implementation of the proposed Fee Change, Public Interest Rule or Significant Change;

(C) the rationale for the proposal and any relevant supporting analysis;

(D) the expected impact, including the quantitative impact, of the proposed Fee Change, Public Interest Rule or Significant Change on the market structure, members and, if applicable, on investors, issuers and the capital markets;

(E) the expected impact of the Fee Change, Public Interest Rule or Significant Change on the Exchange's compliance with Ontario securities law requirements and in particular requirements for fair access and maintenance of fair and orderly markets;

(F) a summary of any consultations, including consultations with external parties, undertaken in formulating the Fee Change, Public Interest Rule or Significant Change, and the internal governance process followed to approve the Rule or Change;

(G) for a proposed Fee Change:

1. the expected number of marketplace participants likely to be subject to the new fee, along with a description of the costs they will incur; and

2. if the proposed Fee Change applies differently across types of marketplace participants, a description of this difference, how it impacts each class of affected marketplace participant, including, where applicable, numerical examples, and any justification for the difference in treatment.

(H) if the Public Interest Rule or Significant Change will require members or service vendors to modify their systems after implementation of the Rule or Change, the expected impact of the Rule or Change on the systems of members and service vendors together with an estimate of the amount of time needed

to perform the necessary work and how the estimated amount of time was deemed reasonable in light of the expected impact of the Public Interest Rule or Significant Change on the Exchange, its market structure, members, issuers, investors or the Canadian capital markets;

(I) where the proposed Significant Change is not a Significant Change subject to Public Comment, the rationale for why the proposed Significant Change is not considered a Significant Change subject to Public Comment;

(J) a discussion of any alternatives considered; and

(K) if applicable, whether the proposed Fee Change, Significant Change or Public Interest Rule would introduce a fee model, feature or Rule that currently exists in other markets or jurisdictions;

(ii) for a proposed Public Interest Rule, Significant Change subject to Public Comment or Fee Change subject to Public Comment, a notice for publication that generally includes the information required under paragraph (a)(i), except information that, if included in the notice, would result in the public disclosure of sensitive information or confidential or proprietary financial, commercial or technical information;

(iii) for a proposed Public Interest Rule, the text of the Rule and a blacklined version of the Rule indicating changes to any existing Rules, and if supplementary material relating to the Rule is contained in Form 21-101F1, blacklined and clean copies of Form 21-101F1; and

(iv) for a proposed Fee Change or Significant Change, blacklined and clean copies of Form 21-101F1 showing the proposed Change.

(b) The Exchange will submit the materials set out in subsection (a)

(i) at least 45 days prior to the expected implementation date of a proposed Public Interest Rule or Significant Change; and

(ii) at least fifteen business days prior to the expected implementation date of a proposed Fee Change.

(c) For a Housekeeping Rule, the Exchange will provide Staff with the following materials:

(i) a cover letter that fully describes the Rule and indicates that it was classified as a Housekeeping Rule and provides an analysis of the rationale for the classification, and the date or proposed date of implementation of the Rule;

(ii) the text of the Rule and a blacklined version of the Rule indicating changes to any existing Rules;

(iii) if supplementary material relating to the Rule is contained in Form 21-101F1, blacklined and clean copies of Form 21-101F1; and

(iv) a notice for publication on the OSC website or in the OSC Bulletin that contains the information in paragraph (ii) as well as the implementation date for the Rule and indicates that the Rule has been classified as a Housekeeping Rule and was not published for comment.

(d) For a Housekeeping Change, the Exchange will provide Staff with the following materials:

(i) a cover letter that indicates that the change was classified as a Housekeeping Change and, for each Housekeeping Change, provides an analysis of the rationale for the classification and the expected or actual date of implementation of the Change; and

(ii) blacklined and clean copies of Form 21-101F1 showing the Change.

(e) The Exchange will submit the materials set out in subsection (d) by the earlier of

(i) the Exchange's close of business on the 10th calendar day after the end of the calendar quarter in which the Housekeeping Change was implemented; and

(ii) the date on which the Exchange publicly announces a Housekeeping Change, if applicable.

8. Review by Staff of notice and materials to be published for comment

(a) Within 5 business days of the receipt of the notice and materials submitted by the Exchange relating to a Public Interest Rule, Significant Change subject to Public Comment or Fee Change subject to Public Comment, in accordance with

subsection 7(a), Staff will review the notice and materials to ensure that they contain an adequate level of detail, analysis and discussion to elicit meaningful public comment, and will promptly notify the Exchange of any deficiency requiring a resubmission of the notice and/or materials.

(b) Where the notice and/or materials are considered by Staff to be deficient, the Exchange will amend and resubmit the notice and/or materials accordingly, and the date of resubmission will serve as the submission date for the purposes of this Protocol.

(c) Where the notice and materials are considered by Staff to be adequate for publication, Staff will proceed with the processes set out in section 9.

9. Publication of a Public Interest Rule, Significant Change Subject to Public Comment or Fee Change Subject to Public Comment

(a) As soon as practicable after the receipt of the notice and materials submitted by the Exchange relating to a Public Interest Rule, Significant Change subject to Public Comment or Fee Change subject to Public Comment, in accordance with subsection 7(a), Staff will publish in the OSC Bulletin and/or on the OSC website, the notice prepared by the Exchange, along with a notice prepared by Staff, if necessary, that provides market participants with an opportunity to provide comments to Staff and to the Exchange within 30 days from the date the notice appears in the OSC Bulletin or on the OSC website, whichever comes first.

(b) If public comments are received

(i) the Exchange will forward copies of the comments promptly to Staff; and

(ii) the Exchange will prepare a summary of the public comments and a response to those comments and provide them to Staff promptly after the end of the comment period.

10. Review and Approval Process for Proposed Fee Changes, Public Interest Rules and Significant Changes

(a) Staff will use their best efforts to complete their review of a proposed Fee Change, Public Interest Rule or Significant Change within

(i) 45 days from the date of submission of a proposed Public Interest Rule or Significant Change; and

(ii) fifteen business days from the date of submission of a proposed Fee Change.

(b) Staff will notify the Exchange if they anticipate that their review of the proposed Fee Change, Public Interest Rule or Significant Change will exceed the timelines in subsection (a).

(c) If Staff have material comments or require additional information to complete their review of a proposed Fee Change, Public Interest Rule or Significant Change, Staff will use best efforts to provide the Exchange with a comment letter promptly by the end of the public comment period for a Public Interest Rule, Significant Change subject to Public Comment or Fee Change subject to Public Comment, and promptly after the receipt of the materials submitted under section 7 for all other Changes.

(d) The Exchange will respond to any comments received from Staff in writing.

(e) Unless Staff agree to an extension of time, if the Exchange fails to respond to Staff's comments within 120 days after the receipt of Staff's comment letter, the Exchange will be deemed to have withdrawn the proposed Fee Change, Public Interest Rule or Significant Change. If the Exchange wishes to proceed with the Fee Change, Public Interest Rule or Significant Change after it has been deemed withdrawn, the Exchange will have to be re-submit it for review and approval in accordance with this Protocol.

(f) Upon completion of Staff's review of a Fee Change, Public Interest Rule or Significant Change, Staff will submit the Change or Rule to the Director or, in the circumstances described in subsection (g), to the Commission, for a decision within the following timelines:

(i) for a Public Interest Rule, Significant Change subject to Public Comment or Fee Change subject to Public Comment, the later of 45 days from the date that the related materials were published for comment and the date that Staff's comments and public comments, including any concerns identified, have been adequately addressed by the Exchange;

(ii) for any other Significant Change, the later of 45 days from the date of submission of the Change and the date that Staff's comments and any concerns identified have been adequately addressed by the Exchange; or

(iii) for any other Fee Change, the later of fifteen business days from the date of submission of the change and the date that Staff's comments and any concerns identified have been adequately addressed by the Exchange.

(g) A Fee Change, Public Interest Rule or Significant Change may be submitted to the Commission for a decision, within the timelines in subsection (f),

(i) if the proposed Fee Change, Public Interest Rule or Significant Change introduces a novel feature to the Exchange or the capital markets;

(ii) if the proposed Fee Change, Public Interest Rule or Significant Change raises significant regulatory or public interest concerns; or

(iii) in any other situation where, in Staff's view, Commission approval is appropriate.

(h) Staff will promptly notify the Exchange of the decision.

(i) If a Public Interest Rule, Significant Change subject to Public Comment or Fee Change subject to Public Comment is approved, Staff will publish the following documents in the OSC Bulletin and/or on the OSC website promptly after the approval:

(i) a notice indicating that the proposed Rule or Change is approved;

(ii) the summary of public comments and responses prepared by the Exchange, if applicable; and

(iii) if non-material changes were made to the version published for public comment, a brief description of these changes prepared by the Exchange and a blacklined copy of the revised Rule or Change highlighting the revisions made.

11. Review Criteria for a Fee Change, Public Interest Rule and Significant Change

(a) Staff will review a proposed Fee Change, Public Interest Rule or Significant Change to assess whether it is in the public interest for the Director or the Commission to approve the Rule or Change. In making this determination, Staff will have regard for the purposes of the *Securities Act* (Ontario) (Act) as set out in section 1.1 of the Act. The factors that Staff will consider in making their determination also include whether:

(i) the Rule or Change would impact the Exchange's compliance with Ontario securities law;

(ii) the Exchange followed its established internal governance practices in approving the proposed Rule or Change;

(iii) the Exchange followed the requirements of this Protocol and has provided sufficient analysis of the nature, purpose and effect of the Rule or Change; and

(iv) the Exchange adequately addressed any comments received.

12. Effective Date of a Fee Change, Public Interest Rule or Significant Change

(a) A Public Interest Rule or Significant Change will be effective on the later of:

(i) the date that the Exchange is notified that the Change or Rule is approved;

(ii) if applicable, the date of publication of the notice of approval on the OSC website;

(iii) if applicable, the implementation date established by the Exchange's Rules, agreements, practices, policies or procedures; and

(iv) the date designated by the Exchange.

(b) The Exchange must not implement a Fee Change unless the Exchange has provided stakeholders, including marketplace participants, issuers and vendors, as applicable, with notice of the Fee Change at least five business days prior to implementation.

(c) Where a Significant Change involves a material change to any of the systems, operated by or on behalf of the Exchange, described in section 12.1 of National Instrument 21-101, the Significant Change will not be effective until a reasonable period of time after the Exchange is notified that the Significant Change is approved.

(d) In determining what constitutes a reasonable period of time for purposes of implementing a Significant Change under paragraph (c), Staff will consider how the Significant Change will impact the Exchange, its market structure, members, issuers, investors or the Canadian capital markets or otherwise raises regulatory or public interest concerns.

(e) The Exchange must notify Staff promptly following the implementation of a Public Interest Rule, Significant Change or Fee Change that becomes effective under subsections (a) and (b).

(f) Where the Exchange does not implement a Public Interest Rule, Significant Change or Fee Change within 180 days of the effective date of the Fee Change, Public Interest Rule or Significant Change, as provided for in subsections (a) and (b), the Public Interest Rule, Significant Change or Fee Change will be deemed to be withdrawn.

13. Significant Revisions and Republication

(a) If, subsequent to its publication for comment, the Exchange revises a Public Interest Rule, Significant Change subject to Public Comment or Fee Change subject to Public Comment in a manner that results in a material change to the proposed substance or effect of the Rule or Change, Staff will, in consultation with the Exchange, determine whether or not the revised Rule or Change should be published for an additional 30-day comment period.

(b) If a Public Interest Rule, Significant Change subject to Public Comment or Fee Change subject to Public Comment is republished under subsection (a), the request for comments will include a blacklined version marked to the originally published version, a summary of comments and responses prepared by the Exchange, and an explanation of the revisions and the supporting rationale for the revisions.

14. Withdrawal of a Fee Change, Public Interest Rule or Significant Change

(a) If the Exchange withdraws a Fee Change, Public Interest Rule or a Significant Change that was previously submitted, it will provide a written notice of withdrawal to Staff.

(b) If the notice of withdrawal relates to a Public Interest Rule, Significant Change subject to Public Comment or Fee Change subject to Public Comment, Staff will publish the notice of withdrawal in the OSC Bulletin and/or on the OSC website as soon as practicable.

(c) If a Public Interest Rule, Significant Change subject to Public Comment or Fee Change subject to Public Comment is deemed to have been withdrawn as provided in subsection 10(e), Staff will prepare and publish a notice informing market participants that the Exchange did not proceed with the Rule or Change.

15. Effective Date of a Housekeeping Rule or Housekeeping Change

(a) Subject to subsections (c) and (d), a Housekeeping Rule will be effective on the later of

(i) the date of the publication of the notice to be published on the OSC website or in the OSC Bulletin, in accordance with subsection (e), and

(ii) the date designated by the Exchange.

(b) Subject to subsections (c) and (d), a Housekeeping Change will be effective on the date designated by the Exchange.

(c) Staff will review the materials submitted by the Exchange for a Housekeeping Change or Housekeeping Rule to assess the appropriateness of the categorization of the Rule or Change as housekeeping within five business days from the date that the Exchange submitted the documents in accordance with subsections 7(c) and 7(d). The Exchange will be notified in writing if there is disagreement with respect to the categorization of the Rule or Change as housekeeping.

(d) If Staff disagree with the categorization of the Rule or Change as housekeeping, the Exchange will immediately repeal the Change, if applicable, submit the proposed Rule as a Public Interest Rule or the proposed Change as a Significant Change, and follow the review and approval processes described in this Protocol as applying to a Public Interest Rule or Significant Change, including those processes applicable to a Significant Change subject to Public Comment, if applicable.

(e) If Staff do not disagree with the categorization of the Rule, Staff will publish a notice to that effect in the OSC Bulletin or on the OSC website as soon as is practicable.

16. Immediate Implementation of a Public Interest Rule or Significant Change

(a) The Exchange may need to make a Public Interest Rule or Significant Change effective immediately where the Exchange determines that there is an urgent need to implement the Rule or Change to maintain fair and orderly markets, or because

of a substantial and imminent risk of material harm to the Exchange, its members, other market participants, issuers or investors.

(b) When the Exchange determines that immediate implementation is necessary, it will advise Staff in writing as soon as possible, but in any event, at least five business days prior to the proposed implementation of the Public Interest Rule or Significant Change. The written notice will include the expected effective date of the Public Interest Rule or Significant Change and an analysis to support the need for immediate implementation. An application for an exemption from the 45-day advance filing requirements in National Instrument 21-101 must follow within five business days following the Exchange receiving notice that Staff agree with immediate implementation of the Public Interest Rule or Significant Change.

(c) If Staff do not agree that immediate implementation is necessary, Staff will promptly notify the Exchange, in writing, of the disagreement no later than the end of the third business day following submission of the notice under subsection (b). If the disagreement is not resolved, the Exchange will submit the Public Interest Rule or Significant Change in accordance with the timelines in section 7.

17. Review of a Public Interest Rule or Significant Change Implemented Immediately

A Public Interest Rule or Significant Change that has been implemented immediately in accordance with section 16 will be published, if applicable, and reviewed and approved by the Director or by the Commission in accordance with the procedures set out in section 10, with necessary modifications. If the Director or the Commission does not approve the Public Interest Rule or Significant Change, the Exchange will immediately repeal the Rule or Change and inform its members of the decision.

18. Application of Section 21 of the Securities Act (Ontario)

The Commission's powers under subsection 21(5) of the *Securities Act* (Ontario) are not constrained in any way, notwithstanding a Rule or Change having been approved under this Protocol.

B.2.5 Orca Gold Inc.

Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – Application for an order than the issuer is not a reporting issuer under applicable securities laws – The issuer is not an OTC reporting issuer; the outstanding securities of the issuer are beneficially owned by fewer than 15 securityholders in each of the jurisdictions of Canada and fewer than 51 securityholders in total worldwide; no securities of the issuer are traded on a marketplace in Canada or another country; the issuer is not in default of securities legislation except it has not filed certain continuous disclosure documents – relief granted.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(10)(a)(ii).

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA AND
ONTARIO
(the Jurisdictions)

AND

IN THE MATTER OF
THE PROCESS FOR CEASE TO BE
A REPORTING ISSUER APPLICATIONS

AND

IN THE MATTER OF
ORCA GOLD INC.
(the Filer)

ORDER

¶ 1 **Background**

The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer for an order under the securities legislation of the Jurisdictions (the Legislation) that the Filer has ceased to be a reporting issuer in all jurisdictions of Canada in which it is a reporting issuer (the Order Sought).

Under the Process for Cease to be a Reporting Issuer Applications (for a dual application):

(a) the British Columbia Securities Commission is the principal regulator for this application;

(b) the Filer has provided notice that subsection 4C.5(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in the provinces of Alberta, Saskatchewan, Manitoba, Quebec and New Brunswick; and

(c) this order is the order of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

¶ 2 **Interpretation**

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this order, unless otherwise defined.

¶ 3 **Representations**

This order is based on the following facts represented by the Filer:

1. the Filer is not an OTC reporting issuer under Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*;

2. the outstanding securities of the Filer, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 securityholders in each of the jurisdictions of Canada and fewer than 51 securityholders in total worldwide;

3. no securities of the Filer, including debt securities, are traded in Canada or another country on a marketplace as defined in National Instrument 21-101 *Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported;

4. the Filer is applying for an order that the Filer has ceased to be a reporting issuer in all of the jurisdictions of Canada in which it is a reporting issuer; and

5. the Filer is not in default of securities legislation in any jurisdiction.

¶ 4 **Order**

Each of the Decision Makers is satisfied that the order meets the test set out in the Legislation for the Decision Maker to make the order.

The decision of the Decision Makers under the Legislation is that the Order Sought is granted.

"Noreen Bent"
Chief, Corporate Finance Legal Services
British Columbia Securities Commission

OSC File #: 2022/0244

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B.3
Reasons and Decisions

B.3 Reasons and Decisions

B.3.1 TD Asset Management Inc. et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief granted from National Instrument 81-101 Mutual Fund Prospectus Disclosure to combine the simplified prospectus of an alternative mutual fund with the simplified prospectus of a conventional mutual fund.

Applicable Legislative Provisions

National Instrument 81-101 Mutual Fund Prospectus Disclosure, ss. 5.1(4) and 6.1(1).

May 24, 2022

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the Jurisdiction)

AND

IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE
RELIEF APPLICATIONS IN
MULTIPLE JURISDICTIONS

AND

IN THE MATTER OF
TD ASSET MANAGEMENT INC.
(the Filer)

AND

TD ALTERNATIVE RISK FOCUSED POOL
(the Existing Alternative Fund)

AND

THE ALTERNATIVE MUTUAL FUNDS ESTABLISHED
IN THE FUTURE AND MANAGED BY THE FILER
OR AN AFFILIATE OF THE FILER
(the Future Alternative Funds, and together with the
Existing Alternative Fund, the Alternative Funds)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Alternative Funds for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) that grants relief to the Alternative Funds from the requirement in subsection 5.1(4) of National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**) which states that a simplified prospectus (**SP**) for an alternative mutual fund must not be consolidated with a SP of another mutual fund if the other mutual fund is not an alternative mutual fund in order to permit SP(s) for one or more Alternative Funds to be consolidated with the SP(s) of one or more mutual funds existing today or created in the future (i) that are reporting issuers to which NI 81-101 and National Instrument 81-102 *Investment Funds* (**NI 81-102**) apply, (ii) that are not alternative mutual funds, and (iii) for which the Filer, or an affiliate of the Filer, acts as the investment fund manager (the **Conventional Funds**, and together with the Alternative Funds, the **Funds**) (the **Exemption Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):

(a) the Ontario Securities Commission is the principal regulator for this application; and

(b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in each of the other provinces and territories of Canada (together with Ontario, the **Canadian Jurisdictions**).

Interpretation

Terms defined in National Instrument 14-101 *Definitions,* MI 11-102 and NI 81-102.

Representations

This decision is based on the following facts represented by the Filer:

1. The Filer is a corporation continued under the laws of the province of Ontario.

2. The Filer is a wholly-owned subsidiary of The Toronto-Dominion Bank, a Schedule 1 Canadian chartered bank. The head office of the Filer is located in Toronto, Ontario.

3. The Filer is registered in: (i) each of the Canadian Jurisdictions as an adviser in the category of portfolio manager and as a dealer in the category of exempt market dealer; (ii) Ontario, Québec, Saskatchewan and Newfoundland and Labrador in the category of investment fund manager; (iii) Ontario in the category of commodity trading

manager; and (iv) Québec as a derivatives portfolio manager.

4. The Filer, or an affiliate of the Filer, is, or will be, the investment fund manager of each Fund.

5. The Filer is not in default of the securities legislation in any of the Canadian Jurisdictions.

6. Each Alternative Fund is, or will be, established under the laws of Ontario or Canada as a mutual fund that is a trust or a class of shares of a mutual fund corporation and is, or will be, a reporting issuer in one or more of the Canadian Jurisdictions.

7. Each Conventional Fund is not, or will not be, an alternative mutual fund.

8. It is expected that the Filer will file a preliminary prospectus on behalf of the Existing Alternative Fund with the securities regulatory authority in each of the Canadian Jurisdictions by (on or about) June 16, 2022.

9. The Existing Alternative Fund is not in default of the securities legislation in any of the Canadian Jurisdictions.

10. The name of the Existing Alternative Fund may be changed by the Filer at its sole discretion.

11. The securities of each Fund are, or will be, qualified for distribution in one or more of the Canadian Jurisdictions using a SP, annual information form (**AIF**), as applicable, fund facts and/or ETF facts document(s) prepared and filed in accordance with the securities legislation of such Canadian Jurisdictions.

12. If an Alternative Fund offers both securities which are listed on a stock exchange and securities which are not listed on a stock exchange, the Alternative Fund will have received permission to distribute such securities using a SP rather than a long form prospectus pursuant to National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**).

13. The Filer wishes to combine the SP(s) for one or more Alternative Funds with the SP(s) of one or more Conventional Funds in order to reduce renewal, printing and related costs. Offering the Alternative Funds using the same SP and AIF, as applicable, as the Conventional Funds would facilitate the distribution of the Alternative Funds in the Canadian Jurisdictions under the same prospectus disclosure and enable the Filer to streamline disclosure across the Filer's fund platform.

14. Even though the Alternative Funds are, or will be, alternative mutual funds, they share, or will share, many common operational and administrative features with the Conventional Funds and combining them in the same SP will allow investors to more easily compare the features of the Alternative Funds and the Conventional Funds.

15. Investors will continue to receive the fund facts and/or ETF facts document(s), as applicable, when purchasing securities of the Alternative Funds or Conventional Funds as required by applicable securities legislation. The form and content of the fund facts and ETF facts document(s) of the Alternative Funds and Conventional Funds will not change as a result of the Exemption Sought. The SP and/or AIF, as applicable, of the Alternative Funds and Conventional Funds will continue to be provided to investors, upon request, as required by applicable securities legislation.

16. NI 41-101 does not contain a provision equivalent to subsection 5.1(4) of NI 81-101. Accordingly, an investment fund manager that manages exchange-traded funds (**ETFs**) is permitted to consolidate a prospectus under NI 41-101 for its ETFs that are alternative mutual funds with a prospectus for its ETFs that are conventional mutual funds. There is no reason why mutual funds filing a prospectus under NI 81-101 should be treated differently from ETFs filing a prospectus under NI 41-101.

Decision

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator is that the Exemption Sought is granted.

"Darren McKall"
Manager
Investment Funds and Structured Products
Ontario Securities Commission

Application File #: 2022/0204

B.3.2 Vivendi S.E.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Application for relief from the prospectus and registration requirements for certain trades made in connection with an employee share offering by a French issuer – In Ontario, application for relief from prospectus requirement only – The issuer cannot rely on the employee exemption in section 2.24 of National Instrument 45-106 Prospectus Exemptions as the securities are not being offered to Canadian employees directly by the issuer but rather through special purpose entities – Canadian participants will have access to disclosure documents – The special purpose entities are subject to the supervision of the local securities regulator – There is no market for the securities of the issuer in Canada – Relief granted, subject to conditions – 5 year sunset clause.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 53(1) and 74(1).
Ontario Securities Commission Rule 72-503 Distributions Outside Canada, s. 2.8(1).

May 20, 2022

[TRANSLATION]

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
QUÉBEC AND
ONTARIO
(the Jurisdictions)

AND

IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS
IN MULTIPLE JURISDICTIONS

AND

IN THE MATTER OF
VIVENDI S.E.
(the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for:

1. an exemption from the prospectus requirement (the **Prospectus Relief**) so that such requirement does not apply to:

2. trades of:

3. units (the **2022 Units**) of *Opus 22 Levier* (the **2022 Compartment**), a compartment of a *fonds commun de placement d'entreprise* or "FCPE", a form of collective shareholding vehicle commonly used in France for the conservation or custodianship of shares held by employee-investors, named *Opus Vivendi* (the **Fund**, and together with the Compartments (as defined below), the **Funds**); and

4. units (together with the 2022 Units, the **Units**) of future compartments of the Fund organized in the same manner as the 2022 Compartment (together with the 2022 Compartment, the **Compartments**),

5. made under Vivendi Group International Employee Savings Plan (**Plan**) to or with Qualifying Employees (as defined below) resident in the Jurisdictions (collectively, the **Canadian Employees**, and Canadian Employees who subscribe for Units, the **Canadian Participants**);

6. trades of ordinary shares of the Filer (the **Shares**) by the relevant Compartment to or with Canadian Participants upon the redemption of Units, as requested by Canadian Participants; and

7. an exemption from the dealer registration requirement (the **Registration Relief**, and together with the Prospectus Relief, the **Exemption Sought**) so that such requirement does not apply to the Filer and its Local Related Entities (as defined below), the Funds and Société Générale Gestion (the **Management Company**) in respect of:

8. trades in Units made pursuant to an Employee Offering to or with Canadian Employees not resident in Ontario; and

9. trades in Shares by the relevant Compartment to or with Canadian Participants upon the redemption of Units, as requested by Canadian Participants.

10. Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a dual application):

    (a) the Autorité des marchés financiers is the principal regulator for this application; and

11. the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

Terms defined in *Regulation 14-101 respecting Definitions*, CQLR, c. V-1.1, r. 3, *Regulation 11-202 respecting Passport System,* CQLR, c. V-1.1, r.1 and *Regulation 45-106 respecting Prospectus Exemption*, CQLR, c. V-1.1, r. 21 have the same meaning if used in this decision, unless otherwise defined.

Representations

This decision is based on the following facts represented by the Filer:

1. The Filer is a corporation formed under the laws of France. It is not, and has no current intention of becoming, a reporting issuer under the securities legislation of any jurisdiction of Canada. The head office of the Filer is located in France and the Shares are listed on Euronext Paris. The Filer is not in default of securities legislation of any jurisdiction of Canada.

2. The Filer carries on business in Canada through certain related entities that employ Canadian Employees (**Local Related Entities**, and together with the Filer and other related entities of the Filer, the **Vivendi Group**). Currently, the greatest number of employees of the Local Related Entities reside in Québec.

3. The Filer has established a global employee share offering under the Plan (the **2022 Employee Offering**) and expects to establish subsequent global employee share offerings following 2022 for the next four years that are substantially similar (**Subsequent Employee Offerings**, and together with the 2022 Employee Offering, the **Employee Offerings**) for Qualifying Employees (as defined below) and participating related entities of the Filer, including Local Related Entities. Each Local Related Entity is a direct or indirect controlled subsidiary of the Filer and no Local Related Entity has any current intention of becoming a reporting issuer under the securities legislation of any jurisdiction of Canada.

4. As of the date hereof, “Local Related Entities” include Divertissements Gameloft Live Inc., Divertissement Gameloft Inc., Gameloft Entertainment Toronto Inc., Interforum Canada and Editions Robert Laffont.

5. Each Employee Offering involves an offering of Shares to be subscribed through the relevant Compartment of the Fund (the **Leveraged Plan**), subject to the decision of the supervisory boards of the FCPEs and the approval of the French AMF (as defined below).

6. Only persons who are employees of an entity forming part of the Vivendi Group during the subscription period for an Employee Offering and who meet other employment criteria (the **Qualifying Employees**) will be allowed to participate in the relevant Employee Offering.

7. The 2022 Compartment was established for the purpose of implementing the 2022 Employee Offering. The Fund was established for the purpose of implementing the Employee Offerings generally. There is no intention for any of the 2022 Compartment or the Fund to become a reporting issuer under the securities legislation of any jurisdiction of Canada. There is no intention for any future Compartment that will be established for the purpose of implementing Subsequent Employee Offerings to become a reporting issuer under the securities legislation of any jurisdiction of Canada.

8. The Fund and the 2022 Compartment have been registered with, and approved by, the Autorité des marchés financiers in France (the **French AMF**). It is expected that each Compartment established for Subsequent Employee Offerings will be registered with, and approved by, the French AMF.

9. Under the Leveraged Plan, each Employee Offering will be made as follows:

(a) Canadian Participants will subscribe for Units, and the relevant Compartment will then subscribe for Shares using the Employee Contribution (as defined below) and certain financing made available by Société Générale (the **Bank**), which is a bank governed by the laws of France.

(b) The subscription price will be the Canadian dollar equivalent of the average opening price of the Shares (expressed in Euros) on Euronext Paris for the 20 trading days preceding the date of the fixing of the subscription price (the **Reference Price**), less a specified discount to the Reference Price.

(c) Canadian Participants will contribute 10% of the price of each Share (expressed in euros) to the relevant Compartment (the **Employee Contribution**). The relevant Compartment will enter into a swap agreement (the **Swap Agreement**) with the Bank. Under the terms of the Swap Agreement, the Bank will contribute the remaining 90% of the price of each Share (expressed in euros) to be subscribed for by the relevant Compartment (the **Bank Contribution**). The relevant Compartment will apply the cash received from the Employee Contribution and the Bank Contribution to subscribe for Shares.

(d) Each Canadian Participant will receive Units in the relevant Compartment entitling him or her to the Euro amount of the Employee Contribution and a multiple of the Average Increase (as defined below) in the price of the Share subscribed for on his or her behalf.

(e) Under the terms of the Swap Agreement, the relevant Compartment will remit to the Bank an amount equal to the net amount of any dividends paid on the Shares held in such Compartment.

(f) The Units will be subject to a hold period of approximately five years (the **Lock-Up Period**), subject to certain exceptions adopted for an Employee Offering (such as death, disability or termination of employment).

(g) In the event of an early exit resulting from a Canadian Participant exercising one of the exceptions to the Lock-Up Period (**Early Redemption**), the Canadian Participant may request the redemption of Units from the relevant Compartment using the Redemption Formula (as defined below).

(h) At the end of the applicable Lock-Up Period, the relevant Compartment will owe to the Bank an amount equal to the market value of the Shares held in the relevant Compartment (as determined pursuant to the terms of the Swap Agreement), less

(i) 100% of the Employee Contributions, plus the greater of:

(1) a guaranteed annual return on the Employee Contributions, or

(2) a multiple of the Participation Percentage (as defined below) multiplied by the quotient obtained from dividing the Reference Price by the Average Increase of the Shares, if any, and further multiplied by the difference between the Average Increase and the Reference Price (the **Appreciation Amount**).

(A) The **Participation Percentage** will be determined for the relevant Offering and communicated to Canadian Participants prior to finalization of their subscriptions.

(B) The **Average Increase** will be determined on the basis of a weekly average during the entire Lock-Up Period. In the event a closing price is less than the Reference Price, the Reference Price will be utilized.

(i) If, at the end of the Lock-Up Period, the market value of the Shares held in the relevant Compartment is less than 100% of the Employee Contributions, the Bank will, pursuant to the terms and conditions of a guarantee contained in the Swap Agreement, make a contribution to the relevant Compartment to make up such shortfall.

(j) At the end of the relevant Lock-Up Period, the Swap Agreement will terminate after the final swap payments. A Canadian Participant may then request the redemption of his or her Units in consideration for cash or Shares with a value representing:

(i) the Canadian Participant's Employee Contribution; and

(ii) the greater of:

(1) the Canadian Participant's portion of the guaranteed annual return on the Employee Contributions; or

(2) the Canadian Participant's portion of the Appreciation Amount, if any

(the **Redemption Formula**).

(k) At the end of the relevant Lock-Up Period, Unless the Canadian Participant elects to receive the redemption of his or her Units in Shares, the Canadian Participant will automatically receive a redemption of Units in exchange for a cash payment.

(l) Pursuant to the terms of the guarantee contained in the Swap Agreement, a Canadian Participant will be entitled to receive 100% of his or her Employee Contribution (in Euros) at the end of the Lock-Up Period or in the event of an Early Redemption. The Management Company is permitted to cancel the Swap Agreement (which will have the effect of cancelling the guarantee) in certain strictly defined conditions where it is in the best interests of the unitholders. In the event that the Management Company cancelled the Swap Agreement and this was not in the best interests of the unitholders, then such unitholders would have a right of action under French law against the Management Company. Under no circumstances will a Canadian Participant be responsible to contribute an amount greater than his or her Employee Contribution.

(m) In the event of an Early Redemption, a Canadian Participant may request the redemption of Units from the relevant Compartment. The value of the Units will be calculated in accordance with the Redemption Formula. The measurement of the increase, if any, from the Reference Price will be carried out in accordance with similar rules to those applied to redemption at the end of the Lock-up Period, but it will be measured using values of the Shares at the time of the Early Redemption instead.

(n) The maximum aggregate number of Shares that may be subscribed for by the Qualifying Employees under the 2022 Employee Offering is 7,000,000 (the **Maximum Offering Size**). A separate Maximum Offering Size may apply to Subsequent Employee Offerings. If subscriptions received from Qualifying Employees under an Employee Offering would result in an acquisition of Shares by the Fund in excess of the Maximum Offering Size, a reduction will be applied to the subscriptions as follows:

(i) an individual subscription threshold, equal to the Maximum Offering Size, divided by the number of participants in the Employee Offering, will be calculated (the Individual Subscription Size). Subscriptions will be accepted in full from each subscriber up to the Individual Subscription Size; and

(ii) the remaining number of Shares available for subscription will be determined, and subscriptions in excess of the Individual Subscription Size will then be proportionally reduced, so as to reduce the aggregate number of Shares subscribed for under the Employee Offering below the Maximum Offering Size.

10. For Canadian federal income tax purposes, a Canadian Participant should be deemed to receive all dividends paid on the Shares financed by either the Employee Contribution or the Bank Contribution at the time such dividends are paid to the relevant Compartment, notwithstanding the actual non-receipt of the dividends by the Canadian Participants.

11. The declaration of dividends on the Shares (in the ordinary course or otherwise) is strictly decided by the shareholders of the Filer on the proposition of the management board. The Filer has not made any commitment to the Bank as to any minimum payment of dividends during the term of the Lock-Up Period.

12. Considering that, at the time of the initial investment decision relating to participation in an Employee Offering, Canadian Participants will be unable to quantify their potential income tax liability resulting from such participation, the Filer or the Local Related Entities will indemnify each Canadian Participant with respect to dividend amounts exceeding EUR100 which are paid on a Share in a calendar year during the Lock-Up Period, such that, in all cases, a Canadian Participant will, at the time of the original investment decision, be able to determine his or her maximum tax liability in connection with dividends received by the relevant Compartment on his or her behalf.

13. At the time the relevant Compartment's obligations under the Swap Agreement are settled, the Canadian Participant will realize a capital gain (or capital loss) by virtue of having participated in the Swap Agreement to the extent that amounts received by the relevant Compartment, on behalf of the Canadian Participant, from the Bank exceed (or are less than) amounts paid by the Compartment, on behalf of the Canadian Participant, to the Bank. Any dividend amounts paid to the Bank under the Swap Agreement will serve to reduce the amount of any capital gain (or increase the amount of any capital loss) that the Canadian Participant would have realized. Capital losses (gains) realized by a Canadian Participant may generally be offset against (reduced by) any capital gains (losses) realized by the Canadian Participant on a disposition of the Shares, in accordance with the rules and conditions under the *Income Tax Act* (Canada) or comparable provincial legislation (as applicable).

14. Under France law, an FCPE is a limited liability entity. The portfolio of the Compartment will consist almost entirely of Shares as well as the rights and associated obligations under the Swap Agreement. The Compartment may also hold cash or cash equivalents pending investments in Shares and for the purposes of facilitating Unit redemptions.

15. The Management Company is a portfolio management company governed by the laws of France. The Management Company is registered with the French AMF as an investment manager and complies with the rules of the French AMF. The Management Company is obliged to act in the best interests of the Canadian Participants and is liable to them, jointly and severally with the Depository (as defined below), for any violation of the rules and regulations governing the FCPE, or for any self-dealing or negligence. The Management Company is not, and has no intention of becoming, a reporting issuer under the securities legislation of any jurisdiction of Canada.

16. The Management Company's portfolio management activities in connection with an Employee Offering and the Compartment are limited to subscribing for Shares from the Filer, selling such Shares as necessary in order to fund redemption requests, investing available cash in cash equivalents, and such activities as may be necessary to give effect to the Swap Agreement.

17. The Management Company is also responsible for preparing accounting documents and publishing periodic informational documents in respect of the relevant Compartment. The Management Company's activities will not affect the value of the Shares.

18. None of the entities forming part of the Vivendi Group, the Funds or the Management Company, or any of their directors, officers, employees, agents or representatives will provide investment advice to the Canadian Employees with respect to an investment in the Shares or the Units.

19. None of the entities forming part of the Vivendi Group, the Funds or the Management Company is currently in default of securities legislation of any jurisdiction of Canada.

20. Shares issued under an Employee Offering will be deposited in the relevant Compartment's accounts with **Société Générale** (the **Depositary**), a large French commercial bank subject to French banking legislation.

21. Participation in an Employee Offering is voluntary, and Canadian Employees will not be induced to participate in an Employee Offering by expectation of employment or continued employment.

22. The total amount that may be invested by a Canadian Employee must be a minimum of C$500 and may not exceed the lesser of (i) 2.5% of his or her estimated gross annual compensation for 2021 (or estimated for 2022, if higher), and (ii) C$4,000, for the 2022 Employee Offering. For Subsequent Employee Offerings, the total amount that may be invested by a Canadian Employee will be based upon the greater of (i) his or her gross annual compensation for the calendar year ended prior to the year in which such Subsequent Employee Offering is completed, or (ii) the estimated gross annual compensation for the calendar year in which such Subsequent Employee Offering is completed.

23. The Shares and the Units are not currently listed for trading on any stock exchange in Canada and there is no intention to have the Shares or the Units so listed. As there is no market for the Shares or Units in Canada, and as none is expected to develop, any first trades of Shares or Units by Canadian Participants will be effected through the facilities of, and in accordance with, the rules and regulations of an exchange outside of Canada.

24. The Filer will retain a securities dealer registered as a broker/investment dealer under the securities legislation of Ontario to provide advisory services to Canadian Employees resident in Ontario who express an interest in an Employee Offering and to make a determination, in accordance with industry practices, as to whether an investment in an Employee Offering is suitable for each such Canadian Employee based on his or her particular financial circumstances.

25. Canadian Employees will receive an electronic information package in the French or English language, according to their preference, which will include a description of the terms of the relevant Employee Offering and a description of Canadian income tax consequences of subscribing for and holding the Units and requesting the redemption of such Units at the end of the Lock-Up Period. Canadian Participants will have access to the Filer's *Document d'Enregistrement Universel* filed with the French AMF in respect of the Shares and a copy of the regulations of the relevant Compartment and Fund. The Canadian Employees will also have access to copies of the continuous disclosure materials relating to the Filer that are furnished to holders of Shares. Canadian Participants will receive an initial statement of their holdings under the Employee Offering together with an updated statement at least once per year.

26. For the 2022 Employee Offering, there were approximately 476 Qualifying Employees resident in Canada, with the largest number residing in the province of Québec (approximately 377) and the remainder in Ontario (approximately 99), representing, in aggregate, approximately 1.33% of the number of employees in the Vivendi Group worldwide eligible to participate in the 2022 Employee Offering.

27. As of the date hereof and after giving effect to any Employee Offering, the Filer is and will be a "foreign issuer" as such term is defined in section 2.15(1) of *Regulation 45-102 respecting Resale of Securities*, CQLR, c. V-1.1, r. 20 (**Regulation 45-102**) and section 2.8(1) of Ontario Securities Commission *Rule 72-503 Distributions Outside Canada* (**OSC Rule 72-503**).

Decision

Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted, provided that:

(a) with respect to the 2022 Employee Offering:

(i) the prospectus requirement will apply to the first trade in any Units or Shares acquired by Canadian Participants pursuant to this decision, unless the following conditions are met:

(1) the issuer of the security was a foreign issuer on the distribution date, as such term is defined in section 2.15(1) of Regulation 45-102 and section 2.8(1) of OSC Rule 72-503;

(2) the issuer of the security

(A) was not a reporting issuer in any jurisdiction of Canada at the distribution date, or

(B) is not a reporting issuer in any jurisdiction of Canada at the date of the trade; and

(3) the first trade is made

(A) through an exchange, or a market, outside of Canada, or

(B) to a person or company outside of Canada;

(b) for any Subsequent Employee Offering under this decision completed within five years from the date of this decision, provided that:

(i) the representations other than those in paragraphs 4, 9(n) and 26 remain true and correct in respect of that Subsequent Employee Offering; and

(ii) the conditions set out in paragraph (a) above are satisfied as of the date of any distribution of a security under such Subsequent Employee Offering (varied such that any references therein to the 2022 Compartment and the 2022 Employee Offering are read as references to the relevant Compartment and the Subsequent Employee Offering, respectively); and

(c) provided that in the Province of Ontario, the prospectus exemption above, for the first trade in any Units or Shares acquired by Canadian Participants pursuant to this decision, is not available with respect to any transaction or series of transactions that is part of a plan or scheme to avoid the prospectus requirements in connection with a trade to a person or company in Canada.

"Benoît Gascon"
Directeur principal du financement des sociétés

B.3.3 PenderFund Capital Management Ltd. and Pender Alternative Absolute Return Fund

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – National Instrument 81-102 Investment Funds Relief granted from short selling and cash borrowing restrictions in NI 81-102 to permit alternative mutual funds to conduct physical short sales and cash borrowing up to a combined aggregate limit of 100% of the fund's net asset value, subject to conditions.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 2.6, 2.6.1, 2.6.2 and 19.1.

May 9, 2022

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA AND
ONTARIO
(the Jurisdictions)

AND

IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS
IN MULTIPLE JURISDICTIONS

AND

IN THE MATTER OF
PENDERFUND CAPITAL MANAGEMENT LTD.
(the Filer)

AND

PENDER ALTERNATIVE ABSOLUTE RETURN FUND
(the Fund)

DECISION

Background

¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer, on behalf of the Fund for an exemption under securities legislation of the Jurisdictions (the Legislation) from the following provisions in National Instrument 81-102 *Investment Funds* (NI 81-102) (together, the Exemption Sought):

(a) subparagraph 2.6.1(1)(c)(v) of NI 81-102, which restricts the Fund from selling a security short, if at the time, the aggregate market value of all securities sold short by the Fund exceeds 50% of the Fund's NAV (together with (c) below, the Short Selling Limit);

(b) subparagraph 2.6(2)(c) of NI 81-102, which restricts the Fund from borrowing cash if the value of cash borrowed, when aggregated with the value of all outstanding borrowing by the Fund, exceeds 50% of the Fund's NAV (together with (c) below, the Cash Borrowing Limit); and

(c) section 2.6.2 of NI 81-102, which restricts the Fund from borrowing cash or selling securities short if, immediately after entering into a cash borrowing or short selling transaction, the aggregate value of cash borrowed combined with the aggregate market value of all securities sold short by the Fund (the Combined Aggregate Value) would exceed 50% of the Fund's NAV and which requires a Fund, if the Combined Aggregate Value exceeds 50% of the Fund's NAV, as quickly as commercially reasonably, to take all steps necessary to reduce the Combined Aggregate Value to 50% or less of the Fund's NAV - (a) and (c) together, the Short Selling Relief, and (b) and (c) together, the Cash Borrowing Relief, and collectively the Requested Relief).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a dual application):

(a) the British Columbia Securities Commission is the principal regulator for this application;

(b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut; and

(c) the decision is a decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

¶ 2 Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this decision unless otherwise defined.

Representations

¶ 3 This decision is based on the following facts represented by the Filer:

The Filer

1. the Filer is a corporation incorporated under the laws of British Columbia on May 28, 2003;

2. the head office of the Filer is located in Vancouver, British Columbia;

3. the Filer is registered as an investment fund manager in British Columbia, Ontario, Québec and Newfoundland and Labrador; a portfolio manager in British Columbia and Ontario; and an exempt market dealer in British Columbia, Alberta, Manitoba, Ontario and Québec;

4. the Filer is the investment fund manager, portfolio manager and trustee of the Fund;

5. the Filer is not a reporting issuer in any of the Jurisdictions and is not in default of the Legislation in any of the Jurisdictions;

The Fund

6. the Fund is an alternative mutual fund to which NI 81-102 applies and is organized under and governed by the laws of British Columbia;

7. the Fund distributes its securities pursuant to a simplified prospectus (the Prospectus) prepared in accordance with NI 81-101 *Mutual Fund Prospectus Disclosure* (NI 81-101) and Form 81-101F1 *Contents of Simplified Prospectus*;

8. securities of the Fund are qualified for distribution in each Jurisdiction;

9. the Fund is a reporting issuer in each Jurisdiction and the Fund is not in default of the Legislation in any of the Jurisdictions;

10. the investment objective of the Fund is to maximize absolute returns over a complete market cycle by providing long-term capital growth and income, with low volatility of returns; the Fund's key investment strategies include (a) the use of absolute return, offsetting, inverse or shorting strategies requiring the use of short selling in excess of the Short Selling Limit, and/or (b) the use of cash borrowing to provide additional investment exposure in connection with the investment strategies of the Fund in excess of the Cash Borrowing Limit; the Fund invests primarily in a portfolio of North American fixed income securities but may also invest in foreign and other securities;

11. the Fund is permitted to invest in asset classes such as physical commodities and specified derivatives, and, among other things:

    (a) invests up to 20% of its NAV in securities of a single issuer (rather than 10% for conventional mutual funds);

    (b) borrows cash of up to 50% of its NAV to use for investment purposes;

(c) sells securities short (provided that the aggregate market value of the securities of the issuer of the securities sold short, other than government securities, does not exceed 10% of its NAV and the aggregate market value of the securities sold short does not exceed 50% of its NAV); and

(d) uses leverage through the use of cash borrowing, short selling and specified derivatives;

12. the combined level of cash borrowing and short selling of the Fund is currently limited to 50% of its NAV in aggregate and the maximum aggregate exposure to the foregoing sources of leverage, as calculated in accordance with section 2.9.1 of NI 81-102, cannot exceed 300% of the Fund's NAV (the Leverage Limit);

13. the Filer has determined that it is in the best interests of the Fund to borrow cash and sell securities short up to 100% of NAV;

Reasons for the Requested Relief

14. the Prospectus, annual information form, and fund facts, as applicable, comply with the applicable requirements of NI 81-101 and Form 81-103F3 *Content of Fund Facts Document* (the Fund Facts) for alternative mutual funds, and will include disclosure in a text box on the cover page of the Fund Facts to highlight how the Fund differs from other mutual funds and alternative mutual funds and to emphasize that the short selling and cash borrowing strategies and increased ability to engage in short selling and cash borrowing permitted for the Fund are outside the scope of the restrictions in NI 81-102 applicable to alternative mutual funds;

15. the Filer does not consider that any activities it would engage in in reliance on the Short Selling Relief and Cash Borrowing Relief would constitute either a fundamental or material change for the Fund under NI 81-102 or Part 11 of National Instrument 81-106 – *Investment Fund Continuous Disclosure*;

16. the Filer determines the risk rating for the Fund using the Investment Risk Classification Methodology as set out in Appendix F of NI 81-102; the Filer does not anticipate that the current risk rating of the Fund would change if the Short Selling and Cash Borrowing Relief were granted;

17. the Filer has comprehensive risk management policies or procedures that address the risks associated with short selling and cash borrowing in connection with the implementation of the investment strategies of the Fund;

18. the Fund will implement the following controls when conducting a short sale:

(a) the Fund will assume the obligation to return to the borrowing agent the securities borrowed to effect the short sale;

(b) the Fund will receive cash for the securities sold short within normal trading settlement periods for the market in which the short sale is effected;

(c) the Filer will monitor the short positions within the constraints of the Short Selling Relief and the Cash Borrowing Relief as least daily;

(d) on an annual basis, the Filer is responsible for setting and reviewing written policies and procedures for the conduct of short sales, risk management controls and proper books and records, including what is described in paragraph 17;

(e) the security interest provided by the Fund over any of its assets that is required to enable the Fund to effect a short sale transaction is made in accordance with industry practice for that type of transaction and relates only to obligations arising under such short sale transactions;

(f) any short sale by the Fund will comply with the investment objectives of the Fund; and

(g) the Filer will keep proper books and records of short sales and all assets of the Fund deposited with borrowing agents as security.

Decision

¶ 4 Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted provided that:

1. the Fund may sell a security short or borrow cash only if, immediately after the cash borrowing or short selling transaction:

(a) the aggregate market value of all securities sold short by the Fund does not exceed 100% of the Fund's NAV;

(b) the aggregate value of all cash borrowing by the Fund does not exceed 100% of the Fund's NAV;

(c) the aggregate market value of securities sold short by the Fund combined with the aggregate value of cash borrowing by the Fund does not exceed 100% of the Fund's NAV; and

(d) the Fund's aggregate exposure to short selling, cash borrowing and specified derivatives does not exceed the Leverage Limit;

2. in the case of a short sale, the short sale:

(a) otherwise complies with all of the short sale requirements applicable to alternative mutual funds under sections 2.6.1 and 2.6.2 of NI 81-102; and

(b) is consistent with the Fund's investment objectives and strategies;

3. in the case of a cash borrowing transaction, the transaction:

(a) otherwise complies with all of the cash borrowing requirements applicable to alternative mutual funds under sections 2.6 and 2.6.2 of NI 81-102; and

(b) is consistent with the Fund's investment objectives and strategies;

4. the Prospectus under which securities of the Fund are offered:

(a) discloses that the Fund can sell securities short or borrow cash up to, and subject to, the limits described in condition 1 above; and

(b) describes the material terms of this decision.

"John Hinze"
Director, Corporate Finance
British Columbia Securities Commission

Application File #: 2022/0108
SEDAR File #: 3385970

B.3.4 Definity Financial Corporation et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Exemption from dealer registration requirement in respect of a share sales service established by a demutualized life insurance company – time-limited relief granted subject to terms and conditions.

Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25, 74(1).

Applicable Legislative Provisions

Multilateral Instrument 11-102 Passport System, s. 4.7.
National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions.
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 4.1, 13.4 and 15.1.

May 13, 2022

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the Jurisdiction)

AND

IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE
RELIEF APPLICATIONS
IN MULTIPLE JURISDICTIONS

AND

IN THE MATTER OF
DEFINITY FINANCIAL CORPORATION,
DEFINITY INSURANCE COMPANY
(formerly known as Economical Mutual Insurance Company)

AND

COMPUTERSHARE INVESTOR SERVICES INC.

DECISION

Background

The principal regulator in the Jurisdiction has received an application from Definity Financial Corporation (**Definity Financial**) and Definity Insurance Company (formerly known as Economical Mutual Insurance Company) (**Definity Insurance** and, together with Definity Financial, the **Filers**) for a decision under the securities legislation of the Jurisdiction (the **Legislation**) that pursuant to Section 74 of the *Securities Act* (Ontario) (the **Act**), the requirement under subsection 25(1) of the Act to be registered as a dealer shall not apply to the Filers or Computershare Investor Services Inc., as the administrator under the Share Selling Service (as defined in paragraph 15 below) (the **Share Sales Agent**) in respect of any trades of common shares of Definity Financial (**Definity Shares**) pursuant to the Share Selling Service (the **Exemption Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):

(a) the Ontario Securities Commission is the principal regulator for this application; and

(b) The Filers have provided notice that section 4.7(1) of Multilateral Instrument 11-102 - *Passport System* (**MI 11-102**) is intended to be relied upon in each of British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon, the Northwest Territories and Nunavut.

Interpretation

Terms defined in National Instrument 14-101 – *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

Representations

This decision is based on the following facts represented by the Filers:

1. Definity Financial is a corporation existing under the *Insurance Companies Act* (Canada) (the **ICA**).

2. Definity Financial is a reporting issuer in each of the provinces and territories of Canada and is not in default of any applicable requirements under securities legislation thereof.

3. The registered and head office of Definity Financial is located at 111 Westmount Road South, Waterloo, Ontario, N2J 4S4.

4. Definity Insurance is a corporation existing under the ICA.

5. Definity Insurance is not a reporting issuer in any of the provinces or territories of Canada and is not in default of any applicable requirements under securities legislation thereof.

6. The registered and head office of Definity Insurance is located at 111 Westmount Road South, Waterloo, Ontario, N2J 4S4.

7. The authorized share capital of Definity Financial consists of an unlimited number of Definity Shares and an unlimited number of preferred shares. The Definity Shares are listed on the Toronto Stock Exchange under the symbol “DFY”.

8. Definity Financial was created to become the owner of the shares of Definity Insurance in connection with the demutualization of Definity Insurance from a mutual property and casualty

insurance company with mutual policyholders into a company with common shares (the **Demutualization**). Demutualization is a regulated legal process by which a mutual insurance company converts from a company with mutual policyholders as its voting members and no shareholders, to a share company with voting shareholders.

9. The Demutualization was implemented on November 23, 2021 pursuant to the ICA and the *Mutual Property and Casualty Insurance Company with Non-Mutual Policyholders Conversion Regulations* under the ICA (the **Demutualization Regulations**), and a conversion plan (the **Conversion Plan**) approved pursuant thereto.

10. Under the Demutualization, mutual and non-mutual policyholders of Definity Insurance as of a specified eligibility date were eligible to participate in the distribution of benefits (in the form of cash, Definity Shares or a combination of cash and Definity Shares) (**Demutualization Benefits**) in accordance with the Demutualization Regulations and the Conversion Plan. Such policyholders are referred to as **Eligible Policyholders**.

11. At the effective time of the Demutualization, the following steps occurred simultaneously pursuant to the Conversion Plan:

    (a) Definity Insurance ceased to be a mutual property and casualty insurance company and became a property and casualty insurance company with common shares;

    (b) All of Definity Insurance's policyholders ceased to have any rights with respect to, or any interest in, Definity Insurance as a mutual company;

    (c) Amended and restated by-laws of Definity Insurance came into force, including a by-law authorizing the issuance of common shares of Definity Insurance;

    (d) Definity Insurance issued common shares to Definity Financial in consideration for Definity Financial issuing Definity Shares to Eligible Policyholders;

    (e) Definity Financial issued Definity Shares to certain Eligible Policyholders in accordance with the Conversion Plan; and

    (f) Definity Financial repurchased and cancelled the one Definity Share that had been held by Definity Insurance.

12. In addition, on November 23, 2021 and following implementation of the Demutualization, Definity Financial completed an initial public offering of Definity Shares (the **IPO**) pursuant to a final PREP prospectus and supplemented PREP prospectus dated November 17, 2021. Definity Financial became a reporting issuer in each of the provinces and territories of Canada upon the issuance of a receipt for its final prospectus for the IPO.

13. Definity Shares distributed pursuant to the Demutualization were issued and registered in the name of the applicable shareholder in the direct registration system maintained by Definity Financial's transfer agent.

14. The Conversion Plan includes certain trading restrictions (the **Market Stabilization Restrictions**), which apply to Definity Shares issued to Eligible Policyholders in the Demutualization for 180 calendar days following the later of the effective date of the Demutualization and the closing of the IPO.

15. To comply with the Demutualization Regulations, and as contemplated in the Conversion Plan, following expiry of the Market Stabilization Restrictions, it is intended that Definity Financial will establish a program (the **Share Selling Service**) administered by the Share Sales Agent through which Eligible Policyholders who received Definity Shares as Demutualization Benefits will be able to sell them. Under the Share Selling Service, it is anticipated that Eligible Policyholders will be able to sell their Definity Shares by instructing the Share Sales Agent to do so.

16. Definity Financial will make the Share Selling Service available only on a commercially reasonable basis and, accordingly, may decide that the Share Selling Service in certain jurisdictions will only be available to persons who hold their Definity Shares through the direct registration system maintained by the transfer agent of Definity Financial, which is currently Computershare Trust Company of Canada, an affiliate of the Share Sales Agent. At this time, Definity Financial expects the Share Selling Service would be available in all provinces and territories of Canada.

17. The Share Selling Service is expected to commence approximately 180 days following the completion of the IPO and terminate two years after completion of the IPO; provided, however, that Definity Financial may terminate the Share Selling Service earlier in any jurisdiction upon a minimum of 90 days' written notice to Eligible Policyholders entitled to use the Share Selling Service in that jurisdiction.

18. Under the Share Selling Service, it is expected that the Share Sales Agent will establish an account with a registered investment dealer and member of the Investment Industry Regulatory Organization of Canada (the **Assisting Dealer**) and will, through the Assisting Dealer, arrange to sell Eligible Policyholders' Definity Shares and remit the proceeds, less applicable fees, to the applicable Eligible Policyholders The Assisting Dealer will not open individual accounts or engage in "know your

client" procedures with respect to Eligible Policyholders utilizing the Share Selling Service and will not have any contact with Eligible Policyholders. The Assisting Dealer may change from time to time.

19. Under the Share Selling Service, only sell orders at the market price would be accepted by the Share Sales Agent and no advice regarding the decision to sell or hold Definity Shares would be offered to any Eligible Policyholder. It is expected that there will be a fee involved with the Share Selling Service, but Eligible Policyholders will not be required to create their own brokerage account. It is therefore anticipated that the Share Selling Service will offer a more convenient way for many Eligible Policyholders to sell Definity Shares than if they sold them on their own. Any Eligible Policyholder who wishes to sell its Definity Shares in another manner (for example, by transferring their holdings to another dealer with whom they have a brokerage relationship), after expiry of the Market Stabilization Restrictions, would be free to do so. No fees are anticipated to be charged by the transfer agent or the Share Sales Agent for the transfer by Eligible Policyholders to their own broker-dealer.

20. The Share Sales Agent will prepare an information statement or brochure describing the Share Selling Service, including disclosure of applicable fees. The Share Sales Agent will also maintain a toll-free number and a call centre through which Eligible Policyholders may ask questions and obtain information about the Share Selling Service. Any information distributed to Eligible Policyholders regarding the Share Selling Service will not contain any investment advice as to the desirability of Eligible Policyholders holding or selling their Definity Shares.

21. When a sale request is made, the Share Sales Agent will request the transfer agent to transfer or credit the applicable shares to the Assisting Dealer. The Assisting Dealer will effect the sale, collect the proceeds upon settlement of the trade, and transfer the gross proceeds to the Share Sales Agent, who will remit the net proceeds to the selling Eligible Policyholder by cheque sent to the address of the selling Eligible Policyholder as shown in Definity Financial's security register. The fees payable to the Share Sales Agent will be deducted from the gross proceeds of sale.

22. Neither the Filers nor the Share Sales Agent will require, recommend, or advise that Eligible Policyholders hold or sell their Definity Shares and Eligible Policyholders who wish to sell such securities will not be required to do so through Share Selling Service. These facts will be outlined in the information statements or brochures describing the Share Selling Service.

23. The Filers and/or the Share Sales Agent may periodically remind Eligible Policyholders of the availability of the Share Selling Service through mailings or other transmission (including by electronic means) of disclosure documents, notices, information statements, brochures or similar documents or in response to inquiries. The information provided will be information about the availability and operation of the Share Selling Service as opposed to providing investment advice as to the desirability of an Eligible Policyholder holding or selling its Definity Shares or seeking to persuade Eligible Policyholders to use it.

24. In providing the Share Selling Service, the Filers and the Share Sales Agent will be facilitating trades pursuant to the Share Selling Service by: (i) receiving orders from Eligible Policyholders to sell their Definity Shares, (ii) instructing the Assisting Dealer to execute the order to sell the Definity Shares, (iii) remitting the proceeds less applicable fees from the sale of Definity Shares to the Eligible Policyholders, and (iv) the Share Sales Agent receiving a fee from the Eligible Policyholders for the Share Selling Service.

25. Definity Financial and Definity Insurance carry out activities under the Share Sale Service with the same employees who, upon request, may direct Eligible Policyholders to the Share Sales Agent or may provide information statements or brochures to the Eligible Policyholders prepared by the Shares Sales Agent.

Decision

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted, provided that:

(a) The Filers only facilitate the sale of Definity Shares by Eligible Policyholders through the Share Sales Agent;

(b) The Filers and the Share Sales Agent deal honestly, fairly and in good faith with Eligible Policyholders with respect to facilitating the sale of Definity Shares through the Share Selling Service;

(c) The Filers, the Share Sales Agent and their directors, officers, employees, contractors, and agents will not provide recommendations or advice regarding the decision to sell or hold the Definity Shares through the Share Selling Service to the Eligible Policyholders;

(d) The Filers and the Share Sales Agent will each inform Eligible Policyholders who may have inquiries concerning their decision to sell or hold the Definity Shares

under the Share Selling Service to seek professional advice;

(e) Definity Financial will provide on a timely basis any report, document or information to the principal regulator that may be requested by the principal regulator from time to time for the purpose of monitoring compliance with securities legislation and the conditions in the Decision with respect to the Share Selling Service, in a format acceptable to the principal regulator;

(f) The Share Sales Agent only facilitates the sale of Definity Shares by Eligible Policyholders in connection with the Share Selling Service through an Assisting Dealer, which will be an investment dealer and member of the Investment Industry Regulatory Organization of Canada;

(g) Where an Eligible Policyholder uses the Share Selling Service, the Share Sales Agent will provide the Eligible Policyholder with a statement outlining the detail of the trade(s) made under the Share Selling Service, including the number of Definity Shares sold, the proceeds of any sale and the fees paid by the Eligible Policyholder;

(h) The Share Sales Agent holds any client securities and client cash separate and apart from Definity Financial's and the Share Sales Agent's own property and holds client cash in a designated trust account held at a Canadian financial institution in trust for the Eligible Policyholders, pending distribution out to the Eligible Policyholders;

(i) The Share Sales Agent maintains records sufficient to show the registered ownership of the cash and securities of each Eligible Policyholder;

(j) The Share Sales Agent remits the proceeds of any trade under the Share Selling Service, less applicable fees, to the Eligible Policyholder as soon as practicable following the receipt of the settlement proceeds from the Assisting Dealer; and

(k) This Decision will expire on a date that is the earlier of:

(i) the date Definity Financial ceases to make available the Share Selling Service, and

(ii) two years from the date of this Decision.

"Debra Foubert"
Director, Compliance and Registrant Regulation
Ontario Securities Commission

OSC File #: 2021-0526

B.3.5 REEL International

Headnote

Dual application under National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – Application for relief from the prospectus and registration requirements for certain trades made in connection with an employee share offering by a French issuer – The issuer cannot rely on the employee exemption in section 2.24 of National Instrument 45-106 *Prospectus Exemptions* as the securities are not being offered to Canadian employees directly by the issuer but rather through a special purpose entity – Canadian participants will receive disclosure documents – The special purpose entity is subject to the supervision of the local securities regulator – Canadian employees will not be induced to participate in the offering by expectation of employment or continued employment – There is no market for the securities of the issuer in Canada – The number of Canadian participants and their share ownership are *de minimis* – Relief granted, subject to conditions.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25(1), 53(1) and 74(1).

May 27, 2022

[TRANSLATION]

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
QUÉBEC AND
ONTARIO
(the Jurisdictions)

AND

IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS
IN MULTIPLE JURISDICTIONS

AND

IN THE MATTER OF
REEL INTERNATIONAL
(the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for:

1. an exemption from the prospectus requirement (the **Prospectus Relief**) so that such requirement does not apply to trades of:

   (a) units (the **Principal Classic Units**) of a *fonds commun de placement d'entreprise* or "FCPE", a form of collective shareholding vehicle commonly used in France for the conservation and custodianship of shares held by employee-investors, named "My Share REEL" (the **Principal Classic Fund**), and

   (b) units (the **Temporary Classic Units**, and together with the Principal Classic Units, the **Units**) of future temporary FCPEs (the **Temporary Classic Funds and,** together with the Principal Classic Fund, the **Funds)** organized in the same manner as the Principal Classic Fund (),

   such trades made pursuant to Employee Share Offerings (as defined below) to or with Qualifying Employees (as defined below) resident in the Jurisdictions (collectively, the **Canadian Employees**, and Canadian Employees who subscribe for Units, the **Canadian Participants**); and

2. an exemption from the dealer registration requirement (the **Registration Relief,** and together with the Prospectus Relief, the **Exemption Sought**) so that such requirement does not apply to the Filer and its Local Affiliates (as defined below), the Funds and Equalis Capital France (the **Management Company**) in respect of trades in Units made pursuant to Employee Share Offerings to or with Canadian Employees.

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a dual application):

(a) the Autorité des marchés financiers is the principal regulator for this application;

(b) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

Terms defined in *Regulation 14-101 respecting Definitions*, CQLR, c. V-1.1, r. 3, *Regulation 11-102 respecting Passport System*, CQLR, c. V-1.1, r. 1 and *Regulation 45-106 respecting Prospectus Exemption*, CQLR, c. V-1.1, r. 21 have the same meaning if used in this decision, unless otherwise defined.

Representations

This decision is based on the following facts represented by the Filer:

1. The Filer is a corporation formed under the laws of France. It is not and has no current intention of becoming a reporting issuer under the securities legislation of any jurisdiction of Canada. The head office of the Filer is located in France. No shares of the Filer (the **Shares**) are listed on any stock exchange, and the Filer does not intend to list its securities on any stock exchange. No shareholders of the Filer are Canadian residents.

2. At the date hereof the Filer carries on business in Canada through three affiliates that employ Canadian Employees, REEL COH, REEL Aluminium and REEL ALESA (collectively, the **Local Affiliates**, and together with the Filer and other affiliates of the Filer, the **REEL International Group**).

3. Each Local Affiliate is an indirect controlled subsidiary of the Filer and is not, and has no current intention of becoming, a reporting issuer under the securities legislation of any jurisdiction of Canada.

4. The head office of the main Local Affiliate of the Filer, REEL COH., is located in Québec and the greatest number of employees in the REEL International Group in Canada reside in Québec.

5. At the date hereof and taking into account the Employee Share Offerings, Canadian Participants do not and will not beneficially own (which term, for the purposes of this paragraph, is deemed to include all Shares held by the Funds on behalf of Canadian Participants) more than 2,5% of the Shares as shown on the books of the Filer.

6. The Filer has established a global employee share offering (the **Employee Share Offering 2022**) and plans to put in place subsequent similar global employee share offerings during the four years (the **Subsequent Employee Share Offerings**, and with the Employee Share Offering 2022, the **Employee Share Offerings**) for Qualifying Employees (as defined below). The Employee Share Offerings involves an offering of Shares to be subscribed through the Funds.

7. Only persons who are employees of an entity forming part of the REEL International Group with at least three months' service on the last day of the subscription period and who are still employed on this last day of the subscription period for the Employee Share Offerings (the **Qualifying Employees**) will be allowed to participate in the Employee Share Offerings.

8. The Principal Classic Fund was established in 2022 for the purpose of implementing the Employee Share Offering 2022 and the Temporary Classic Funds will be established for the purpose of implementing the Subsequent Employee Share Offerings. There is no current intention for the Funds to become a reporting issuer under the securities legislation of any jurisdiction of Canada.

9. The Principal Classic Fund is registered with and has been approved by the French Autorité des marchés financiers (the **French AMF**). The Temporary Classic Funds established for Subsequent Employee Share Offerings will be registered with, and approved by, the French AMF.

10. Under the Employee Share Offerings, Canadian Participants will subscribe for Units and the Funds will then subscribe for Shares on behalf of Canadian Participants using the Canadian Participants' contributions.

    a. The subscription period to the Principal Classic Fund for the Employee Share Offering 2022 will be limited to a period of three weeks, starting on or around June 1st, 2022. The subscription price per Principal Classic Unit will be the Canadian dollar equivalent of €10,00. This initial Principal Classic Unit valuation will be based on a 20% discount Share price of €77,27. The euro exchange rate used for the subscription will be fixed on May 31, 2022 and will correspond to the official spot rate as determined by the European Central Bank at this date. The Share price has been set by an independent appraiser, Oderis, (the **Independent Appraiser**) in accordance with regulations from the French AMF and as described in the terms and rules of the Principal Classic Fund (the **Rules**).

b. With respect to the Subsequent Employee Share Offerings:

i. The Canadian Participants will subscribe to Temporary Classic Units at a subscription price equal to the Share price certified by the Filer's auditor and following a valuation method determined by the Independent Appraiser in accordance with the regulations of the French AMF.

ii. Following the completion of a Subsequent Employee Share Offering, the relevant Temporary Classic Fund will be merged with the Principal Classic Fund (subject to the approval of the supervisory board of the FCPEs and the French AMF). The Temporary Classic Units held by the Canadian Participants will be replaced with Principal Classic Units on a pro rata basis and the Shares subscribed for will be held in the Principal Classic Fund (such transaction being referred to as the **Merger**).

11. A Canadian Participant's loss, if any, under the Employee Share Offerings will be limited to the Canadian Participant's contributions to the Employee Share Offerings and under no circumstances will a Canadian Participant be liable to the Filer or the Funds for any additional amounts.

12. The Units will be subject to a hold period of five years (the **Lock-Up Period**), subject to certain exceptions prescribed by French law and provided for in the Employee Share Offerings (such as long-term disability, death, or termination of employment).

13. At the end of the Lock-Up Period, a Canadian Participant may (a) request the redemption of Principal Classic Units in the Principal Classic Fund in consideration for a cash payment equal to the value of the Principal Classic Unit based on the current Share price as set by the Independent Appraiser or (b) continue to hold Units in the Principal Classic Fund and request the redemption of those Principal Classic Units at a later date in consideration for a cash payment equal to the value of the Unit based on the current Share price as set by the Independent Appraiser.

14. In the event of an early release resulting from a Canadian Participant exercising one of the exceptions to the Lock-Up Period and meeting the applicable criteria, the Canadian Participant may request the redemption of Principal Classic Units in the Principal Classic Fund in consideration for a cash payment equal to the value of the Principal Classic Unit based on the current Share price as set by the Independent Appraiser.

15. Any dividends paid on the Shares held by the Funds will be contributed to the relevant Funds and reinvested by the Funds in cash or cash equivalents on behalf of the Unit holder. To reflect this reinvestment, no new Units will be issued. Instead, the reinvestment will increase the asset base of the Unit of the relevant Funds as well as the value of the Units held by the Canadian Participants.

16. Under French law, an FCPE is a limited liability entity. The portfolio of the Funds will consist mostly of Shares and for the residual exposure of money market fund units, but may, from time to time, also include cash or cash equivalents in respect of dividends paid on the Shares (as described in paragraph 15). Initially, the portfolio of the Principal Classic Fund will consist of Shares for 95% and money market fund units for 5%.

17. The Management Company is a portfolio management company governed by the laws of France. The Management Company is registered with the French AMF as an investment manager and complies with the rules of the French AMF. The Management Company is not, and has no current intention of becoming, a reporting issuer under the securities legislation of any jurisdiction of Canada.

18. The Management Company's portfolio management activities in connection with the Employee Share Offerings and the Funds are limited to subscribing to Shares from the Filer, selling such Shares to the Filer at the Share price set by the Independent Appraiser as necessary in order to fund redemption requests and investing available cash in cash equivalents.

19. The Management Company is also responsible for preparing accounting documents and publishing periodic informational documents about the Principal Classic Fund as provided by the Rules.

20. The Management Company is bound to act in the best interests of Canadian Participants and is liable to them, jointly with the Depositary (as defined below), for any violation of the rules and regulations governing FCPEs, for any self-dealing or for any negligence.

21. The entities forming part of the REEL International Group, the Funds and the Management Company, as well as any director, officer, employee, agent or representative thereof will not provide investment advice to the Canadians Employees with respect to an investment in the Shares or the Units nor to the Canadian Participants in respect of the holding or redemption of the Principal Classic Units.

22. Shares issued pursuant to the Employee Share Offerings will be deposited in the Funds through Banque Fédérative du Crédit Mutuel (the **Depositary**), a large French commercial bank subject to French banking legislation. The Depositary

carries out orders to purchase, trade and sell securities in the portfolio and takes all necessary action to allow the Funds to exercise the rights relating to the securities held in their portfolio.

23. The accounts of the Funds are audited by chartered auditors, appointed for a period of six years with the agreement of the French AMF.

24. The value of the Principal Classic Units will be calculated and reported to the French AMF every six months, based on the net assets of the Principal Classic Fund divided by the number of Principal Classic Units outstanding, in accordance with the Rules. The value of the Units will be based on the value of the underlying Shares but the number of Units of the Funds will not correspond to the number of the underlying Shares. The underlying value of the Shares will be re-evaluated once a year based on the formula laid out by the Independent Appraiser in accordance with regulations from the French AMF and as described in the Rules.

25. All management charges relating to the Funds will be paid by the Filer, as provided in the Rules.

26. Participation in the Employee Share Offerings is voluntary, and the Canadian Employees will not be induced to participate in the Employee Share Offerings by expectation of employment or continued employment.

27. The total amount which may be invested by a Canadian Employee in each of the Employee Share Offerings cannot exceed 25 % of his or her estimated gross annual compensation for the calendar year in question.

28. The Filer adds for the Employee Share Offering 2022 to the subscriptions made by the Canadian Participants a financial contribution of 50 % of the subscriptions up to €610, then 20 % up to €14 335, unless expressly waived by said Canadian Employee. This financial contribution is applicable for the Employee Share Offering 2022 and may differ for the Subsequent Employee Share Offerings.

29. The Units are not transferable and will be not be listed on any exchange, and no market for the Units is expected to develop.

30. The Canadian Employees may request an information package in the French or English language, according to their preference, which will include a summary of the terms of the Employee Share Offerings and a tax notice, for information purposes only, containing a description of Canadian income tax consequences of subscribing to and holding Units of the Funds and requesting the redemption of Principal Classic Units for cash at the end of the Lock-Up Period.

31. Canadian Employees can have access, through their management or their human resource services, to a copy of a presentation of the Filer, its annual consolidated and audited financial statements, as well as a copy of the information documents of the Filer deposited with the French AMF relating to the Shares and the Rules. The new value of the Shares and general information on the business of the Filer will also be communicated annually to the Canadian Employees.

32. Canadian Participants will receive an initial statement of their holdings under the Employee Share Offerings, together with an updated statement at least once per year.

33. There are approximately 308 Qualifying Employees resident in Canada (with the greatest number, approximately 254, resident in Québec), who represent, in the aggregate, approximately 12 % of the number of employees in the REEL International Group worldwide as of April 2022.

34. Neither the Principal Classic Fund nor an entity forming part of the REEL International Group is in default of securities legislation of any jurisdiction of Canada. The Management Company is not in default of securities legislation of any jurisdiction of Canada.

Decision

Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted provided that with respect to any Subsequent Employee Share Offering under this decision completed within five years from the date of this decision, provided that the representations other than those in paragraphs 2, 28 and 33 remain true and correct with necessary adjustments in respect of the relevant Subsequent Employee Share Offering and Temporary Classic Fund.

“Benoît Gascon”
Directeur principal du financement des sociétés

OSC File #: 2022/0194

B.4
Cease Trading Orders

B.4.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

Company Name	Date of Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Revoke
THERE IS NOTHING TO REPORT THIS WEEK.				

Failure to File Cease Trade Orders

Company Name	Date of Order	Date of Revocation
The Flowr Corporation	May 6, 2022	May 25, 2022
Heritage Cannabis Holdings Corp.	March 2, 2022	May 30, 2022
Logica Ventures Corp.	May 6, 2021	May 27, 2022
NextPoint Financial Inc.	May 24, 2022	

B.4.2 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order	Date of Lapse
Gamelancer Gaming Corp.	May 3, 2022	May 25, 2022
NextPoint Financial Inc.	April 1, 2022	May 24, 2022

B.4.3 Outstanding Management & Insider Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Expire	Date of Issuer Temporary Order
Performance Sports Group Ltd.	19 October 2016	31 October 2016	31 October 2016		

Company Name	Date of Order	Date of Lapse
Agrios Global Holdings Ltd.	September 17, 2020	
Gatos Silver, Inc.	April 1, 2022	
NextPoint Financial Inc.	April 1, 2022	May 24, 2022
Gatos Silver, Inc.	April 12, 2022	
Bhang Inc.	May 3, 2022	
Gamelancer Gaming Corp.	May 3, 2022	May 25, 2022
RYAH Group Inc.	May 3, 2022	
Red White & Bloom Brands Inc.	May 4, 2022	
Emerald Health Therapeutics, Inc.	May 5, 2022	

Company Name	Date of Order	Date of Lapse
Magnetic North Acquisition Corp.	May 5, 2022	
CANSORTIUM INC.	May 6, 2022	
CoinAnalyst Corp.	May 6, 2022	

B.7
Insider Reporting

This chapter is available in the print version of the OSC Bulletin, as well as in Thomson Reuters Canada's internet service SecuritiesSource (see www.westlawnextcanada.com).

This chapter contains a weekly summary of insider transactions of Ontario reporting issuers in the System for Electronic Disclosure by Insiders (SEDI). The weekly summary contains insider transactions reported during the seven days ending Sunday at 11:59 pm.

To obtain Insider Reporting information, please visit the SEDI website (www.sedi.ca).

B.9
IPOs, New Issues and Secondary Financings

INVESTMENT FUNDS

Issuer Name:
Beutel Goodman American Equity Fund
Beutel Goodman Balanced Fund
Beutel Goodman Canadian Dividend Fund
Beutel Goodman Canadian Equity Fund
Beutel Goodman Core Plus Bond Fund
Beutel Goodman Fundamental Canadian Equity Fund
Beutel Goodman Global Dividend Fund
Beutel Goodman Global Equity Fund
Beutel Goodman Income Fund
Beutel Goodman International Equity Fund
Beutel Goodman Long Term Bond Fund
Beutel Goodman Money Market Fund
Beutel Goodman North American Focused Equity Fund
Beutel Goodman Short Term Bond Fund
Beutel Goodman Small Cap Fund
Beutel Goodman Total World Equity Fund
Beutel Goodman World Focus Equity Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated May 23, 2022
NP 11-202 Final Receipt dated May 24, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3371020

Issuer Name:
BlackRock - IG Active Allocation Pool IV
IG Managed Growth Portfolio - Global Neutral Balanced
Principal Regulator – Manitoba
Type and Date
Securities Description:
Series P units
Series P Units
Project #03390537
Type and Date:
Combined Preliminary and Pro Forma Simplified Prospectus dated May 26, 2022
NP 11-202 Preliminary Receipt dated May 27, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3390537

Issuer Name:
BMO Private Canadian Core Equity Portfolio (formerly, BMO Private Canadian Conservative Equity Portfolio)
BMO Private Canadian Corporate Bond Portfolio
BMO Private Canadian Income Equity Portfolio
BMO Private Canadian Money Market Portfolio
BMO Private Canadian Short-Mid Bond Portfolio (formerly, BMO Private Canadian Mid-Term Bond Portfolio)
BMO Private Canadian Special Equity Portfolio
BMO Private Diversified Yield Portfolio
BMO Private Emerging Markets Equity Portfolio
BMO Private International Equity Portfolio
BMO Private U.S. Equity Portfolio
BMO Private U.S. Growth Equity Portfolio
BMO Private U.S. Special Equity Portfolio
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated May 13, 2022
NP 11-202 Final Receipt dated May 25, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3364353

Issuer Name:
FDP Balanced Growth Portfolio
FDP Balanced Income Portfolio
FDP Balanced Portfolio
FDP Canadian Bond Portfolio
FDP Canadian Equity Portfolio
FDP Canadien Dividend Equity Portfolio
FDP Cash Management Portfolio
FDP Emerging Markets Equity Portfolio
FDP Global Equity Portfolio
FDP Global Fixed Income Portfolio
FDP US Equity Portfolio
Principal Regulator – Quebec
Type and Date:
Final Simplified Prospectus dated May 24, 2022
NP 11-202 Final Receipt dated May 25, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3359097

Issuer Name:
GreenWise Balanced Portfolio
GreenWise Conservative Portfolio
GreenWise Growth Portfolio
RGP Global Sector Class (formerly R.E.G.A.R. Investment Management Global Equity Class)
RGP Global Sector Fund (formerly R.E.G.A.R. Investment Management Global Equity Fund)
RGP Impact Fixed Income Portfolio
Sectorwise Balanced Portfolio
Sectorwise Conservative Portfolio
Sectorwise Growth Portfolio
Principal Regulator – Quebec
Type and Date:
Combined Preliminary and Pro Forma Simplified Prospectus dated May 24, 2022
NP 11-202 Final Receipt dated May 25, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3367016

Issuer Name:
RBC Global Equity Leaders Currency Neutral Fund
RBC Private Global Growth Equity Pool
RBC Target 2040 Education Fund
Principal Regulator – Ontario
Type and Date:
Combined Preliminary and Pro Forma Simplified Prospectus dated May 20, 2022
NP 11-202 Preliminary Receipt dated May 24, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3387821

Issuer Name:
Longevity Pension Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated May 27, 2022
NP 11-202 Final Receipt dated May 30, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3374570

Issuer Name:
Franklin Brandywine Global Sustainable Income Optimiser Active ETF
Franklin ClearBridge Sustainable Global Infrastructure Income Active ETF
Franklin ClearBridge Sustainable International Growth Active ETF
Franklin FTSE Canada All Cap Index ETF
Franklin FTSE Europe ex U.K. Index ETF
Franklin FTSE Japan Index ETF
Franklin FTSE U.S. Index ETF
Franklin Global Growth Active ETF
Franklin Innovation Active ETF
Franklin Liberty Canadian Investment Grade Corporate ETF
Franklin Liberty Core Balanced ETF
Franklin Liberty Core Plus Bond ETF
Franklin Liberty Global Aggregate Bond ETF (CAD-Hedged)
Franklin Liberty Risk Managed Canadian Equity ETF
Franklin Liberty Short Duration Bond ETF
Franklin Liberty U.S. Investment Grade Corporate ETF (CAD-Hedged)
Franklin LibertyQT Emerging Markets Index ETF
Franklin LibertyQT Global Dividend Index ETF
Franklin LibertyQT International Equity Index ETF
Franklin LibertyQT U.S. Equity Index ETF
Franklin Western Asset Core Plus Bond Active ETF
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated May 17, 2022
NP 11-202 Final Receipt dated May 25, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3366160

Issuer Name:
Mackenzie Multi-Asset Inflation-Focused Fund
Mackenzie USD US Mid Cap Opportunities Fund
Principal Regulator – Ontario
Type and Date:
Preliminary Simplified Prospectus dated May 25, 2022
NP 11-202 Preliminary Receipt dated May 25, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3389114

Issuer Name:
Mawer Balanced Fund
Mawer Canadian Bond Fund
Mawer Canadian Equity Fund
Mawer Canadian Money Market Fund
Mawer EAFE Large Cap Fund
Mawer Emerging Markets Equity Fund
Mawer Global Balanced Fund
Mawer Global Equity Fund
Mawer Global Small Cap Fund
Mawer International Equity Fund
Mawer New Canada Fund
Mawer Tax Effective Balanced Fund
Mawer U.S. Equity Fund
Mawer U.S. Mid Cap Equity Fund
Principal Regulator – Alberta (ASC)
Type and Date:
Final Simplified Prospectus dated May 20, 2022
NP 11-202 Final Receipt dated May 24, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3366506

Issuer Name:
EdgePoint Canadian Growth & Income Portfolio
EdgePoint Canadian Portfolio
EdgePoint Global Growth & Income Portfolio
EdgePoint Global Portfolio
EdgePoint Monthly Income Portfolio
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated May 26, 2022
NP 11-202 Final Receipt dated May 27, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3372593

Issuer Name:
Brandes Canadian Equity Fund
Brandes Canadian Money Market Fund
Brandes Corporate Focus Bond Fund
Brandes Emerging Markets Value Fund
Brandes Global Equity Fund
Brandes Global Opportunities Fund
Brandes Global Small Cap Equity Fund
Brandes International Equity Fund
Brandes U.S. Equity Fund
Bridgehouse Canadian Bond Fund
GQG Partners Global Quality Equity Fund
GQG Partners International Quality Equity Fund
GQG Partners U.S. Quality Equity Fund
Lazard Defensive Global Dividend Fund
Lazard Global Balanced Income Fund
Lazard Global Compounders Fund
Lazard International Compounders Fund
Morningstar Balanced Portfolio
Morningstar Conservative Portfolio
Morningstar Growth Portfolio
Morningstar Moderate Portfolio
Morningstar Strategic Canadian Equity Fund
Sionna Canadian Equity Fund
Sionna Opportunities Fund
Sionna Strategic Income Fund
Principal Regulator – Ontario
Type and Date:
Combined Preliminary and Pro Forma Simplified Prospectus dated May 24, 2022
NP 11-202 Final Receipt dated May 25, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3372521

Issuer Name:
YTM Capital Fixed Income Alternative Fund
Principal Regulator – Ontario
Type and Date:
Combined Preliminary and Pro Forma Simplified Prospectus dated May 27, 2022
NP 11-202 Final Receipt dated May 27, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3369850

Issuer Name:
Franklin ActiveQuant Canadian Fund
Franklin ActiveQuant U.S. Fund
Franklin Bissett Canada Plus Equity Fund
Franklin Bissett Canadian Balanced Fund
Franklin Bissett Canadian Bond Fund
Franklin Bissett Canadian Dividend Fund
Franklin Bissett Canadian Equity Fund
Franklin Bissett Canadian Government Bond Fund
Franklin Bissett Core Plus Bond Fund
Franklin Bissett Corporate Bond Fund
Franklin Bissett Dividend Income Fund
Franklin Bissett Money Market Fund
Franklin Bissett Monthly Income and Growth Fund
Franklin Bissett Short Duration Bond Fund (formerly, Franklin Bissett Canadian Short Term Bond Fund)
Franklin Bissett Small Cap Fund
Franklin Brandywine Global Sustainable Balanced Fund
Franklin Brandywine Global Sustainable Income Optimiser Fund (formerly Franklin Strategic Income Fund)
Franklin Canadian Core Equity Fund
Franklin ClearBridge Sustainable Global Infrastructure Income Fund
Franklin Clearbridge Sustainable International Growth Fund (formerly,Franklin ClearBridge International Growth Fund)
Franklin ClearBridge U.S. Sustainability Leaders Fund
Franklin Conservative Income ETF Portfolio
Franklin Core ETF Portfolio
Franklin Emerging Markets Core Equity Fund
Franklin Global Aggregate Bond Fund
Franklin Global Growth Fund
Franklin Growth ETF Portfolio
Franklin High Income Fund
Franklin Innovation Fund
Franklin International Core Equity Fund
Franklin Martin Currie Sustainable Emerging Markets Fund
Franklin Martin Currie Sustainable Global Equity Fund (formerly, Franklin Martin Currie Global Equity Fund)
Franklin Quotential Balanced Growth Portfolio
Franklin Quotential Balanced Income Portfolio
Franklin Quotential Diversified Equity Portfolio
Franklin Quotential Diversified Income Portfolio
Franklin Quotential Growth Portfolio
Franklin Royce Global Small Cap Premier Fund (formerly, Templeton Global Smaller Companies Fund)
Franklin Sustainable Canadian Core Equity Fund
Franklin Sustainable International Core Equity Fund
Franklin Sustainable U.S. Core Equity Fund
Franklin U.S. Core Equity Fund
Franklin U.S. Monthly Income Fund
Franklin U.S. Opportunities Fund
Franklin U.S. Rising Dividends Fund
Franklin Western Asset Core Plus Bond Fund
FT Balanced Growth Private Wealth Pool
FT Balanced Income Private Wealth Pool
FT Growth Private Wealth Pool
Templeton Emerging Markets Fund
Templeton Global Balanced Fund
Templeton Global Bond Fund
Templeton Growth Fund
Principal Regulator – Ontario
Type and Date:
Combined Preliminary and Pro Forma Simplified Prospectus dated May 27, 2022
NP 11-202 Final Receipt dated May 30, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3368459

Issuer Name:
iProfile Active Allocation Private Pool IV
Principal Regulator – Manitoba
Type and Date:
Combined Preliminary and Pro Forma Simplified Prospectus dated May 26, 2022
NP 11-202 Preliminary Receipt dated May 27, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3390050

Issuer Name:
Capital Group Canadian Core Plus Fixed Income Fund (Canada)
Capital Group Canadian Focused Equity Fund (Canada)
Capital Group Capital Income Builder (Canada)
Capital Group Emerging Markets Total Opportunities Fund (Canada)
Capital Group Global Balanced Fund (Canada)
Capital Group Global Equity Fund (Canada)
Capital Group International Equity Fund (Canada)
Capital Group Monthly Income Portfolio (Canada)
Capital Group Multi-Sector Income Fund (Canada)
Capital Group U.S. Equity Fund (Canada)
Capital Group World Bond Fund (Canada)
Principal Regulator – Ontario
Type and Date:
Combined Preliminary and Pro Forma Simplified Prospectus dated May 26, 2022
NP 11-202 Final Receipt dated May 27, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3371244

Issuer Name:
First Trust Cboe Vest U.S. Equity Buffer ETF – May
First Trust Cboe Vest U.S. Equity Deep Buffer ETF – May
Principal Regulator - Ontario
Type and Date:
Amendment #3 to Final Long Form Prospectus dated May 20, 2022
NP 11-202 Final Receipt dated May 26, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3250634

Issuer Name:
Horizons Enhanced Income Equity ETF
Horizons Enhanced Income Energy ETF
Horizons Enhanced Income Financials ETF
Horizons Enhanced Income Gold Producers ETF
Horizons Enhanced Income US Equity (USD) ETF
Horizons Enhanced Income International Equity ETF
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Long Form Prospectus dated May 19, 2022
NP 11-202 Final Receipt dated May 26, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3210909

Issuer Name:
TruX Exogenous Risk Pool
Principal Regulator - Ontario
Type and Date:
Amendment #3 to Final Simplified Prospectus dated May 25, 2022
NP 11-202 Final Receipt dated May 30, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3278743

Issuer Name:
Fidelity Systematic U.S. High Yield Bond ETF Fund
Fidelity Systematic U.S. High Yield Bond Currency Neutral ETF Fund
Principal Regulator - Ontario
Type and Date:
Amendment #6 to Final Simplified Prospectus and Amendment #8 to AIF dated May 20, 2022
NP 11-202 Final Receipt dated May 26, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3281899

Issuer Name:
Canadian Banc Corp.
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Shelf Prospectus dated May 30, 2022
Received on May 30, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3238792

NON-INVESTMENT FUNDS

Issuer Name:
ANC Capital Ventures Inc.
Type and Date:
Amendment dated May 25, 2022 to Preliminary CPC Prospectus dated February 23, 2022
(Preliminary) Receipted on May 26, 2022
Offering Price and Description:
0.00
Underwriter(s) or Distributor(s):
-
Promoter(s):
Randy Reginald Jennings
Project #3342304

Issuer Name:
Cabral Gold Inc.
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated May 25, 2022
Preliminary Receipt dated May 25, 2022
Offering Price and Description:
$5,000,300.00 - Up to 16,130,000 Units
Price: $0.31 per Unit
Underwriter(s) or Distributor(s):
PARADIGM CAPITAL INC.
CORMARK SECURITIES INC.
RESEARCH CAPITAL CORP.
ROTH CANADA INC.
Promoter(s):
-
Project #3388975

Issuer Name:
Element Nutritional Sciences Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated May 20, 2022
Preliminary Receipt dated May 24, 2022
Offering Price and Description:
$50,000,000.00 - Common Shares, Warrants, Subscription Receipts, Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3387825

Issuer Name:
Golden Age Exploration Ltd.
Principal Regulator - British Columbia
Type and Date:
Preliminary Long Form Prospectus dated May 20, 2022
Preliminary Receipt dated May 24, 2022
Offering Price and Description:
3,000,000.00 - Common Shares at $0.10 per Common Share at $0.10 per Common Share
Underwriter(s) or Distributor(s):
-
Promoter(s):
KEVIN R. HANSON
Project #3387507

Issuer Name:
Ivanhoe Electric Inc.
Principal Regulator - British Columbia
Type and Date:
Preliminary Long Form Prospectus dated May 24, 2022
Preliminary Receipt dated May 25, 2022
Offering Price and Description:
0.00
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3388471

Issuer Name:
Millennial Precious Metals Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated May 25, 2022
Preliminary Receipt dated May 25, 2022
Offering Price and Description:
$15,000,000.00
37,500,000 Units
$0.40 per Unit
Underwriter(s) or Distributor(s):
EIGHT CAPITAL
CORMARK SECURITIES INC.
PI FINANCIAL CORP.
STIFEL NICOLAUS CANADA INC.
SPROTT CAPITAL PARTNERS LP by its general partner, SPROTT CAPITAL PARTNERS GP INC.
Promoter(s):
-
Project #3387034

Issuer Name:
Suncor Energy Inc.
Principal Regulator - Alberta
Type and Date:
Preliminary Shelf Prospectus dated May 25, 2022
Preliminary Receipt dated May 26, 2022
Offering Price and Description:
Debt Securities, Common Shares, Preferred Shares, Subscription Receipts, Warrants, Units, Share Purchase Contracts, Share Purchase Units
Underwriter(s) or Distributor(s):
SUNCOR ENERGY OIL SANDS LIMITED PARTNERSHIP
Promoter(s):
-
Project #3389017

Issuer Name:
Suncor Energy Inc.
Principal Regulator - Alberta
Type and Date:
Preliminary Shelf Prospectus dated May 25, 2022
Preliminary Receipt dated May 26, 2022
Offering Price and Description:
Medium Term Notes (Unsecured)
Underwriter(s) or Distributor(s):
ATB CAPITAL MARKETS INC.
BMO NESBITT BURNS INC.
CIBC WORLD MARKETS INC.
CITIGROUP GLOBAL MARKETS CANADA INC.
DESJARDINS SECURITIES INC.
J.P. MORGAN SECURITIES CANADA INC.
MERRILL LYNCH CANADA INC.
MIZUHO SECURITIES CANADA INC.
MORGAN STANLEY CANADA LIMITED
RBC DOMINION SECURITIES INC.
SCOTIA CAPITAL INC.
SMBC NIKKO SECURITIES CANADA, LTD.
TD SECURITIES INC.
Promoter(s):
-
Project #3389057

Issuer Name:
TransAlta Corporation
Principal Regulator - Alberta
Type and Date:
Preliminary Shelf Prospectus dated May 24, 2022
Preliminary Receipt dated May 25, 2022
Offering Price and Description:
Common Shares, First Preferred Shares, Warrants, Subscription Receipts, Debt Securities, Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3388577

Issuer Name:
Canadian Copper Inc. (formerly, Melius Metals Corp.)
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated May 24, 2022
Receipt dated May 25, 2022
Offering Price and Description:
0.00
Underwriter(s) or Distributor(s):
-
Promoter(s):
Simon Quick
Project #3333002

Issuer Name:
Cassiar Gold Corp. (formerly Margaux Resources Ltd.)
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated May 27, 2022
Receipt dated May 27, 2022
Offering Price and Description:
$8,000,000.00 - 8,000,000 Flow-Through Units
Price: $1.00 per Flow-Through Unit
Underwriter(s) or Distributor(s):
RED CLOUD SECURITIES INC.
RAYMOND JAMES LTD.
BMO NESBITT BURNS INC.
Promoter(s):
-
Project #3346857

Issuer Name:
Frontenac Mortgage Investment Corporation
Principal Regulator - Ontario
Type and Date:
Amendment #11 dated May 25, 2022 to Final Long Form Prospectus dated June 7, 2021
Receipt dated May 26, 2022
Offering Price and Description:
Unlimited Number of Common Shares
Price: $30.00 per Common Share
Underwriter(s) or Distributor(s):
-
Promoter(s):
W.A. ROBINSON ASSET MANAGEMENT LTD.
Project #3209666

Issuer Name:
Glacier Credit Card Trust
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus dated May 27, 2022
Receipt dated May 27, 2022
Offering Price and Description:
Up to $1,500,000,000.00 - Credit Card Asset-Backed Notes
Underwriter(s) or Distributor(s):
BMO NESBITT BURNS INC.
CIBC WORLD MARKETS INC.
DESJARDINS SECURITIES INC.
MUFG SECURITIES (CANADA), LTD.
NATIONAL BANK FINANCIAL INC.
RBC DOMINION SECURITIES INC.
SCOTIA CAPITAL INC.
TD SECURITIES INC.
Promoter(s):
CANADIAN TIRE BANK
Project #3386960

Issuer Name:
Kobo Resources Inc.
Principal Regulator - Quebec
Type and Date:
Amendment dated May 27, 2022 to Final Long Form Prospectus dated March 30, 2022
Receipt dated May 27, 2022
Offering Price and Description:
Minimum: $5,000,000.00 or 20,000,000 Units
Maximum: $10,000,000.00 or 40,000,000 Units
PRICE: $0.25 PER UNIT
Underwriter(s) or Distributor(s):
ECHELON WEALTH PARTNERS INC.
Promoter(s):
EDOUARD GOSSELIN
PAUL SARJEANT
Project #3307914

Issuer Name:
Suncor Energy Inc.
Principal Regulator - Alberta
Type and Date:
Final Shelf Prospectus dated May 25, 2022
Receipt dated May 26, 2022
Offering Price and Description:
Debt Securities, Common Shares, Preferred Shares, Subscription Receipts, Warrants, Units, Share Purchase Contracts, Share Purchase Units
Underwriter(s) or Distributor(s):
SUNCOR ENERGY OIL SANDS LIMITED PARTNERSHIP
Promoter(s):
-
Project #3389017

Issuer Name:
Suncor Energy Inc.
Principal Regulator - Alberta
Type and Date:
Final Shelf Prospectus dated May 25, 2022
Receipt dated May 26, 2022
Offering Price and Description:
Medium Term Notes (Unsecured)
Underwriter(s) or Distributor(s):
ATB CAPITAL MARKETS INC.
BMO NESBITT BURNS INC.
CIBC WORLD MARKETS INC.
CITIGROUP GLOBAL MARKETS CANADA INC.
DESJARDINS SECURITIES INC.
J.P. MORGAN SECURITIES CANADA INC.
MERRILL LYNCH CANADA INC.
MIZUHO SECURITIES CANADA INC.
MORGAN STANLEY CANADA LIMITED
RBC DOMINION SECURITIES INC.
SCOTIA CAPITAL INC.
SMBC NIKKO SECURITIES CANADA, LTD.
TD SECURITIES INC.
Promoter(s):
-
Project #3389057

Issuer Name:
TransAlta Corporation
Principal Regulator - Alberta
Type and Date:
Final Shelf Prospectus dated May 24, 2022
Receipt dated May 25, 2022
Offering Price and Description:
Common Shares, First Preferred Shares, Warrants, Subscription Receipts, Debt Securities Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3388577

B.10
Registrations

B.10.1 Registrants

Type	Company	Category of Registration	Effective Date
Consent to Suspension (Pending Surrender)	Edinburgh Partners Limited	Portfolio Manager	May 25, 2022
Name Change	From: Kalsa Capital Management Inc. To: Bayxis Capital Management Inc.	Exempt Market Dealer, Portfolio Manager, Investment Fund Manager	May 3, 2022

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B.11
SROs, Marketplaces, Clearing Agencies and Trade Repositories

B.11.2 Marketplaces

B.11.2.1 Aequitas Innovations, Inc. and Neo Exchange, Inc. – Application by Aequitas Innovations, Inc. and Neo Exchange, Inc. for Variation of Recognition Order Reflecting Acquisition by Cboe Canada Holdings, ULC – Notice of Commission Approval and Variation of Recognition Order

NOTICE OF COMMISSION APPROVAL AND VARIATION OF RECOGNITION ORDER

APPLICATION BY
AEQUITAS INNOVATIONS, INC. AND NEO EXCHANGE, INC.
FOR VARIATION OF RECOGNITION ORDER REFLECTING ACQUISITION BY
CBOE CANADA HOLDINGS, ULC

On May 27, 2022, the Ontario Securities Commission approved the acquisition (the **Acquisition**) of Aequitas Innovations, Inc. (**Aequitas**) by Cboe Canada Holdings, ULC, a Canadian subsidiary of Cboe Global Markets, Inc. (**Cboe Global**) and issued an order under section 144 of the *Securities Act* (Ontario) varying the decision of the Commission to recognize Aequitas and Neo Exchange, Inc. (**Neo Exchange**) as exchanges (the **Recognition Order**) to reflect the structure of the new entities under the Acquisition. The order varying the Recognition Order took effect on June 1, 2022.

Notice of the application by Aequitas and Neo Exchange to approve the Acquisition and to vary the Recognition Order, together with the proposed terms and conditions of exchange recognition, was published for comment in the OSC Bulletin on April 7, 2022, at (2022), 45 OSCB 3845 (the **Notice**).

The Commission received two comments in response to the Notice. A summary of the comments received and the responses to the comments, prepared by Aequitas and Neo Exchange, is published together with this notice and the Recognition Order.

Staff notes that Cboe Global, the ultimate parent company of Aequitas and Neo Exchange, was not required to be recognized as an exchange, although it is subject to certain terms and conditions of the Recognition Order. Generally, the Commission's approach to the recognition of exchanges is that the Commission will seek to recognize any entity that carries on exchange-like functions, whether or not the entity actually operates an exchange. The consequence to this approach is that in some cases, the Commission has recognized an ultimate parent company of an exchange operator as an exchange because the entity carried out exchange functions. Based on Staff's review of the application of Aequitas and Neo Exchange and the representations made therein, Cboe Global does not carry out exchange activities in respect of Aequitas and Neo Exchange that would warrant recognition as an exchange.

SUMMARY OF COMMENTS AND RESPONSES

*Note: The responses to the comments reflect the views of Aequitas Innovations Inc. (**Aequitas**) and Neo Exchange Inc. (**Neo**) and do not necessarily reflect the views of the Ontario Securities Commission (**OSC**).*

The following is a summary of comments received in response to the Notice and Request for Comment regarding the application by Aequitas and Neo for an order varying the decision of the OSC to recognize Aequitas and Neo as exchanges to reflect the proposed acquisition by Cboe Canada Holdings, ULC. (**Notice**), published on April 7, 2022, and the responses thereto.

Two comment letters were received in response to the Notice from the following industry stakeholders:

- Toronto Futures Options Exchange, Inc. (**tFOSE**); and
- TMX Group Limited (**TMX Group**).

General Comment	Aequitas and Neo Response
Level Playing Field – Regulatory Regime There should be equivalence in the manner in which TMX Group Limited (**TMX Group**) and Cboe Global Markets, Inc. (**Cboe**) are regulated, as owners of Canadian exchange operations (*TMX Group*).	The terms and conditions included in the recognition orders of Nasdaq CXC Limited (**Nasdaq Canada**) and Ensoleillement Inc., CNSX Markets Inc. (**CNSX**), and Neo and Aequitas, under their current form, are in fact all different to those included in the TMX Group recognition order. This variation in terms and conditions is supported by the fact that, unlike the TMX Group, none of these exchanges own or control in Canada a derivatives market, derivatives and securities clearing and settlement infrastructure or a transfer agent, nor do they represent the same market dominance or pricing power across their various business lines. Variation in terms and conditions set forth in exchange recognition orders may also evolve as a result of changing circumstances. The most notable variations resulting from changing circumstances were in relation to the TMX Group: following its demutualization, in 2022; following the acquisition of the Montreal Exchange, in 2008; and following the Maple transaction, in 2012. In the case of Aequitas and Neo, the proposed terms and conditions: • meet the OSC's exchange recognition criteria; • are consistent, where appropriate, with recognition orders of comparable Canadian exchanges; and • balance investor protection and efficient markets, while accommodating innovation and competition that foster liquid markets and capital formation in Canada.

Level Playing Field – Fairness There should not be differences in recognition orders that hinder competition (*TMX Group*).	The claim that all exchanges should have identical regulatory requirements to ensure fair competition assumes that a one size fits all approach is appropriate. However, a one size fits all approach ignores key differences between exchanges. Moreover, recognition order terms and conditions are, in fact, largely consistent amongst the various Canadian exchanges that do not have a dominant market position. In the case of the TMX Group, the terms and conditions imposed on it not only reflect the need to ensure proper oversight, but also seek to address competition concerns by restricting the exchange from using its dominant market position anti-competitively. Many of the terms and conditions applicable to the TMX Group were the result of the Maple transaction. The Maple transaction caused the TMX Group to represent the vast majority of issuers listed in Canada, 85% of all trading in Canadian listed securities, 100% of all trading in Canadian listed derivatives, all exchange traded securities and derivatives clearing and settlement operations, while also holding a virtual monopoly for Canadian market data products. Considering this level of market dominance, and potential resulting anti-competitive behaviour, the terms and conditions imposed on the TMX Group are, in our view, appropriate. Aequitas' and NEO's application are only proposing to support its existing business lines, none of which enjoy a position of market dominance. We acknowledge that expanding our service offerings and/or achieving market dominance in certain business lines could lead to a variation of our recognition order. We also wish to note that Cboe is subject to significant regulatory requirements in the U.S. and that any comparison of the regulatory burdens between the TMX Group and Cboe should consider the entire suite of obligations they are both subject to. With respect to the proposal of the Chair of the Neo board not being an independent and the absence of independent dealer representation on the Neo board, both of which the TMX Group assert are inconsistent with the principle of a level playing field, we note the following: • As discussed in our application letter, any public interest concerns that may arise from the Chair of the NEO Board being a non-independent director are addressed by the appointment of an independent lead director. In its comment letter, tFOSE supports and acknowledges the merits, of this proposed approach. • With respect to independent dealer representation on the TMX Group board, we note that this was the consequence of the Maple transaction and, in particular, the strong representation of significant capital markets participants on the TMX Board. The term and condition seeks to ensure that independent dealers would have representation and that their voice could be heard. We additionally note that Aequitas and Neo are not currently required to include representatives of independent dealers on their boards.

	It is not clear why their acquisition by Cboe should change this.
Governance, reporting and certification Cboe should be subject to the same requirements as the TMX Group (*TMX Group*)	Unlike TMX Group, whose business is principally conducted in Canada, Neo is one of multiple businesses and marketplaces operated by Cboe globally. Under the proposed recognition order, Cboe must ensure that Aequitas and Neo conduct their business in a manner that is consistent with the public interest, facilitate the allocation of sufficient financial and non-financial resources, and provide the OSC with all information in its custody or control related to the business of Neo or Aequitas upon request. Taken together, these terms and conditions appropriately support the protection of the Canadian public interest and that the OSC is able to request and review information it deems necessary to conduct its oversight responsibilities.
Listing of shares of significant shareholders, their affiliates or competitors Neo should be subject to same requirements with respect to conflicts of interests, including with respect to policies and procedures, including prior approval by the OSC in case of any changes, as the TSX (*TMX Group*)	Neo is, and will continue to be, subject to the requirement to establish, maintain and require compliance with policies and procedures that identify and manage conflicts of interest or potential conflicts of interest arising from the listing of the shares of any significant shareholder or an affiliate of a significant shareholder of Neo. This requirement is substantially the same as the requirements imposed on Nasdaq Canada and CNSX under their recognition order. The prior notice requirement imposed on the TMX Group may be explained by its dominant market position and its ownership structure. With respect to listing of competitors, Neo is subject to requirements that are more onerous than what is required under the Nasdaq Canada and CNSX recognition orders. The framework applicable to the TMX Group in respect of competitor listings is quite different. This difference is, again, explained by the TMX Group's dominant market position and ownership structure. Moreover, the TMX Group's recognition order does not impose any requirement for it to form a Conflicts Committee, or to impose any of the other requirements it describes in its comment letter (competitor can request that a matter be referred to the Conflicts Committee; TSX is required to refer certain competitor listing-related matters to the OSC). These are, in our view, measures that the TMX Group has, in consultation with the OSC, determined are advisable in order to address the listing related conflicts of interest that result from its dominant market position and ownership structure.

Fees, Fee Models, Incentives and Routing There should be additional restrictions applied on Neo to eliminate the risk of tied-selling or coordinated order routing connected to Cboe's other international markets (*TMX Group*).	In respect of order routing, Neo will be subject to a requirement in its recognition order not to support, encourage or incent, either through fee incentives **or otherwise**, Neo marketplace participants, **Cboe affiliated entities or significant shareholders** to coordinate the routing of their orders to Neo Exchange. In respect of tied selling, Neo will be subject to a requirement not to, through any fee schedule, any fee model or any contract, agreement or other arrangement with any marketplace participant **or any other person or company**, provide any discount, rebate, allowance, price concession or other similar arrangement for any service or product offered by Neo **or Cboe and its affiliated entities and significant shareholders** that is conditional upon: (A) the requirement to have Neo be set as the default or first marketplace a marketplace participant routes to, or (B) the router of Neo being used as the marketplace participant's primary router. The other tied selling restrictive provisions included in section 12 of Section 2, and section 29 of Schedule 3, to Neo's recognition order are similarly broadly drafted and extend to Cboe affiliates and significant shareholders. Accordingly, TMX Group's concerns regarding the recognition order's tied selling and order routing provisions appear to be misplaced.

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Editor's Note: On Friday, April 29, 2022, the Securities Commission Act, 2021, came into force by proclamation of the Lieutenant Governor of Ontario. The new structural and governance changes are now reflected in the Bulletin index with the use of the "Capital Markets Tribunal" designation to differentiate those proceedings from the proceedings of the Ontario Securities Commission: www.capitalmarketstribunal.ca.

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