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

The Ontario Securities Commission
Cadillac Fairview Tower
22nd Floor, Box 55
20 Queen Street West
Toronto, Ontario
M5H 3S8

Contact Centre – Inquiries, Complaints:
416-593-8314 or Toll Free 1-877-785-1555
Fax: 416-593-8122
Email: inquiries@osc.gov.on.ca

Office of the Secretary:
Fax: 416-593-2318

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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.2.1 Plateau Energy Metals Inc. et al.

FOR IMMEDIATE RELEASE
September 14, 2022

PLATEAU ENERGY METALS INC.,
ALEXANDER FRANCIS CUTHBERT HOLMES AND
PHILIP NEVILLE GIBBS,
File No. 2021-16

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

A copy of the Order dated September 14, 2022 is available at capitalmarketstribunal.ca.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission
For Media Inquiries:

media_inquiries@osc.gov.on.ca

For General Inquiries:

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inquiries@osc.gov.on.ca

A.2.2 Jiubin Feng and CIM International Group Inc.

FOR IMMEDIATE RELEASE
September 14, 2022

JIUBIN FENG AND
CIM INTERNATIONAL GROUP INC.,
File No. 2021-27

TORONTO – Take notice of the merits hearing time change on September 19, 2022 in the above named matter. The hearing on September 19, 2022 scheduled to commence at 10:00 a.m. will instead commence at 8:30 a.m.

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Ontario Securities Commission

For Media Inquiries:

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A.2.3 Teknoscan Systems Inc. et al.

FOR IMMEDIATE RELEASE
September 15, 2022

TEKNOSCAN SYSTEMS INC.,
H. SAMUEL HYAMS,
PHILIP KAI-HING KUNG AND
SOON FOO (MARTIN) TAM,
File No. 2022-19

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

A copy of the Order dated September 15, 2022 is available at capitalmarketstribunal.ca.

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inquiries@osc.gov.on.ca

A.2.4 Aux Cayes Fintech Co. Ltd.

FOR IMMEDIATE RELEASE
September 16, 2022

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

TORONTO – Take notice that the merits hearing scheduled to be heard on September 20 to 23, 2022 will not proceed as scheduled in the above matter.

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For Media Inquiries:

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A.2.5 First Global Data Ltd. et al.

FOR IMMEDIATE RELEASE
September 16, 2022

FIRST GLOBAL DATA LTD.,
GLOBAL BIOENERGY RESOURCES INC.,
NAYEEM ALLI,
MAURICE AZIZ,
HARISH BAJAJ, AND
ANDRE ITWARU,
File No. 2019-22

TORONTO – The Tribunal issued the following in the above matter.

1. Reasons for Decision, dated September 15, 2022

2. Reasons for Decision on a Motion, dated September 15, 2022

3. Reasons and Decision on the Merits, dated September 15, 2022

Copies of each of the reasons are available at capitalmarketstribunal.ca.

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Ontario Securities Commission

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media_inquiries@osc.gov.on.ca

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A.3
Orders

A.3.1 Plateau Energy Metals Inc. et al.

IN THE MATTER OF
PLATEAU ENERGY METALS INC.,
ALEXANDER FRANCIS CUTHBERT HOLMES AND
PHILIP NEVILLE GIBBS

File No. 2021-16

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

September 14, 2022

ORDER

WHEREAS on September 14, 2022 the Capital Markets Tribunal held a hearing by videoconference;

ON HEARING the submissions of the representatives for Staff of the Commission and for each of Plateau Energy Metals Inc., Alexander Francis Cuthbert Holmes and Philip Neville Gibbs;

IT IS ORDERED THAT:

1. each respondent shall serve notice of intent to call an expert and their responding expert report, if any, on every other party by 4:30 p.m. on September 28, 2022;

2. each respondent shall file their notice of intent to call an expert and their responding expert report, if any, by 4:30 p.m. on October 5, 2022;

3. reply evidence, if any, from Staff's expert witness shall be provided orally at the merits hearing; and

4. if Staff elects to file an affidavit for their witness Marcel Tillie, the affidavit:

    a. shall be served on each respondent by 4:30 p.m. on September 21, 2022; and

    b. shall be filed by 4:30 p.m. on October 5, 2022.

"M. Cecilia Williams"

"Geoffrey D. Creighton"

A.3.2 Teknoscan Systems Inc. et al.

IN THE MATTER OF
TEKNOSCAN SYSTEMS INC.,
H. SAMUEL HYAMS,
PHILIP KAI-HING KUNG AND
SOON FOO (MARTIN) TAM

File No. 2022-19

Adjudicator: Andrea Burke

September 15, 2022

ORDER

WHEREAS on September 15, 2022, the Capital Markets Tribunal held a hearing by videoconference;

ON HEARING the submissions of the representatives for Staff of the Ontario Securities Commission (**Staff**) and for the respondents;

IT IS ORDERED THAT:

1. by October 13, 2022, Staff shall disclose to the respondents the non-privileged, relevant documents and things in Staff's possession or control;

2. by December 30, 2022, the respondents shall serve and file a motion, if any, regarding Staff's disclosure or seeking disclosure of additional documents;

3. by January 5, 2023, Staff shall:

   a. serve and file a witness list,

   b. serve a summary of each witness's anticipated evidence, and

   c. indicate any intention to call an expert witness, including providing the expert's name and the issues on which the expert will give evidence; and

4. a further attendance in this matter is scheduled for January 12, 2023, at 10:00 a.m., by videoconference, or on such other date and time as may be agreed to by the parties and set by the Governance & Tribunal Secretariat.

"Andrea Burke"

A.4
Reasons and Decisions

A.4.1 First Global Data Ltd. et al.

Citation: *First Global Data Ltd (Re)*, 2022 ONCMT 23
Date: 2022-09-15
File No. 2019-22

IN THE MATTER OF
FIRST GLOBAL DATA LTD.,
GLOBAL BIOENERGY RESOURCES INC.,
NAYEEM ALLI,
MAURICE AZIZ,
HARISH BAJAJ, AND
ANDRE ITWARU

REASONS FOR DECISION

Adjudicator:	Timothy Moseley	
Hearing:	By teleconference, October 1, 2020	
Appearances:	Mark Bailey Charlie Pettypiece	For Staff of the Ontario Securities Commission
	Anil Saxena	For Global Bioenergy Resources Inc.
	Robert Stellick	For Maurice Aziz
	Nayeem Alli	For himself
	Harish Bajaj	For himself
	Andre Itwaru	For himself
	No one appearing for First Global Data Ltd.	

REASONS FOR DECISION

1. OVERVIEW

[1] On the eve of the merits hearing in this enforcement proceeding, the respondent Nayeem Alli asked that it be adjourned for thirty days. His primary reason for the request was that his counsel would no longer be representing him.

[2] At a hearing the following day, I denied Alli's request, for reasons to follow. These are my reasons for that decision.

[3] Merits hearings are to proceed as scheduled unless exceptional circumstances require an adjournment. I was not satisfied that Alli's circumstances met that test.

2. BACKGROUND

[4] This is a complex proceeding involving serious and wide-ranging allegations against multiple respondents with divergent interests. It was commenced on May 31, 2019, almost a year and a half before the merits hearing was scheduled to begin on October 5, 2020. There were numerous preliminary attendances during that time. The parties expected that the merits hearing would require approximately 40 hearing days, with testimony from approximately 25 witnesses.

[5] On September 24, 2020, Alli served and filed notice that he intended to act on his own behalf in this proceeding. On September 30, 2020, less than three business days before the merits hearing was to begin, Alli wrote to the registrar to request an adjournment. A teleconference hearing was convened for the following day to consider his request.

3. LEGAL FRAMEWORK

[6] Rule 29(1) of the *Rules of Procedure and Forms* provides that every merits hearing in an enforcement proceeding shall proceed on the scheduled date unless the party requesting an adjournment "satisfies the Panel that there are exceptional circumstances requiring an adjournment".

[7] That standard is a difficult one to meet. It reflects the important objective, set out in Rule 1, that Tribunal proceedings be "conducted in a just, expeditious and cost-effective manner".

[8] That objective must, however, be balanced against the parties' ability to participate meaningfully in hearings and to present their case. A determination about whether to grant an adjournment is necessarily dependent on the particular circumstances of the case.[1]

4. ANALYSIS

[9] Alli requested the adjournment because:

a. he was not equipped to represent himself and he therefore needed counsel;

b. he was close to retaining new counsel, but they would need time to prepare;

c. he could not attend a lengthy hearing himself because he had to work to pay for counsel; and

d. he and his wife were recovering from medical events that had occurred approximately one year earlier, and six months earlier, respectively.

[10] Alli made other assertions in support of his request, but they were not relevant to the issue before me.

[11] Staff opposed Alli's request. The other respondents either supported Alli's request or took no position.

[12] I have some sympathy for the position in which Alli found himself. Responding to serious allegations in a complex matter with many witnesses over many hearing days is challenging, even with counsel. Doing so on one's own behalf is even more challenging.

[13] However, respondents in Tribunal proceedings often represent themselves. While a respondent may feel that they cannot participate as effectively as they could with counsel, there are many protections in place to ensure that they get a fair hearing. There is no absolute right to counsel.

[14] Alli did not explain why his counsel was no longer representing him or why the change came when it did.

[15] Parties are of course free to choose whether to be represented, and if so, by whom. Generally, parties need not explain their choice about how they are represented. However, when a party seeks an adjournment based solely on that choice, the party bears the burden of demonstrating the exceptional circumstances that warrant an adjournment. Without an explanation, I cannot accept Alli's loss of counsel as meeting that burden.

[16] As for Alli's assertion that he and his wife were recovering from medical events, he provided no evidence in support. Even if he had, however, I would not have found his assertion persuasive as framed.

[17] An adjournment of the merits hearing would have been a significant disruption. Parties, counsel, panel members and witnesses had all been scheduled for many hearing days in October. The merits hearing dates had been set seven months earlier. Rescheduling the hearing on the eve of its scheduled commencement would inevitably have resulted in a delay of months for the conclusion of the hearing, especially given the many participants.

[18] The requested adjournment would also have caused the Commission and the parties to incur additional costs.

[19] That result would have been directly contrary to the objective set out in Rule 1 of expeditious and cost-effective proceedings.

[20] For these reasons, I denied Alli's request to adjourn the merits hearing.

Dated at Toronto this 15th day of September, 2022

"Timothy Moseley"

[1] *Money Gate Mortgage Investment Corporation (Re)*, 2019 ONSEC 40 at para 54, citing *Pro-Financial Asset Management Inc (Re)*, 2018 ONSEC 18 at para 28 and *Cheng (Re)*, 2018 ONSEC 13 at paras 5-6

A.4.2 First Global Data Ltd. et al.

Citation: *First Global Data Ltd (Re)*, 2022 ONCMT 24
Date: 2022-09-15
File No. 2019-22

IN THE MATTER OF
FIRST GLOBAL DATA LTD.,
GLOBAL BIOENERGY RESOURCES INC.,
NAYEEM ALLI,
MAURICE AZIZ,
HARISH BAJAJ AND
ANDRE ITWARU

REASONS FOR DECISION ON A MOTION

Adjudicators:	Timothy Moseley (chair of the panel) Lawrence P. Haber Mary Anne De Monte-Whelan	
Hearing:	In writing; last submissions received November 30, 2021	
Appearances:	Mark Bailey Charlie Pettypiece Vincent Amartey	For Staff of the Ontario Securities Commission
	Nayeem Alli	For himself

REASONS FOR DECISION

1. OVERVIEW

[1] After the evidentiary portion of the merits hearing in this proceeding was concluded, and after the parties had delivered their written closing submissions, but while our decision on the merits was under reserve, the respondent Nayeem Alli moved for a stay of the proceeding against him on the basis of alleged misconduct by counsel for Staff of the Ontario Securities Commission.

[2] The conduct that Alli complains of occurred in the period before Staff filed a Statement of Allegations to begin this proceeding. Alli claims that counsel for Staff at the time (outside counsel who withdrew from the file early in the proceeding) was in a conflict of interest. Alli asserts that this fact motivated Staff counsel to concoct a contemplated fraud allegation against him, and to include that contemplated allegation in an Enforcement Notice delivered to him well before the proceeding was commenced, but to exclude that allegation from the Statement of Allegations, all in an effort to bully Alli into a settlement.

[3] No settlement was ever concluded.

[4] Staff brought a motion seeking dismissal of Alli's motion on a preliminary basis. We heard that motion in writing and issued an order granting Staff's motion and dismissing Alli's motion.[1] We dismissed Alli's request for a stay because:

a. of his significant delay in bringing the motion;

b. the motion sought to address irrelevant issues; and

c. Alli failed to meet the high bar for the grant of a stay of proceeding, in that he failed to establish any of Staff's actions at the time complained of constituted misconduct.

[5] Alli also sought a declaration, which he later conceded we have no authority to make. Finally, he sought an order requiring the Commission to report its Staff to the appropriate regulatory body. Again, we have no authority to issue such an order, and in any event, we find that there is no basis on which any member of Staff should be reported to any regulatory body.

[6] Staff has requested an order striking certain portions of written submissions filed by Alli following the evidentiary portion of the merits hearing, as well as certain portions of an affidavit sworn by Alli and filed on this motion. We agree with Staff's submissions that the impugned portions of both documents improperly seek to introduce material that is irrelevant and/or privileged. We therefore included a provision in our order striking those portions.

[1] (2021) 44 OSCB 10375

[7] In our order, we indicated that reasons for our decision would follow. These are our reasons, which are being released simultaneously with our reasons and decision resulting from the merits hearing.[2]

2. BACKGROUND

[8] In January 2021, during Alli's direct oral testimony in the hearing on the merits of Staff's allegations in this proceeding, Alli sought to testify about what he claimed was a conflict of interest involving Melissa MacKewn. Around the time that the Statement of Allegations was issued (May 2019), MacKewn was outside counsel acting for Staff in this matter.

[9] Alli's concern was that MacKewn and her firm were also representing a group of First Global debenture holders at the same time as she was acting for Staff, until she recused herself from this file later in 2019. Her firm commenced an action in the Superior Court of Justice in December 2018 on behalf of that group of debenture holders. In that proceeding, the debenture holders alleged fraud against Alli. Alli believes that he has been unfairly treated as a result of MacKewn's involvement in both proceedings, for reasons we will explain further below.

[10] When Alli began to testify about this topic, Staff objected. We upheld Staff's objection for four reasons:

a. in his summary of anticipated evidence, delivered to the other parties before the merits hearing as required, Alli did not raise this issue;

b. given the nature of Alli's concern, he ought to have raised it reasonably promptly after the concern arose, and not in the middle of the merits hearing more than a year and a half later;

c. given that Alli expressly alleged that MacKewn engaged in professional misconduct, he ought to have raised the concern in a way that afforded MacKewn an opportunity to respond if she chose to do so; and

d. Alli's concern, even if well-founded, was irrelevant to the issues before us at the time.

[11] The hearing on the merits continued without any testimony from Alli on the topic.

[12] On June 29, 2021, at the conclusion of the evidentiary portion of the hearing on the merits, Alli filed his written closing submissions (the **Alli Closing Submissions**). In those submissions, Alli addressed the issue mentioned above. On July 29, 2021, Staff wrote to the Registrar (with a copy to all parties) seeking our assistance. Staff advised that it had asked Alli to file revised submissions that excluded mention of the issue, but Alli had declined to do so.

[13] We responded to the parties by asking that Staff file a redacted version of Alli's submissions that would, in Staff's view, resolve the issue. Following that, Alli would have an opportunity to make submissions about whether that version should replace the one he originally filed.

[14] Staff filed a redacted version, but Alli did not respond with any submissions. Instead, on August 9, 2021, he brought a motion to stay this proceeding and for certain declaratory relief. In his motion, he elaborated on his concern. He alleged that MacKewn "weaponised" this proceeding against him by "concocting a fraud allegation… to bully… Alli into a settlement". Alli alleged that Staff intentionally inflicted mental suffering on him without regard for his serious medical conditions.

[15] As Alli notes, the Statement of Allegations in this proceeding contains no allegation of fraud against him. However, he implies, although does not state, that there is a connection between MacKewn's retainer on behalf of the debenture holders and the removal of a fraud allegation against him in this proceeding. We note that the Statement of Allegations in this proceeding has never been amended. Alli's reference to removal of an allegation refers to an Enforcement Notice that Staff provided to him in August 2018, months before this proceeding was commenced.

[16] In correspondence after Alli filed his motion, Staff raised a number of concerns about the motion and its contents. At an attendance before a single-member panel on August 18, 2021, the Tribunal heard submissions from the parties. After hearing Staff's position, Alli advised that he wished to review the transcript of the attendance and that he would then decide how to proceed.

[17] Alli took no formal steps to advance his motion. On October 25, 2021, Staff brought a motion seeking to dismiss Alli's motion. On consent of Staff and Alli, we ordered that Staff's motion be heard in writing.[3]

[2] *First Global Data Ltd (Re),* 2022 ONCMT 25
[3] (2021) 44 OSCB 8971

[18] Staff delivered a motion record that contained a motion form and the affidavit of Sherry Brown sworn October 21, 2021.[4] Alli responded on November 8, 2021, with his own affidavit sworn November 7, 2021 (the **Alli Affidavit**).[5]

[19] On November 18, 2021, Staff delivered written submissions. In those submissions, Staff supplemented its dismissal request by asking that we strike certain portions of the Alli Affidavit. The impugned portions related to the same topic mentioned above.

[20] Alli delivered responding submissions on November 30, 2021.

[21] On December 16, 2021, we issued our order granting Staff's motion and dismissing Alli's motion.

3. ANALYSIS

3.1 Introduction

[22] Staff's motion to dismiss, as supplemented by the request Staff made in its written submissions, raises three main issues, which we will address in turn:

a. whether we should dismiss Alli's request for a stay;

b. whether we should dismiss Alli's request for declaratory relief; and

c. whether we should strike portions of the Alli Affidavit and the Alli Closing Submissions.

3.2 Alli's request for a stay

3.2.1 Introduction

[23] Staff contended that we ought to dismiss Alli's request for a stay because:

a. without satisfactory explanation, Alli is significantly late in bringing the motion, and failed to proceed with it once it had been brought;

b. the issues raised by the motion are irrelevant to the proceeding, and the motion is therefore frivolous or abusive; and

c. a stay of a proceeding is an extreme remedy that is reserved for only the most egregious of cases, and a stay is not warranted in this case.

[24] Our authority to dismiss Alli's motion derives from the Tribunal's authority to control its own process.[6] In reaching our decision, we were guided by the imperative that we conduct proceedings in a just, expeditious and cost-effective manner.[7]

3.2.2 Delay in bringing the motion and in proceeding with it

[25] Staff correctly submits that Alli is significantly late in moving for a stay. Alli alleges an improper process between the August 2018 delivery by Staff of an Enforcement Notice (containing Staff's preliminary views and setting out contemplated allegations were a proceeding to be commenced) and the May 2019 issuance of the Statement of Allegations (the document that Staff files with the Tribunal to commence a proceeding). Alli does not rely on any events that occurred after the Statement of Allegations was issued. Accordingly, Alli knew by May 2019 of all the facts on which he now bases his motion for a stay.

[26] Alli does not satisfactorily explain why he waited until January 2021, more than a year and a half later, and after Staff had already completed its evidentiary portion of the merits hearing, to raise this issue with the Tribunal, *i.e.*, by way of his testimony during the merits hearing.

[27] Similarly, Alli does not satisfactorily explain why he waited until August 9, 2021, more than two years after the issuance of the Statement of Allegations, to bring this motion. This further delay is especially noteworthy given the panel chair's admonition on January 12, 2021, during the merits hearing, that if Alli intended to make conflict of interest allegations against MacKewn or her firm, he should alert them as soon as possible. To our knowledge, Alli never did so.

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4 We have marked Staff's motion record as Exhibit 1 in this hearing

5 We have marked the Alli Affidavit as Exhibit 2 in this hearing

6 *Statutory Powers Procedure Act*, RSO 1990, c S.22 (***SPPA***), s 25.0.1; *Prassad v Canada (Minister of Employment & Immigration)*, 1989 CanLII 131 (SCC) at para 46

7 *Rules of Procedure and Forms*, r 1

[28] Finally, Alli does not satisfactorily explain why he did not take the necessary steps to proceed with his motion once filed. At the attendance on August 18, 2021, Alli heard Staff describe its concerns about his motion. He advised that he wished to review a transcript of the attendance and that he would respond in writing to the issues raised. Staff attempted to contact Alli numerous times over the weeks that followed, but Alli either did not respond or advised that he needed more time.

[29] Alli does offer explanations, but we do not find them persuasive. In his submissions on this motion, Alli cites two factors: (i) that he is self-represented; and (ii) that he has been experiencing critical medical conditions.

[30] As to the first factor, Alli is self-represented now, but he was represented by counsel for the entire period between the delivery of the Enforcement Notice and the issuance of the Statement of Allegations. He was also represented by counsel for most of this proceeding, including at preliminary attendances and motion hearings between the issuance of the Statement of Allegations and the commencement of the merits hearing. He had ample opportunity to move for a stay or seek other relief well before the merits hearing began. The fact that he is self-represented now is irrelevant.

[31] As to the second factor, we have no proper basis to assess Alli's claim of critical medical conditions. We can note only that Alli fully participated in the lengthy merits hearing. We cannot conclude that his medical conditions, however serious they may have been, precluded him (or his counsel on his behalf) from bringing this motion at any time between May 2019 and the beginning of the merits hearing.

[32] In addition, Alli states, without evidence in support, that it was his counsel's oversight in not bringing the motion earlier. We cannot accept this unsubstantiated submission.

[33] By failing to bring the motion until after the evidentiary portion of the merits hearing had concluded, and after the parties had delivered their closing submissions, Alli denied the parties and the Tribunal the opportunity to determine at an early stage whether to exclude evidence related directly to him and thereby to shorten the hearing and expend fewer resources. He also denied the Tribunal the opportunity to consider whether alternative remedies might have adequately addressed his concern, if we concluded that his concern was well-founded.

[34] In addition, Alli's delay is at odds with the purpose a stay is meant to achieve. A stay is not meant to right a past wrong. Instead, underlying the grant of a stay is the "critically important" assumption that the prejudice caused to the party will be manifested, perpetuated or aggravated by continuing with the proceeding.[8]

[35] The timing of Alli's motion fundamentally undermines any argument that proceeding with the merits hearing would manifest, perpetuate or aggravate any prejudice to him. This conclusion holds despite the facts that:

a. our decision and reasons on the merits hearing had not been released at the time of Alli's motion; and

b. the sanctions and costs hearing has yet to occur, especially given that the evidentiary portion of the merits hearing took place over more than thirty hearing days, and any sanctions and costs hearing is likely to take far less time.

[36] For these reasons, a motion seeking a stay of a proceeding must be brought promptly after the facts giving rise to the concern come to light, absent reasonable explanation for the delay. There was no sufficient explanation in this case. Accordingly, we would dismiss Alli's motion on this basis alone. For completeness, however, we proceed to consider our other two grounds for dismissing the motion.

3.2.3 Irrelevance of Alli's allegations

[37] Alli's concerns relate to actions of the Commission's enforcement staff in the last stage of its investigation, and before Staff made a final decision about which allegations would be included in the Statement of Allegations.

[38] The Supreme Court of Canada has held that prosecutorial discretion "is especially ill-suited to judicial review" and that courts should intervene only where there is conspicuous evidence of improper motives or of bad faith.[9] Similarly, this Tribunal has held that Staff's decision-making about the contents of a Statement of Allegations "should not lightly be subjected to review" on a motion for a stay.[10]

[39] These are important considerations on this motion. Alli seeks to introduce extensive evidence about matters that are outside the scope of the Statement of Allegations. Considering that evidence would require the resolution of issues of privilege, relating both to solicitor-client communications and to without prejudice discussions involving respondents and Staff that came before the commencement of the proceeding.

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8 *R v Regan*, 2002 SCC 12 at para 54
9 *R v Power*, 1994 CanLII 126 (SCC) at paras 12, 34
10 *Azeff (Re)*, 2012 ONSEC 16 (***Azeff***) at para 211

[40] Permitting Alli to introduce that evidence and raise those issues would subject the Tribunal and all parties to significant expenditure of time and resources, particularly because on Alli's own description, some of the relevant discussions involved all other respondents.

[41] Because the substance of Alli's concern relates to matters that are irrelevant in the proceeding before us, we conclude that his motion is frivolous. It is therefore appropriate for us to dismiss his motion at this preliminary stage. We concluded that we should accede to Staff's request that we do so.

3.2.4 Alli's failure to meet the necessary standard for a stay of the proceeding

[42] Our third reason for dismissing Alli's request for a stay is that he failed to meet the necessary standard.

[43] A party who seeks the drastic remedy of a stay of a proceeding faces a high bar. The party must establish that the proceeding is oppressive or vexatious, and that it violates the fundamental principles of justice underlying the community's sense of fair play and decency.[11] The evidence of improper behaviour must be overwhelming and must demonstrate clearly that the proceeding is unfair and contrary to the administration of justice. A stay should be granted only in the clearest of cases.[12]

[44] Not only does Alli's complaint not meet this standard, it does not approach it. By Alli's own description, Staff at one time contemplated the possibility of a fraud allegation against him, but ultimately when Staff filed its Statement of Allegations, Staff elected not to include such an allegation. If anything, Alli benefited from the Enforcement Notice process and the opportunity for discussions and negotiation prior to the commencement of the proceeding. That process is a healthy part of Staff's enforcement work, and it contributes to both real and reasonably perceived justice for intended respondents.[13]

[45] Alli contends that Staff concocted the fraud allegation to bully him into a settlement. We do not understand that submission. There was no settlement. Alli has not pointed to any relevant step taken or decision made that was caused or influenced by the matters that are the subject of his concern. Further, it is an important part of the process that Staff would reconsider all contemplated allegations before making those allegations formal and public.

[46] Alli has failed to explain how this development worked against him or how Staff's conduct rendered the proceeding unfair and contrary to the administration of justice.

3.2.5 Conclusion on Alli's request for a stay

[47] For each of the three reasons cited above, Alli fails to establish that he is entitled to a stay. Indeed, we conclude that it would undermine public confidence in the Tribunal's process if we were to grant the stay. We therefore dismissed his request.

3.3 Alli's request for declaratory relief

[48] In addition to seeking a stay, Alli initially asked that we issue declarations that:

a. the Commission breached its obligations to Alli by allowing Staff to conduct itself in the manner that it did, thereby contributing to severe medical harm to him; and

b. the Commission self-report the misconduct of its Staff to Staff's professional regulators.

[49] In his written submissions, Alli correctly concedes that the Tribunal has no authority to issue a declaration.[14] In any event, we have rejected the underlying premise of Alli's request, since we have found that none of the actions complained of constituted misconduct on the part of Staff.

[50] The second request seeks not a declaration, but an order from the Tribunal that the Commission make a report to some other body. Once again, we have already rejected the underlying premise of this request. Further, the Tribunal is a statutory body with no inherent jurisdiction. It can order only what it is empowered to order. Nothing empowers the Tribunal to make the kind of order that Alli requests.

[51] We therefore dismissed the balance of Alli's motion.

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11 *R v Scott*, 1990 CanLII 27 (SCC) at paras 69-70
12 *Glendale Securities Inc (Re)*, (1996) 19 OSCB 3874 at 8; *R v Sandhu*, 2020 ONCA 479 at para 74
13 *Azeff* at paras 259-260
14 *B (Re)*, 2020 ONSEC 21 at para 17

3.4 Staff's request that portions of Alli's material be struck

[52] Our order provided that the following portions of the Alli Affidavit be struck: paragraphs 2, 6, 8, 14, 15, 16, 17(2), 17(4), 17(5), 17(6), 17(7), 19, 20 and 22, and exhibits C, E, F, G, H, I and J. Our order also provided that paragraphs (a), (b) and (c) and footnote 1 on page 4 of Alli's Closing Submissions be struck.

[53] Staff requested that those portions be struck because they improperly disclosed information that is privileged and that is irrelevant to the motions and to the proceeding generally. Staff submitted that the impugned portions improperly attempted to introduce evidence and arguments on the same topic as described above.

[54] We agree. The impugned portions contained details of settlement discussions and communications, and copies of documents relating to those discussions. Any such evidence is presumptively inadmissible before the Tribunal,[15] and for reasons set out above (*i.e.*, Alli's failure to demonstrate an abuse of process), no exception to that presumption applies. Accordingly, the impugned portions must be struck from any documents filed.

[55] We therefore granted Staff's request to strike the portions specified above. As noted above in paragraph [14], Staff had already filed a redacted version of the Alli Closing Submissions that reflected Staff's concerns. In accordance with our order of December 16, 2021, Staff filed a revised version of the Alli Affidavit that redacted the portions set out above. Only the redacted versions of the two documents shall be available to the public.

4. CONCLUSION

[56] On December 16, 2021, we ordered that Alli's motion for a stay of this proceeding, and for declaratory relief, be dismissed. We issued that order because:

a. Alli delayed significantly the bringing of his motion and then failed to proceed with it expeditiously, all without reasonable explanation;

b. Alli's motion purported to address issues irrelevant to this proceeding;

c. Alli failed to meet the high bar necessary to justify a stay of this proceeding;

d. we have no authority to make the declaration sought or to require the Commission to take the steps requested, and in any event, we found no misconduct on the part of Staff that would justify such orders; and

e. the impugned portions of Alli's Affidavit and Alli's Closing Submissions improperly attempted to raise the issues described above.

Dated at Toronto this 15th day of September, 2022

"Timothy Moseley"

"Lawrence P. Haber"

"Mary Anne De Monte-Whelan"

[15] *Sable Offshore Energy Inc v Ameron International Corp*, 2013 SCC 37 at paras 12-13; *SPPA*, s 15(2)(a)

A.4.3 First Global Data Ltd. et al. – s. 127(1)

Reasons and Decision on the Merits in the matter of *First Global Data Ltd. et al*. is reproduced on the following internally numbered pages. Bulletin pagination resumes at the end of the Decision.

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Capital Markets Tribunal
Tribunal des marchés financiers
22nd Floor 20 Queen Street West Toronto ON M5H 3S8
22e étage 20, rue Queen ouest Toronto ON M5H 3S8

Citation: *First Global Data Ltd (Re)*, 2022 ONCMT 25
Date: 2022-09-15
File No. 2019-22

IN THE MATTER OF
FIRST GLOBAL DATA LTD., GLOBAL BIOENERGY RESOURCES INC., NAYEEM ALLI, MAURICE AZIZ, HARISH BAJAJ, and ANDRE ITWARU

REASONS AND DECISION

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

Adjudicators:	Timothy Moseley (chair of the panel) Lawrence P. Haber Mary Anne De Monte-Whelan	
Hearing:	By videoconference and teleconference, October 5, 7, 9, 13-16, 19, 21-23, 26, 27, November 20, 25-27, December 4, 7, 9-11, 14-17, 2020; January 7, 8, 11-15, 18, April 6, 2021; written submissions received March 29 to August 10, 2021	
Appearances:	Mark Bailey Charlie Pettypiece	For Staff of the Ontario Securities Commission
	Anil Saxena	For Global Bioenergy Resources Inc.
	Syed Abid Hussain	For Nayeem Alli, for a portion of the hearing
	Simon Bieber Robert Stellick	For Maurice Aziz
	Harish Bajaj	For himself
	Kevin Richard	For Andre Itwaru, for a portion of the hearing
	No one appearing for First Global Data Ltd.	

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REASONS AND DECISION

1. OVERVIEW

[1] In more than 100 separate transactions during an eight-month period in 2015, 80 investors invested an aggregate of approximately $4.46 million in debentures of First Global Data Ltd. (**First Global**), an Ontario public company. The investors lost all their money.

[2] The fundraising activities were carried on by Global Bioenergy Resources Inc. (**GBR Ontario**), a private Ontario company, and its two principals. None of them was a registrant under Ontario securities law.

[3] Staff of the Ontario Securities Commission alleges that the First Global debentures were illegally distributed (*i.e.*, sold without a prospectus or an exemption from the prospectus requirement), and that GBR Ontario and its two principals engaged in the business of trading those debentures without being registered. We agree. Their sales efforts were repeated and continuous, they were compensated or expected to be compensated for those efforts, and some of their activities resembled those of a securities dealer.

[4] Staff also alleges that GBR Ontario and its two principals perpetrated securities fraud because of misrepresentations they made. The three sets of allegedly fraudulent misrepresentations were about:

a. how the funds raised by selling First Global debentures would be put to use, *i.e.*, to fund First Global's working capital, and/or to help First Global deploy its mobile technology and global payment systems outside Canada, and/or to fund certain Colombian natural resource operations unrelated to First Global's core business;

b. whether natural resource assets and production facilities existed in Colombia that were operating and that were producing sufficient revenue to generate the promised returns on the First Global debentures; and

c. whether investment in the First Global debentures was secure, guaranteed and risk-free.

[5] The individual respondents and other principals cannot themselves agree as to how investors' funds were to be used, or whether the representations were complied with. Worse, the documents provided to investors were fundamentally contradictory on those subjects.

[6] We agree with Staff's submission that GBR Ontario and its principals perpetrated securities fraud as alleged. We conclude that those respondents put investor funds raised from the First Global debentures to uses that had not been disclosed to investors, including to:

a. go toward a different Colombian project involving a coal mine;

b. pay referral fees and other expenses of GBR Ontario; and

c. pay interest to debenture holders.

[7] We also conclude that at a minimum, those respondents:

a. were reckless as to whether there were sufficient operating assets to produce the necessary income (we conclude that there were not);

b. were reckless as to whether any assets had been pledged as promised to secure the First Global debentures (we conclude that they had not been); and

c. were cavalier in promising that investment in those debentures was 100% secure, guaranteed and risk-free (which it was not).

[8] Staff makes similar allegations against GBR Ontario and one of its principals about a debenture issued by GBR Ontario (not First Global) directly to one investor, reflecting a total investment of $450,000 made over a period of less than two months. As with the First Global debentures, the same misrepresentations were made about whether the investment was secured by assets. We conclude, for reasons similar to those about the First Global debentures, that GBR Ontario and the principal against whom the allegation is made perpetrated securities fraud in respect of this debenture.

[9] Finally, Staff alleges that First Global entered into agreements that purported to be licence agreements but that were in reality investment or financing agreements. In one set of audited year-end financial statements, and three

subsequent quarterly unaudited interim financial reports, First Global improperly recognized revenue in connection with these agreements. First Global eventually restated its financial results to reflect a significant negative impact, but Staff alleges that before that restatement, First Global breached its obligation to prepare and file financial statements prepared in accordance with applicable standards. Staff also alleges that First Global's two principals authorized the release of the improper financial results and that they therefore failed to comply with Ontario securities law.

[10] We agree that First Global improperly recognized revenue in respect of the purported licence agreements. We conclude, though, that First Global and its principals exercised reasonable due diligence before they did so with respect to the year-end financial statements and two of the three quarterly interim financial reports. We reach that conclusion primarily because First Global's auditor gave a clean audit opinion with respect to the year-end financial statements despite being aware of the revenue recognition issue.

[11] However, we find that the due diligence defence was not available in respect of the third interim financial report. By that time, the issue had been repeatedly discussed, and First Global's auditor had reversed his position and advised First Global not to recognize the revenue. We find that Staff has proven its allegations regarding that interim financial report.

[12] We explain our reasoning for all the above conclusions in our analysis below, following a review of the background facts.

2. BACKGROUND

2.1 Introduction

[13] This proceeding arises because a number of individuals saw opportunities in coming together with other individuals involved in different sectors, whose ambitions were different but were seen as complementary. Things did not turn out as hoped, at least for some of the individuals and their associated companies.

[14] There are two geographic centres to the events underlying Staff's allegations.

[15] The first is Colombia, in which may have been situated certain natural resource assets, including one or more bitumen mines, biodiesel facilities, and coal mines. We say "may have" because the existence, status and ownership of these assets were unclear throughout the relevant time and are in dispute in this proceeding.

[16] The second geographic centre is Ontario, which was home to businesses (First Global and GBR Ontario) and individuals who sought to raise funds from the public, supposedly for one or both of two purposes:

a. to develop mobile payment technology and introduce that technology outside Canada; and/or

b. to develop some or all of the Colombian assets referred to above.

[17] It is the public fundraising in Ontario that forms the core of this proceeding. Staff alleges that from approximately May to December of 2015 (the **Solicitation Period**), the respondents raised funds in a manner that breached numerous provisions of the *Securities Act*.[1]

2.2 The initial connection

[18] The connections in this case began in early 2014, when through a mutual friend, the respondent Maurice Aziz met Michel Faille (who is not a respondent). Aziz had worked in financial services but described his passion as business development, bringing some of his many contacts together to help them solve problems. Aziz understood that Faille was a tax specialist.

[19] According to Aziz, who was based in Ontario, Faille told him about a project that he was working on in Colombia. Faille explained that a friend of his owned all the necessary facilities, rights and permits with respect to some natural resource assets, but that more funding was needed to develop the assets and to increase production at the facilities.

[20] Aziz expressed interest in the project. Faille then introduced Aziz by telephone to Faille's friend Adriana Rios Garcia, and Garcia's husband Martin Grenier. Aziz began to speak with Garcia and Grenier regularly. Like Faille, neither Garcia nor Grenier is a respondent in this proceeding.

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[1] RSO 1990, c S.5

[21] Garcia is from Colombia and is a dual citizen of Colombia and the United States of America, with residences in both countries. Garcia and Grenier told Aziz that Garcia controlled various assets in Colombia, although legal title to some of them was held by Garcia's family members' companies. According to Garcia, who testified at the hearing, she oversaw the operations of the Colombian businesses, and her husband Grenier was in charge of fundraising.

[22] Despite Grenier's active and prominent role in the events giving rise to this proceeding, his name does not appear on any contracts or other formal documents. In late June 2015, Grenier explained to Aziz and other involved individuals that this was so because of issues in his past. It is evident that he was referring to some or all of what had been publicly reported about him, including that:

a. he had been charged with offences (some of which he had very recently pled guilty to) relating to money laundering and the proceeds of drug trafficking;

b. he had used aliases; and

c. he had used a Canadian lawyer to fabricate a document in an attempt to legitimize the origins of illicit funds.

2.3 The Colombian assets and the need for funding

[23] Aziz says that Garcia and Grenier told him that Garcia held rights to six Colombian assets. These assets, and the distinctions among them, become significant in our analysis below, since Staff's allegations raise issues relating to whether all the assets were indeed operating, who owned what portion of the assets, and what representations were made to investors about the assets for which their funds would supposedly be used.

[24] Four of the six assets were bitumen mines: the **Rio Negro** mine, the **SGS Baranquilla** mine, the **Asfaltitas** mine, and the **La Esperanza** mine. The other two assets were the **Hoyo Patia** coal mine and either one or two **biodiesel** production facilities (an uncertainty we address below).

[25] Aziz says that Garcia and Grenier explained that their bitumen production was being done by hand in open pit mines using "artisanal" methods, including

pickaxes and shovels. According to Garcia and Grenier, they needed funding to upgrade their bitumen production methods. Similarly, they needed funding for the biodiesel facility(ies), so that they could buy equipment and make capital investments in order to significantly increase production.

[26] Garcia and Grenier said they had been unable to raise the necessary funds through conventional means, because many lenders feared investing in Colombia.

2.4 Aziz introduces Bajaj and Thiviyanayagam to the project

[27] Aziz liked the opportunity that the Colombian projects appeared to present, but he felt that he lacked the appropriate skillset to raise the necessary funds. He decided to introduce the projects to two individuals he knew in Ontario – the respondent Harish Bajaj, whom Aziz had known for about 15 years, and an associate of Bajaj's, Shankar Thiviyanayagam, who is not a respondent. Aziz testified that Bajaj and Thiviyanayagam often partnered together to raise funds.

[28] In late 2014, Aziz introduced Bajaj and Thiviyanayagam to Faille, who in turn introduced them to Garcia and Grenier. Following that introduction, Aziz, Bajaj and Thiviyanayagam reviewed documents from Garcia and Grenier. They also traveled to Colombia to meet with Garcia and Grenier and to visit some of the assets. During a January 2015 trip, Bajaj and Thiviyanayagam visited:

a. what they were told was the La Esperanza mine, where they saw a few people digging by hand and filling bags; and

b. a biodiesel plant that they were told was producing biodiesel, although the extent of Bajaj's understanding about this plant was that one of Garcia's companies owned it; when he testified at the hearing he could not recall the name of the company.

[29] In our analysis below, we examine more closely the due diligence conducted by Aziz and Bajaj, which becomes important in considering the representations they made to investors.

[30] There was significant uncertainty about the subject assets from the start. For example, Aziz and Bajaj differed about which assets were to be the subject of

the fundraising efforts. Bajaj testified that initially it was the bitumen assets only. Aziz says the biodiesel facility was included from the beginning.

[31] In any event, Aziz testified that having made the initial connection, he left it to Bajaj, Thiviyanayagam, Garcia and Grenier to move things forward. He says that over the first few months he was not actively and directly involved in the partnership.

2.5 GBR entities

[32] Two corporations using "Global Bioenergy Resource" or its derivation "GBR" as part of their names figure prominently in this case. We mentioned the respondent GBR Ontario above. We will return to GBR Ontario after describing the other GBR company.

[33] That other company, which was incorporated six months earlier than GBR Ontario, is "Global Bioenergy Resource SAS", a Colombian corporation with offices in Bogotá. The parties in this proceeding referred to the company as "GBRSAS". We will refer to it as **GBR Colombia**.

[34] Garcia testified that on February 26, 2015, she incorporated GBR Colombia, of which she owned 100% and was the sole legal representative and only person with authority to sign on behalf of the company.

[35] Just over three months later, in early June 2015, Bajaj and Thiviyanayagam signed a memorandum of understanding (which they dated May 14, 2015) with GBR Colombia (the **GBR Colombia MoU**, or the **MoU**). The GBR Colombia MoU, which was signed by Garcia on behalf of GBR Colombia, reflected that:

a. Bajaj and Thiviyanayagam committed to raise funds through an unspecified Canadian company and to invest in GBR Colombia an amount up to C$5 million;

b. GBR Colombia would manage the Colombian bitumen mining operation and would increase production to 30,000 tons per month;

c. Garcia would own 50% of the shares of GBR Colombia; and

d. Bajaj and Thiviyanayagam together would own the other 50% of the shares.

[36] Bajaj and Garcia agree that at the time they signed the MoU, the La Esperanza and Rio Negro bitumen mines were the only assets that were identified as becoming part of the fundraising arrangement. While Bajaj did not know at the time what assets GBR Colombia owned, he says he was promised by Garcia and Grenier that the La Esperanza mine would be transferred to GBR Colombia without any conditions. He expected the transfer to be effected when the MoU was signed. The biodiesel facility was added later.

[37] There is some dispute about the extent of Aziz's participation at this stage. Bajaj claims to have been working with Aziz from the beginning. Bajaj states that even before the MoU was signed, there was an oral understanding between him and Aziz that the two of them would be entitled to equal shares of the business. On the other hand, Aziz denies having had any direct involvement in the fundraising efforts at the time. He notes that he was not a party to the MoU and that he had no entitlements under it.

[38] Bajaj drafted the MoU without the benefit of any legal advice. It is brief and it is precise as to share ownership (Garcia as to 50%, with Bajaj and Thiviyanayagam together owning the other 50%, with no suggestion that Aziz would own any shares). The only evidence to suggest that Aziz was entitled to an ownership interest is Bajaj's testimony, which is contradicted by the MoU and by testimony from Aziz and Garcia.

[39] Bajaj gave no explanation as to why the supposed oral understanding was not reduced to writing in the MoU or elsewhere. Aziz's testimony aligns with the documentary evidence, and we conclude that it is more likely than not that Aziz had no ownership interest in GBR Colombia at that time.

[40] Ownership of GBR Colombia aside, much of the evidence in this hearing revolved around whether Garcia promised to transfer any of the Colombian assets to that company, and whether any such transfers ever happened. We will return to that issue in our analysis below.

[41] For our purposes in this proceeding, the next significant corporate event for GBR Colombia occurred in October 2015, four months after the MoU was signed. At a meeting in Montreal, at the offices of GBR Colombia's lawyer, four directors of GBR Colombia (Garcia, Aziz, Thiviyanayagam and Bajaj) signed a resolution

appointing Bajaj as president, an individual by the name of Paul James as chief executive officer, and Garcia as secretary. Garcia testified that there was an oral agreement that this and other resolutions signed at that time were to remain undated and were to be held in escrow until GBR Ontario raised at least $5 million. We reject Garcia's claim, for reasons we discuss further below.

[42] GBR Ontario was founded by Aziz, Baja and Thiviyanayagam, and incorporated on August 11, 2015. From its inception, Aziz was a director and Bajaj was its president. Aziz became the secretary beginning in 2017. GBR Ontario's sole reason for existing was to carry out the fundraising. GBR Ontario carried on no other business.

[43] In these reasons we sometimes refer to the respondents GBR Ontario, Bajaj and Aziz together as the **GBR Ontario Parties**.

[44] Bajaj testified that he and the other two co-founders of GBR Ontario (Aziz and Thiviyanayagam) were responsible for raising funds for GBR Colombia to develop the Colombian assets. Bajaj stated that the three of them, along with Faille, managed the day-to-day operations of GBR Ontario.

[45] Staff submits that Aziz was a directing mind of GBR Ontario. Aziz disagreed, testifying that he was not part of management and played only a peripheral role, and that it was Faille (as Grenier's voice) and Bajaj who managed the company. We address that issue in our analysis below.

[46] According to Bajaj, Faille and Aziz told him:

a. to continue to use, for GBR Ontario, an office in Richmond Hill that Bajaj had previously been using for an unrelated entity; and

b. that whether Bajaj used the Richmond Hill office or Bajaj's Brampton office (which Bajaj used for his financial and accounting services, and which Bajaj preferred over the Richmond Hill office), he would be reimbursed for rent and employee salaries.

[47] Staff submits that Bajaj was also a directing mind of GBR Ontario. Bajaj submits that his role with GBR Ontario was to raise funds and to show the investment opportunity to investors. That role is not inconsistent with Staff's allegation, and

as we set out in more detail below, we conclude that Bajaj was indeed a directing mind of GBR Ontario.

[48] Even though some documents referred to GBR Ontario as the "Canadian office" and GBR Colombia as the "Colombian office", there was no corporate relationship between the two companies. Where possible in these reasons, we will distinguish between the two companies. However, presentations and marketing documents often conflated the two entities, referring to them together as "GBR", or referring to one or the other as "GBR", without being clear about which entity was involved. Accordingly, where appropriate, we will occasionally refer simply to "**GBR**", to reflect the message that was being given to investors at that time that the two entities were one.

2.6 Desire to raise funds using public companies

[49] By June 2015, when the GBR Colombia MoU was signed, Bajaj had already been speaking with investors about the Colombian assets, and had already been promoting the investment through marketing material and radio advertisements.

[50] Bajaj and Thiviyanayagam considered it important that the fundraising be done through a public company, so that investors could hold their investments in registered accounts (*e.g.*, RRSP, TFSA). Unsuccessful attempts ensued with two companies, before Aziz suggested a company he knew of that, he had recently learned, was experiencing financial difficulties.

[51] The company was the respondent First Global, a Canadian company with its head office in Toronto. First Global became a public company by way of a reverse takeover in 2012. It was listed on the TSX Venture Exchange and was a reporting issuer in Ontario and other provinces. First Global described itself as an international financial technology company, involved in mobile payments and cross-border payments.

[52] Aziz had a long-standing relationship with First Global, having been friends with its two principals, the respondents Andre Itwaru (a co-founder of First Global and its then-CEO) and Nayeem Alli (also a co-founder of First Global and its then-CFO) for approximately ten years. In these reasons we sometimes refer to First Global, Itwaru and Alli together as the **First Global Parties**.

[53] Aziz believed that there was an opportunity to align his and Bajaj's interests with those of First Global, Garcia and Grenier. In July 2015, Aziz introduced First Global's principals Itwaru and Alli to Faille, Bajaj and Thiviyanayagam to discuss how they might all work together to raise funds to meet their various objectives.

2.7 Agreement between First Global and GBR Colombia

[54] First Global Corp. (First Global's subsidiary) entered into an agreement with GBR Colombia, pursuant to which GBR Colombia agreed to help First Global raise funds by distributing First Global debentures. The agreement, which we refer to as the **First Global-GBR Debenture Agreement**, is dated August 21, 2015, although it appears to have been executed sometime after that date, likely in October or later. In any event, by August 21, the date shown on the agreement, First Global had already raised approximately $1.6 million from investors using First Global's subscription documents.

[55] According to Aziz, First Global was to be only a temporary solution for GBR Colombia, as a vehicle to raise funds. He testified that once a shell listed company could be identified, GBR Colombia would roll all its assets into that company and continue raising capital using that company. GBR Colombia would no longer need First Global.

2.8 Solicitation of investors

[56] In our analysis below, we describe in detail the methods by which investors were solicited and investments were documented. Briefly:

a. Bajaj led the fundraising efforts on behalf of GBR Ontario, using his existing client network, PowerPoint presentations at open in-person seminars, brochures made available to potential investors, radio advertisements, and referral networks;

b. Aziz played a role in the fundraising, although a less central role than Bajaj;

c. Bajaj and Aziz made representations to investors about:

   i. how funds would be used;

ii. the extent to which the assets in Colombia were operating and capable of producing the advertised return; and

iii. whether investment in the First Global debentures was secure, guaranteed and risk-free; and

d. investors signed First Global subscription documents that indicated that funds were to be used for First Global's working capital, but did not mention use of funds for any other purposes, including the Colombian operations.

2.9 The breakdown of the First Global relationship

[57] During the time that funds were being raised, primarily for the Colombia operations, a dispute arose about the extent to which First Global was entitled to retain some portion of those funds. Once it was clear that First Global had retained approximately $1.5 million (more than some thought it was entitled to), trust between Garcia, Grenier and Faille on the one hand and First Global on the other was eroded. The parties agreed that the best way forward was for GBR Colombia to work with a new Canadian company and for First Global to assign the debentures to that company.

[58] Grenier and the GBR Ontario Parties urgently wanted to find a public company to replace First Global. Grenier reintroduced Threegold Resources Inc. (**Threegold**), which had been one of the companies contemplated before First Global became the fundraising vehicle (see paragraph [50] above). The relationship with Threegold had not previously been formally concluded.

[59] Preparatory steps were taken, and on December 22, 2015, Bajaj (as a director of Threegold) signed an agreement pursuant to which First Global assigned $3.43 million of the First Global debentures to Threegold. However, challenges arose because Threegold was not actively listed on the TSX-V, and if that issue were not addressed, investors would suffer significant tax penalties.

[60] Threegold made efforts to resolve the issue, but those efforts were not successful. The proposed reverse take-over transaction with Threegold, which had been contemplated before First Global became involved, was never effected.

Ultimately, in December 2017, First Global accepted the reassignment of the First Global debentures back from Threegold.

2.10 Loans from EH

[61] One investor provided funding for the Colombian operations through a channel other than the First Global debentures. In July and August of 2015, investor EH provided loans totaling $450,000. Staff and Aziz dispute which entity EH invested in, and the extent of Aziz's involvement. We explore these issues in detail in our analysis below (see discussion of the "GBR Debenture" beginning at paragraph [442]).

[62] Staff alleges that Aziz and GBR Ontario perpetrated securities fraud in respect of these loans. EH received a limited number of interest payments (fewer than EH was entitled to) but no principal.

2.11 Purported licence transactions

[63] The last category of transactions that form the subject of Staff's allegations is a set of what purported to be licence agreements involving First Global's subsidiary First Global Data Technologies Inc. These agreements stated that individuals advanced funds in exchange for exclusive licences to market and deploy First Global's technology. EH, the investor mentioned above, was one of the individuals, but there were others.

[64] At the time these agreements were entered into between First Global Data Technologies Inc. and various individuals, there was much discussion involving First Global's principals and First Global's auditor and accounting staff about the appropriate accounting treatment for the agreements. In one set of year-end comparative financial statements, and three succeeding quarterly interim financial reports, First Global recognized significant revenue from the agreements. Concerns were raised about whether it was appropriate to recognize revenue equal to the sums advanced by the individuals, as opposed to treating the sums received as liabilities (due to the obligation to repay the amount advanced at the end of the term of the agreement) or deferred revenue.

[65] First Global's auditor signed a clean audit opinion for the year-end statements that recognized revenue. He later changed his view, following further discussions

with First Global management. First Global eventually restated the various financial results, to exclude the revenue.

3. PRELIMINARY MATTERS

[66] Before we address the merits of Staff's allegations, we review three preliminary matters:

a. two requests by Alli to adjourn the merits hearing, immediately prior to and immediately after the commencement of, the hearing;

b. our mid-hearing ruling (for reasons to follow) about the admissibility of certain testimony, given Staff's objection on the ground that the substance of the testimony was not properly disclosed before the hearing; and

c. our mid-hearing ruling (for reasons to follow) about the right of respondents to cross-examine each other, and the procedure to be followed in hearings with multiple respondents.

[67] We note here as well that after the evidentiary portion of this hearing had concluded, Alli brought a motion to stay this proceeding. Staff brought a motion to dismiss Alli's stay motion. On consent, we ordered that Staff's motion to dismiss be heard in writing. We issued our decision to grant Staff's motion,[2] and our reasons for that decision are issued simultaneously with, but separately from, this decision.[3]

[68] We will now address in turn the three preliminary matters mentioned above.

3.1 Alli's requests to adjourn the merits hearing

[69] We begin with Mr. Alli's requests to adjourn the merits hearing.

3.1.2 October 1, 2020, request

[70] Less than a week before the merits hearing was set to begin, Mr. Alli requested a 30-day adjournment for several reasons, primarily to retain new legal counsel. Mr. Alli had previously been represented by counsel at the preliminary

[2] (2021) 44 OSCB 10375

[3] *First Global Data Ltd (Re)*, 2022 ONCMT 24

attendances in this matter, but by September 24, 2020, that counsel was no longer retained.

[71] After hearing submissions from the parties, that panel (differently composed than this panel) advised that for reasons to follow, the merits hearing would proceed as scheduled, beginning the following Monday, October 5, 2020. The reasons for that decision are published simultaneously with, but separately from, this decision.[4]

[72] At the motion hearing, and in its reasons, the panel stated that the decision on the October 1 adjournment request would not preclude any future counsel retained by Mr. Alli from bringing a further request for adjournment, should new facts or evidence become available.

3.1.3 October 7, 2020, request

[73] By the second day of the merits hearing, Mr. Alli had retained new counsel, Mr. Syed, who attended on his behalf. At the commencement of the hearing day, counsel for Mr. Alli made a request for a week-long adjournment, citing the large volume of material he needed to review in order to effectively represent his client, given his recent retainer.

[74] Staff opposed the request, citing the facts that the hearing had already begun, and investor witnesses were scheduled to begin their testimony that week. Staff submitted that the "exceptional circumstances" requirement under Rule 29 of the *Rules of Procedure and Forms* had not been met.

[75] As the Tribunal has previously held, the "exceptional circumstances" standard is a "high bar" that reflects the important objective set out in Rule 1, that Tribunal proceedings be "conducted in a just, expeditious and cost-effective manner". This objective must be balanced against the parties' ability to participate meaningfully in hearings and to present their case. A determination about whether to grant an adjournment is necessarily fact-based.[5]

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[4] *First Global Data Ltd (Re),* 2022 ONCMT 23

[5] 2019 ONSEC 40 (***Money Gate***) at para 54, citing *Pro-Financial Asset Management Inc (Re)*, 2018 ONSEC 18 at para 28 and *Cheng (Re)*, 2018 ONSEC 13 at paras 5-6

[76] Mr. Alli did not provide any additional facts or evidence supporting his request for an adjournment, aside from his recent retainer of new counsel. In *Money Gate*, the Tribunal explained that "while a party is generally entitled to choose its counsel without any obligation to explain its choice, that rule cannot apply when the party seeks to rely on a change of counsel to justify an adjournment request".[6] In those circumstances the party must provide evidence that the change of counsel constitutes exceptional circumstances. Mr. Alli failed to provide any such evidence.

[77] The panel denied Mr. Alli's request for an adjournment. Mr. Alli failed to meet his onus of establishing exceptional circumstances that warrant an adjournment of the merits hearing, and the hearing continued as scheduled.

3.2 Mid-hearing ruling on the admissibility of testimony about a meeting with Roch (GBR Colombia's lawyer)

[78] We now turn to our mid-hearing ruling on the admissibility of testimony about a meeting that involved GBR Colombia's lawyer.

[79] During the hearing, Aziz sought to testify about a meeting held in Montreal on October 12, 2015, at the offices of Steven Roch, of the firm of Colby Monet, which acted for GBR Colombia and various entities controlled by Garcia. Present with Aziz at the meeting were Garcia, Bajaj, Thiviyanayagam, Faille and Grenier.

[80] Aziz wished to testify about a discussion at that meeting, at which Roch allegedly told the group that they could retain a reserve amount from funds raised, to cover interest obligations owing to investors.

[81] Staff objected to the admission of this testimony on the basis that Staff had not been given sufficient notice of this anticipated evidence in pre-hearing disclosure, contrary to Rule 27 of the *Rules of Procedure and Forms*. That rule provides that parties may not rely on evidence that was not disclosed as required, unless the panel permits.

[82] After hearing submissions, we decided to admit the evidence, without prejudice to the ability of any party (including Staff) to make submissions following the

[6] *Money Gate* at para 58

hearing about what weight, if any, ought to be attached to the evidence. We advised that our reasons for that decision would follow, and we set out those reasons here.

[83] The idea of retaining a portion of the raised funds in order to pay interest to earlier investors was incorporated into a GBR Colombia resolution signed at the meeting in Montreal, by Garcia, Aziz, Thiviyanayagam and Bajaj. The resolution said that "14% of raised fund [*sic*] will keep [*sic*] for interest purposes".

[84] Staff called Garcia as a witness at the hearing. She testified that Roch drafted the resolution. On cross-examination, she was asked whether there was any discussion at the meeting about 14% being retained for interest purposes. She said she did not remember.

[85] In his testimony, Aziz explained that production in Colombia at the time was insufficient to fund interest obligations to the First Global debenture holders, which made Bajaj concerned. Following discussion among everyone including Roch, the decision was to retain 14% of the raised funds to cover interest in the first year, in case there was a shortfall.

[86] In submissions about the admissibility of this testimony, Aziz conceded that his summary of anticipated evidence, delivered to Staff as required before the hearing, did not refer specifically to this evidence. However, Aziz submitted that Staff received notice of this evidence through Roch's summary of anticipated evidence, which said that Roch would testify about:

a. how he "advised [GBR Ontario] and [GBR Colombia] on how to raise money in compliance with applicable securities laws";

b. the resolutions signed at the meeting, including the one referred to above; and

c. "the flow of funds from [GBR Colombia] investors through the Fundraising into Olympia Trust, to his own trust account at Colby Monet, and then on to Ms. Garcia and Mr. Grenier in Colombia."

[87] Aziz notes that during Staff's investigation, Staff did not interview Roch. Further, once confronted by this evidence from Aziz, Staff could have asked for some relief, including an adjournment if necessary to adduce evidence in response.

Presumably, that could have been done by having Roch testify orally or provide an affidavit. Staff also chose not to request that Bajaj be recalled so that Staff could ask him about that evidence.

[88] Staff submits that the failure to disclose before the hearing "prevent[ed] any pre-hearing investigation of the evidence by Staff". We do not accept that submission. Staff was free, during its investigation, to ask questions of any of the attendees at the meeting, including Roch. Staff knew about the meeting, at least through Staff's own witness Garcia, and Staff had the resolutions. Staff was in no way prevented from investigating as it saw fit.

[89] Staff submitted that a party cannot rely on the summary of anticipated evidence of one witness to allow another witness (in this case, a respondent witness, Aziz) to testify about something. That may be an appropriate outcome in some cases, but we are not prepared to adopt that approach as a categorical rule. The purpose of pre-hearing disclosure is to put parties on notice of issues in the proceeding and evidence that may be given. There is no policy reason to treat each witness's evidence separately in all cases. In some cases, the admissibility decision might turn on who the source of the anticipated testimony is. We do not think that applies in this case.

[90] Roch's summary of anticipated evidence gave Staff enough pre-hearing notice that discussions at the Montreal meeting were at issue. In addition, Staff's own witness Garcia testified about the meeting and that Roch drafted the resolution. Staff was not prejudiced by Aziz testifying about the same meeting.

[91] For these reasons, we ruled that Aziz's testimony was admissible.

3.3 Mid-hearing ruling on the rights of respondents to cross-examine each other

3.3.1 Background

[92] As a final preliminary matter, we explain our mid-hearing ruling about the rights of respondents to cross-examine each other and the procedure to be followed in hearings with multiple respondents who wish to question each other.

[93] During the evidentiary portion of the hearing, these questions arose. It appeared to the parties and to us that the questions had not been squarely addressed in a

Tribunal decision in the context of competing submissions. Following our receipt of helpful submissions from the parties before us, we gave our ruling and advised that our reasons for that ruling would be incorporated in these reasons.

[94] We begin by noting that the term "cross-examination" describes examination of a witness by another party, as opposed to by the representative for the party that called the witness. Questions in cross-examination may be leading (*i.e.*, suggesting the answer in the question) and often are leading, but even if they are not leading, they are still cross-examination.

[95] In this hearing, the issue arose in the context of one respondent (or their representative) examining another respondent, as opposed to examining a non-party witness called by another respondent. The principles set out here may well apply equally to non-party witnesses, but our ruling was and is confined to respondents as questioners and witnesses.

[96] During the hearing, we ruled that:

a. on issues where the two parties were adverse in interest, they were entitled to cross-examine each other, including by asking leading questions;

b. on issues where the parties were aligned in interest, they were entitled to cross-examine each other, but were not permitted to ask leading questions; and

c. on issues where it was not clear whether the parties were adverse or aligned in interest (including because respondents in enforcement proceedings before the Tribunal do not file a formal response to the Statement of Allegations), we would err on the side of caution and permit leading questions, but the questioning party would bear the risk of the resulting answer being given less weight if it ultimately became clear that the parties were aligned in interest.

[97] As matters of practice:

a. we ruled that a testifying respondent be cross-examined by their co-respondents first (in an order determined by the panel after hearing submissions) and then by Staff;

b. we encouraged the questioning parties to advise when they were about to move into questions about a different issue, so that we could determine (after hearing submissions if necessary) whether leading questions would be permitted on that issue; and

c. we adopted a practice of permitting co-respondents, after Staff's cross-examination, to conduct re-direct examination of the witness within the normal boundaries, *i.e.*, to address any issue on which the questioner and the witness were aligned in interest and where the purpose of the re-direct questions was to address matters raised in cross-examination.

3.3.2 Analysis

[98] The core principles underlying our decision are well explained by the Superior Court of Justice in *Elder v Rizzardo Bros Holdings Inc*:[7]

a. cross-examination is an integral part of the adversarial process we employ in hearings to find the truth;

b. cross-examination is designed to challenge or discredit evidence given in chief, so leading questions are permitted for those purposes; and

c. leading questions in non-adversarial circumstances could distort rather than enhance the truth-finding objective, and the rationale for permitting leading questions is absent.[8]

[99] We also referred to the decision of the Court of Appeal for Ontario in *R v McLaughlin*,[9] which while a case arising in criminal law, offers useful guidance. The Court held that once an accused person chooses to testify, that person subjects themselves to cross-examination, whether for impeachment purposes or to elicit testimony favourable to the questioner.[10] The ability of an accused to cross-examine a fellow accused (*i.e.*, by asking leading questions) is an important right for the former.[11]

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[7] 2016 ONSC 7235 (***Elder***)
[8] *Elder* at paras 22, 24-26 and 30
[9] 1974 CanLII 748 (***McLaughlin***)
[10] *McLaughlin* at para 15
[11] *McLaughlin* at para 17

[100] As for "sweetheart" evidence (where a party asks questions to bolster a common position or set of facts), the Court of Appeal held that allowing one accused to cross-examine another could permit the questioner to put their defence before the court without testifying and thereby exposing themselves to cross-examination. The Court stated, however, that this was not "a matter of great concern", because in deciding what weight to give to the evidence, the trier of fact would note, among other things, the form of the question that elicited the answer.[12]

[101] This Tribunal has previously considered the issue in part. In reasons for decision at the conclusion of a hearing on the merits in *Natural Bee Works Apiaries Inc (Re)*, the Tribunal reviewed instructions that it had given to the respondents about their ability to cross-examine each other.[13] The Tribunal stated that in cross-examination, the questions must be on matters where the co-respondents are adverse in interest, and that the respondents were not allowed to ask questions to bolster a common position or set of facts.

[102] It does not appear from the reasons in that case that the issue had been the subject of opposing submissions, or that the panel was required to turn its mind to whether there was a middle ground between adversity and bolstering. In our view, there will be circumstances where parties who are aligned in interest on an issue can legitimately ask non-leading questions whose purpose is not to improperly bolster testimony, but instead is, for example, to clarify an answer given earlier or fill in a gap that would be best addressed by the respondent being questioned. The reasons in *Natural Bee Works* do not expressly preclude those possibilities, and in our view such a refinement on the language in that decision is more consistent with the principles set out in the authorities cited above.

[103] The panel is of course always able to control any examination by any party, to ensure that it respects applicable parameters, and to ensure that the hearing is conducted in a fair and efficient manner.

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[12] *McLaughlin* at para 23

[13] 2019 ONSEC 23 (***Natural Bee Works***) at para 44

[104] For these reasons, we issued the mid-hearing ruling described in paragraph [96] above.

4. STRUCTURE OF THE ANALYSIS

[105] We turn now to our analysis of the merits of Staff's allegations.

[106] Given the complex factual matrix underlying the allegations, as well as the number of respondents and their differing interests, we have organized our analysis in three main parts, each of which focuses on a group of significant transactions. Those three categories are:

a. sales of the First Global debentures;

b. the loans from investor EH; and

c. the First Global purported licence transactions.

[107] With respect to each of the three groups of transactions, Staff alleges that one or more respondents contravened a number of different provisions of Ontario securities law.

[108] We will address each group of transactions in turn. In our discussion of each group, we will begin by describing the factual background, followed by our analysis of the allegations relating to that group. We start with the First Global debentures.

5. FIRST GLOBAL DEBENTURES

5.1 Introduction

[109] Staff alleges that some or all respondents breached Ontario securities law in several ways relating to the First Global debentures:

a. by illegally distributing those debentures (*i.e.*, without a prospectus and without an exemption from the prospectus requirement);

b. by engaging in the business of trading the debentures without being registered to do so; and

c. by perpetrating fraud in connection with the debentures.

[110] We will address each of these, beginning with the alleged illegal distribution of the First Global debentures.

5.2 Alleged illegal distribution

5.2.1 Introduction

[111] Staff alleges that the First Global debentures were illegally distributed, because they had never previously been traded before they were sold to investors, no prospectus was filed and receipted, and no exemption was available from the prospectus requirement. Of those elements, the only one about which there was any real dispute was whether an exemption was available. First Global purported to rely on the accredited investor exemption, which allows an issuer to proceed without a prospectus in respect of distributions to investors who meet certain qualifications. The issuer must take steps to document the availability of, and reliance on, that exemption.

[112] As we explain below, we conclude that in none of the distributions of First Global debentures was the accredited investor exemption available. We therefore find that First Global illegally distributed the debentures. We further find that the other respondents directly participated in that illegal distribution.

5.2.2 Factual background

[113] A possible alignment of interests between First Global and GBR became apparent to some of the respondents in the late spring of 2015. First Global was experiencing financial difficulties, and GBR needed a public company to use as a vehicle to raise capital from holders of registered accounts (*e.g.*, TFSA, RRSP) to further development of the Colombian assets. This alignment of interests formed the basis for what ultimately evolved into distribution of First Global debentures, with First Global and GBR splitting the funds raised through those distributions.

[114] We heard conflicting evidence about the evolution of this idea, from the initial plan to the mechanism that was put in place. For example, while it is undisputed that Bajaj took on significant responsibility for raising funds from investors, it is unclear what limits, if any, there were on his responsibility. Alli (First Global's CFO) testified that because Bajaj was not qualified to be a broker to raise funds, Bajaj's responsibility was only to bring investors to First Global.

[115] Bajaj denies that there was such a limitation. Whatever the truth about whether there was supposed to be a limitation, things did not proceed in a way that

resembled Alli's version. Bajaj proceeded as if there had been no limitation. He did significantly more than simply refer investors, in that he gave regular seminars regarding the investment opportunity, he met with the investors, he explained aspects of the investment, and he worked with the investors to complete subscription documents.

[116] We explore Bajaj's role in further detail below. We turn now to analyze the allegation of illegal distribution by First Global.

5.2.3 Analysis of First Global's alleged illegal distribution

[117] Every issuance of the First Global debentures was a "distribution", as that term is defined in the Act, because the debentures had not previously been issued.[14] Section 53(1) of the Act prohibits the distribution of securities unless a prospectus has been filed and a receipt for the prospectus has been issued, or an exemption is available.

[118] No prospectus was filed. Alli is incorrect in his unsubstantiated submission that none was required.

[119] Ontario securities law does provide numerous exemptions from this requirement. However, where a respondent seeks to rely on an exemption, the respondent must file a report of exempt distribution (Form 45-106F1), which provides a wide range of information about the distribution, including the particular exemption relied on. Whichever exemption the issuer seeks to rely on, the issuer ultimately bears the burden of establishing their entitlement to that exemption.[15]

[120] First Global filed no reports of exempt distribution in respect of the First Global debentures. Despite this, in this proceeding the respondents asserted to varying extents that some steps were taken at the time of investment to show that First Global was relying on the accredited investor exemption provided for in s. 2.3 of National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**). That exemption applies where certain requirements are met, including prescribed income and asset thresholds for the investor.[16]

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[14] Act, s 1.1, "distribution"

[15] *Meharchand (Re)*, 2018 ONSEC 51 (***Meharchand***) at para 95

[16] Act, s 73.3(1)(j); NI 45-106, s 1.1 "accredited investor" (j) to (m)

[121] As the Tribunal has previously held, issuers that rely on the accredited investor exemption cannot, without further investigation, simply rely on an investor's certification as to their accredited status. Before accepting a prospective subscription, the issuer must go beyond any boilerplate language in a subscription agreement and must conduct a serious factual inquiry in good faith.[17]

[122] The investor witnesses testified either that the term "accredited investor" was not discussed with them (in the case of investors KF, SR and KG) or that they were told that the accredited investor forms were just a formality (in the case of investor JN). Bajaj denied saying that to the investors. Instead, Bajaj claimed that every investor who met with him told him that "they have enough assets back home" worth more than $1 million, and that that was sufficient to qualify as an accredited investor.

[123] We prefer the testimony of the investor witnesses, which is consistent from one witness to another, and is consistent with the perfunctory manner in which the subscription documents and other agreements were completed (by Bajaj, among others), often after the fact, as attempts of varying quality that purported to memorialize practices that were already being followed.

[124] In any event, even if we believed Bajaj's assertion that every investor said they had assets worth more than $1 million "back home", that assertion, unsupported by any documentary evidence, would be insufficient to meet the standard of a serious factual inquiry. It would also fail to meet the asset threshold for the accredited investor exemption, which requires either financial assets (as opposed to total assets) of more than $1 million, or total assets of more than $5 million. In both cases, the minimum asset amount is net of related liabilities.

[125] Itwaru submits that in 2015, his understanding of First Global's obligations was that First Global simply had to verify that each investor had completed an accredited investor certificate. Unfortunately for Itwaru, his understanding was incorrect, as we have explained above regarding an issuer's obligation to conduct appropriate due diligence.

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[17] *Money Gate* at para 189

[126] Alli offered two additional responses to the allegation that First Global illegally distributed its debentures.

[127] First, Alli submitted that each capital raise that First Global completed was recorded in First Global's financial statements. Even if true, that fact does not relieve First Global of its securities law obligations with respect to the distributions.

[128] Second, Alli submitted that for each capital raise, First Global relied on the expertise of its counsel. A defence of reasonable reliance on legal advice is not available for an alleged breach of s. 53(1) of the Act,[18] but even if it were, First Global would have to show that its counsel advised First Global that it was entitled to distribute the debentures without a prospectus, and the reasons for that conclusion. First Global offered no such evidence.

[129] We conclude that the accredited investor exemption was unavailable to First Global because:

a. none of the investors who testified before us was in fact an accredited investor;

b. despite Bajaj's assertions to the contrary, the investor witnesses were not given an explanation of the subscription documents, and they signed blank documents and/or initialed them where they were told; and

c. the completed documents were provided to First Global (the issuer of the debentures), whose staff simply reviewed the forms to ensure that the accredited investor certificates were completed, without having any contact with the investors.

5.2.4 Conclusion about the allegation that First Global illegally distributed its debentures

[130] The First Global debentures were securities that had not previously been issued. No prospectus was filed, no relief from the prospectus requirement was obtained, and First Global has failed to show that it was entitled to rely on any exemption from that requirement, including the accredited investor exemption.

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[18] *Money Gate* at para 195

[131] Accordingly, each trade in First Global debentures was an illegal distribution and constitutes a breach by First Global of s. 53(1) of the Act.

[132] Staff submits that we should make a similar finding against each of the other respondents. We turn now to consider that submission.

5.2.5 Role of the other respondents in First Global's illegal distributions

5.2.5.a Itwaru and Alli

[133] We begin with First Global's principals, Itwaru and Alli. Staff alleges that Itwaru and Alli participated directly in First Global's illegal distributions, or alternatively that they should be deemed not to have complied with Ontario securities law because they authorized, permitted or acquiesced in First Global's non-compliance.

[134] We conclude that each of Itwaru and Alli played a direct role in the illegal distributions:

a. both were involved in negotiating the First Global-GBR Debenture Agreement, the foundational document pursuant to which GBR Colombia agreed to assist First Global in raising funds through the sale of the First Global debentures;

b. Itwaru signed the First Global-GBR Debenture Agreement on behalf of First Global;

c. both voted as directors of First Global to approve the debenture offering;

d. Itwaru signed the debentures on behalf of First Global; and

e. both Itwaru and Alli signed and accepted subscription documents on behalf of First Global.

[135] Alli submits that neither he nor Itwaru ever issued the debentures directly to purchasers. While that may be true in a literal sense, in that neither of them physically handed a debenture to an investor, Staff need not show physical delivery in order to establish an individual's direct participation in an illegal distribution. We return to this point below (at paragraph [146]) in our discussion about Aziz's role in the distributions.

[136] We find that Itwaru and Alli, as principals, contravened s. 53(1) of the Act by participating directly in the illegal distribution of First Global debentures.

[137] Even if we had not found that Itwaru and Alli participated directly as principals, we would have found that as directors and officers of First Global they authorized First Global's illegal distributions, and therefore by virtue of s. 129.2 of the Act, they would be deemed to have contravened Ontario securities law.

5.2.5.b GBR, Bajaj and Aziz

5.2.5.b.i Introduction

[138] We turn next to the GBR Ontario Parties, *i.e.*, GBR Ontario and its principals Bajaj and Aziz. Staff alleges that all three directly participated in First Global's illegal distributions.

[139] In considering the role of each of the three GBR Ontario Parties, it is useful to understand, at a high level, two PowerPoint presentations that the GBR Ontario Parties used to solicit new investors and, to some extent, to update existing investors. We will examine the contents of these presentations in greater detail later in these reasons, but the presentations may be described briefly as follows:

a. ***Colombia Presentation*** – Many iterations of this presentation were entered into evidence. Through to February 2016, its contents were updated as new information was acquired, or in response to questions asked by investors at seminars. The presentation gave information about, among other things:

   i. GBR, and its assets and reserves;

   ii. the advantages of investing in Colombia;

   iii. bio-diesel and bitumen generally;

   iv. how investor funds would be used;

   v. how the investment would be secured;

   vi. expected revenues from the bio-diesel and bitumen operations;

   vii. methods of investment (*e.g.*, RRSP, TFSA) and their corresponding returns; and

viii. risk mitigation strategies.

b. ***Mortgage Presentation*** – This presentation offered scenarios whereby investors could pay down personal mortgages on their homes more quickly by using savings, or by borrowing funds, to invest and receive royalty payments from the investment in First Global debentures.

5.2.5.b.ii Bajaj's role

[140] Bajaj, on behalf of GBR, led the effort to sell the First Global debentures. Most investors were Bajaj's clients from his tax business, or individuals who had been referred to Bajaj.

[141] Bajaj had been actively fundraising for the Colombian assets before First Global became involved. Once Bajaj, Aziz and Thiviyanayagam had agreed on their desire to use a public company as the investment vehicle so that holders of registered accounts could invest, the three of them had short-lived relationships with two other public companies (**Threegold** Resources Inc. and **Northern Coast** Financial Limited) before engaging First Global.

[142] Bajaj described himself as a member of the GBR fundraising team, along with Aziz and others. His direct participation and central role in the fundraising throughout is evident from the following:

a. in March 2015, before First Global became involved, he and Thiviyanayagam traveled to Montreal to meet with the president of Northern Coast, one of the two public companies that was originally to have been used as the fundraising vehicle;

b. he reviewed drafts of the Northern Coast subscription documents;

c. he completed copies of the Northern Coast subscription documents and presented them to investors (although no investors ever completed purchases of Northern Coast bonds as intended, because Northern Coast terminated the relationship in early July 2015 for reasons we explain below);

d. he conducted seminars at the Richmond Hill office, during which he explained the Colombian investment opportunity in bitumen and biodiesel to potential and existing investors, including to individuals who were

helping to solicit new investors – these seminars began in March or April of 2015 (before First Global became the public company vehicle for the fundraising) and continued throughout 2015;

e. he drafted the Colombia Presentation, presented it at seminars at the Richmond Hill office, and asked investors to show it to other people;

f. he signed a GBR Colombia board resolution as one of the company's directors, confirming that version 85 of the Colombia Presentation (entitled "Bio-Diesel & Bitumen") could show investors the biodiesel plant and Rio Negro bitumen mineral rights, including pictures of both, as being "part of" GBR Colombia;

g. he prepared and showed the Mortgage Presentation, encouraging investors to borrow money through a secured line of credit to invest in the First Global debentures;

h. he participated in reviewing drafts of the First Global subscription documents (including the attached term sheet) and in preparing packages for investors that included those documents as well as account opening forms;

i. beginning in July 2015, he started raising funds using the First Global subscription documents;

j. he prepared and distributed brochures that were available at the Richmond Hill office, were handed out to seminar attendees, and were also sent to investors by mail;

k. when his tax clients came to his office, Bajaj spoke to them about the investment opportunity, showed them the presentations and brochures, and encouraged them to attend the seminars at the Richmond Hill office;

l. he prepared and placed radio advertisements, some but not all of which mentioned that investment in the First Global debentures was for accredited investors;

m. he met with investors to help them fill out First Global subscription documents as well as Olympia Trust account opening and transfer

documents, and provided the Olympia Trust documents to Olympia Trust; and

n. he managed a referral network for sales of First Global debentures, and received and paid referral fees from and to his team of agents, which team together with Bajaj himself raised over $3.8 million from 68 investors through 85 subscriptions for First Global debentures.

5.2.5.b.iii Aziz's role

[143] Aziz's involvement was less central, but he also participated directly in the fundraising efforts, including the distribution of First Global debentures:

a. he reviewed, or at least was given an opportunity to review, drafts of the Northern Coast subscription documents;

b. he was included in correspondence that exchanged draft First Global subscription documents and drafts of the Colombia Presentation, which drafts Aziz reviewed and approved;

c. he and Thiviyanayagam came up with the idea to use brochures to market the investment;

d. Bajaj gave him packages of First Global subscription documents and account opening forms because Aziz was speaking to existing and potential investors;

e. as the sole signatory on behalf of GBR, he signed the foundational First Global-GBR Debenture Agreement referred to above, which agreement contemplated the First Global debentures being offered to the public;

f. he had his own office in the Richmond Hill office space that was used for the seminars;

g. he signed rent cheques on behalf of GBR Ontario, the only business of which was to raise funds by selling First Global debentures;

h. he was aware of Bajaj's radio advertisements referred to above and received at least one script of an advertisement, and concluded that Bajaj should not be advertising on the radio, although there is no evidence that he expressed that concern to Bajaj;

i. he approved payment of the referral fees mentioned above;

j. he provided First Global subscription documents to GBR staff and directed staff to send packages to investors;

k. as he admitted, he remained in close contact with Bajaj, Thiviyanayagam, Garcia and Grenier and he was kept generally apprised of the status of the Colombian projects; and

l. subscription documents showed that he was the salesperson for at least $288,305 of First Global debentures, and together with Faille solicited approximately $600,000 of debenture investments.

[144] In addition, we find that Aziz attended and spoke at several seminars regarding the potential investment. Investor witness JN, who regularly attended the seminars, testified that Aziz came to four or five of the seminars, and that on at least two of those occasions Aziz: (i) talked about having just returned from Colombia, and (ii) advised that the project was going well and that investors' money was safe.

[145] In his submissions, Aziz sought to minimize his involvement in these seminars. However, we accept JN's testimony, which was corroborated by Bajaj to a material extent in this respect, and which is more consistent with the broad range of activities set out above in which Aziz was involved. Further, Aziz did not cross-examine JN on this aspect of his testimony. Accordingly, we are unable to accept his submission that we should prefer his version over JN's.

[146] Aziz also submits that he cannot be found to have "distributed" the First Global debentures because a distribution is a kind of trade, and he did not "trade" the First Global debentures. Aziz further submits that he could not reasonably have known that First Global was not entitled to an exemption (including the accredited investor exemption) in respect of those investors who subscribed for First Global debentures. He submits that we should narrowly construe the prohibition in s. 53(1) and that he should not be found to have contravened it.

[147] We cannot accept that submission. Subsection 53(1) does not provide or even suggest that it applies only to the issuer whose securities are distributed.

Indeed, the language explicitly includes any individual who trades the issuer's security on behalf of that issuer, as the following excerpt demonstrates:

> No **person**… shall trade in a security… **on behalf of any… company** if the trade would be a distribution of the security, unless a preliminary prospectus and a prospectus have been filed… [emphasis added]

[148] Further, a "trade" is not limited to the actual purchase or sale of the security. The term "trade" is defined in the Act[19] to include acts, solicitations, or other conduct directly or indirectly in furtherance of a trade.

5.2.5.b.iv Conclusion about the GBR Ontario Parties' roles in the illegal distributions

[149] We find that by their many activities in aid of securing investors for the First Global debentures, Bajaj and Aziz, and through them GBR Ontario, traded the First Global debentures on behalf of First Global. Aziz's participation was less active than Bajaj's, but he was nonetheless fully involved.

[150] As we concluded above, the trades were distributions of the securities. Accordingly, we find that each of the GBR Ontario Parties directly contravened s. 53(1) of the Act.

5.3 Engaging in the business of trading the First Global debentures without being registered

5.3.1 Introduction

[151] We turn now to Staff's allegation that GBR Ontario and its principals Bajaj and Aziz engaged in the business of trading in securities. If they did, then because none of them was registered under the Act, they will have violated s. 25(1) of the Act. We conclude that they did violate that provision.

[152] The meaning of "engaged in the business of trading in securities" is addressed in Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations*. That Companion Policy suggests criteria that

[19] Act, s 1(1), "trade"

help determine whether a person or company is engaged in the business of trading in securities.

[153] The Companion Policy is not part of Ontario securities law and therefore is not directly binding on the respondents. However, in other proceedings the Tribunal has adopted the "business purpose" test in s. 1.3 (also referred to as the "business trigger" test), on which Staff relies.[20] Of the factors that are included in the test, the following are relevant in this proceeding:

a. trading with repetition, regularity or continuity, whether or not that activity is the sole or even primary endeavour of the business;

b. directly or indirectly soliciting securities transactions;

c. receiving, or expecting to receive, compensation for trading; and

d. engaging in activities similar to those of a registrant, including by promoting the sale of securities.

[154] We adopt the test and will assess each of these factors in turn.

5.3.2 Trading with repetition, regularity and continuity

[155] In the eight-month period in 2015 that GBR Ontario was raising funds, it raised over $4.46 million from 80 investors in 104 separate transactions.

[156] That timing and frequency place the trading in this case at the high end of the spectrum for repetition, regularity and continuity. By this criterion, the GBR Ontario Parties' conduct suggests that they were engaged in the business of trading securities.

5.3.3 Directly or indirectly soliciting securities transactions

[157] We set out above, in paragraphs [142] and [143], Bajaj's and Aziz's specific and direct involvement in soliciting investment in the First Global debentures. These efforts yielded the desired results of attracting investors, including individuals who had been referred by others and individuals who had heard about the opportunity through the radio advertisements.

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[20] See, *e.g.*, *Money Gate* at para 145

[158] Within GBR Ontario, Bajaj and Aziz's exclusive focus on these fundraising efforts, as opposed to any other aspect of First Global's or GBR's business, strongly suggests that they were engaged in the business of trading in securities.

5.3.4 Receiving, or expecting to receive, compensation for trading

[159] Bajaj testified that he received over $114,000 in referral fees in return for soliciting investors in the First Global debentures. The fact that he earned this large amount in the short time, and for no activity other than selling debentures, strongly suggests that he was engaged in the business of trading in securities.

[160] Aziz did not receive referral fees. However, he understood that he was to receive a one-sixth ownership interest in GBR Colombia for two reasons: (i) because he introduced all the parties (Bajaj, Thiviyanayagam, Grenier, Garcia and Faille) to each other; and (ii) because he introduced many potential buyers of the bitumen product in Colombia.

[161] Aziz not only carried out those introductions; he also spent considerable time involved with the fundraising in many ways. We find that it is more likely than not that the shares of GBR Colombia he was promised related to his overall work with the enterprise, including his fundraising efforts for GBR Colombia via First Global. This factor suggests that Aziz was engaged in the business of trading in securities.

5.3.5 Engaging in activities similar to those of a registrant

[162] Staff submits, and we agree, that GBR Ontario effectively acted as a dealer of the First Global debentures. As itemized above, the GBR Ontario Parties did many of the things that a registered exempt market dealer would normally do, including by actively soliciting investments, providing and completing documentation, and acting as an intermediary between the investors and the issuer.

[163] This conduct by the GBR Ontario Parties strongly suggests that they were engaged in the business of trading.

5.3.6 Conclusion about Staff's allegation that GBR, Bajaj and Aziz were engaged in the business of trading

[164] Bajaj, Aziz and Thiviyanayagam founded GBR Ontario and were its only directors and shareholders. Bajaj testified that the three of them, along with Faille, were GBR's fundraising team, engaging in sales efforts themselves and creating and managing a network of referral agents. Further, GBR Ontario carried on no business other than raising funds through the sale of First Global debentures, a portion of which was to flow through to GBR Colombia.

[165] Simply put, GBR Ontario's business was the trading of First Global debentures. GBR Ontario did so repeatedly, continuously and regularly during the eight-month fundraising period in 2015. Bajaj and Aziz were compensated, or they expected to be compensated, for their efforts associated with the business, and GBR Ontario's activities were similar to those of a registered dealer. Effectively, those activities took the place of such a dealer, and in so doing, GBR Ontario deprived the investors of the protections associated with the involvement of a registered intermediary. By these actions, GBR Ontario engaged in the business of trading securities and thereby breached s. 25(1) of the Act.

[166] As Bajaj himself admitted, his role was to raise funds and to show the investment opportunity to investors. He was directly compensated for that activity, which he carried out continuously. As a result, he too breached s. 25(1) of the Act.

[167] Aziz submits that we should reach a different conclusion about his own participation. He submits that his actions were administrative or operational, as opposed to fundraising in nature. We accept that his focus was different from Bajaj's, but that distinction is of no material significance. Aziz was directly involved in fundraising, as set out in paragraph [143] above. To the extent that the fundraising was carried on by GBR through Bajaj, we find that Aziz at least acquiesced in that conduct. As a director and officer of GBR, he is therefore deemed by s. 129.2 of the Act to have contravened Ontario securities law as well, because of GBR's non-compliance.

[168] As a result, we find that GBR, Bajaj and Aziz engaged in the business of trading securities of First Global, and that they thereby contravened s. 25(1) of the Act.

5.4 Alleged misrepresentations

5.4.1 Introduction

[169] The last category of alleged misconduct relating to the First Global debentures involves Staff's allegations that the respondents made three sets of misrepresentations.

[170] At a high level, the first set of alleged misrepresentations (the **Use of Funds Representations)** consisted of two different statements:

a. that funds raised would be used for First Global's general working capital; or

b. that funds raised would be used for bitumen and biodiesel assets in Colombia that were owned by GBR.

[171] The second set of alleged misrepresentations (the **Colombian Operations Representations**) related to the operational status of the Colombian facilities and to whether production from those facilities was sufficient to generate the 14% annual return owed on the First Global debentures.

[172] The third set of alleged misrepresentations (the **Security Representations**) included representations that investment in the First Global debentures was secure, guaranteed and risk-free.

[173] All three sets of alleged misrepresentations figure into two different alleged contraventions of the Act:

a. that GBR Ontario, Bajaj and Aziz (but not First Global, Itwaru or Alli) defrauded investors, contrary to s. 126.1(1)(b) of the Act: and

b. First Global (and by extension Itwaru and Alli, pursuant to s. 129.2 of the Act, because they permitted, authorized or acquiesced in First Global's conduct), GBR Ontario, Bajaj and Aziz contravened s. 44(2) of the Act because the representations were about a matter that a reasonable investor would consider relevant in deciding whether to enter into or maintain a trading relationship with them, and the representations were untrue or omitted information necessary to prevent them from being false or misleading in the circumstances in which they were made.

[174] We begin our analysis of the various representations by assessing their truth or falsity. After making those factual findings, we will then consider the alleged contraventions and determine whether the misrepresentations, if any, constitute a breach of the Act.

5.4.2 Use of Funds Representations

5.4.2.a Introduction

[175] We begin with the Use of Funds Representations. Much of the documentary and oral evidence before us on that question conflicted in numerous respects.

[176] Staff alleges that representations to investors about the use of their funds fell into two categories:

a. in the term sheet that formed part of the First Global subscription documents, a representation that the funds raised would be used for First Global's "general working capital"; and

b. for at least some investors, representations made by Bajaj and Aziz that the funds raised would be used to finance GBR's bitumen mining and/or biodiesel operations in Colombia.

[177] Staff alleges that all these representations were untrue. Specifically:

a. neither GBR Colombia nor GBR Ontario had any direct ownership interests or business operations in bitumen mining or biodiesel, so no funds were directed to such operations as promised; and

b. approximately $300,000 of the raised capital was used to make interest payments to investors on the First Global debentures and on the loans from investor EH.

[178] In exploring more closely what was said about how the funds were to be used, we begin with what the respondents themselves understood the plan to be. As will quickly become apparent, those who made the representations cannot themselves agree about how the funds were to flow.

5.4.2.b The purposes of the offering as understood by the respondents

[179] Aziz testified that one of the purposes of the offering was to help First Global deploy its mobile and cross-border payment technology in various countries. His

understanding is corroborated by the First Global-GBR Debenture Agreement, as well as promissory notes documenting the loans from First Global to GBR Colombia.

[180] Both the First Global-GBR Debenture Agreement and the promissory notes expressly refer to the use of funds for technology deployment. The agreement provides that the "**majority of** the proceeds from the Offering shall be used toward the deployment of [First Global] services by [GBR Colombia], and for [First Global] working capital needs. [emphasis added]" The promissory notes were less precise about the apportionment of funds, *i.e.*, what portion would be devoted to the deployment: "Use of proceeds **includes** the technology division of [GBR Colombia] sourcing and deploying technology of [First Global] in Colombia and other countries. [emphasis added]"

[181] Itwaru gave a similar description. He testified that the First Global-GBR Debenture Agreement contained the terms of the arrangement. He described what he called the "main thrust" of that agreement as being the establishment of First Global's services and technology in Colombia and elsewhere.

[182] Alli had the same understanding. He testified that he had limited involvement in any of the fundraising activities, because he was focused on First Global's technology. However, he understood that GBR Colombia would launch First Global's technology in Colombia.

[183] Bajaj, who was not a signatory to the First Global-GBR Debenture Agreement, says that he had no knowledge of any efforts to launch First Global's technology in Colombia, and never spoke with Garcia, Grenier or anyone else about that technology. Bajaj disputes that there was a fundraising objective related to First Global's technology.

[184] In Bajaj's view, the purpose of the offering was to raise funds for the Colombian natural resource assets. That this was his understanding is corroborated by:

a. the fact that the Northern Coast subscription documents, used before First Global became engaged, referred to agreements with GBR Colombia relating to bitumen and biodiesel;

b. the absence of any mention of the First Global technology in the radio advertisements or PowerPoint presentations referred to above;

c. an email he sent on September 17, 2015, to Aziz, Faille and Thiviyanayagam, requesting a letter from First Global's lawyer to confirm that the funds raised "will not be used anywhere else, it will be used for Global bioenergy Resources [*sic; i.e.*, the Colombian bitumen and biodiesel assets]";

d. the absence of any evidence that Aziz sought to correct that description (in the September 17 email) of how the funds would be used, despite Aziz's testimony before us that all parties understood that some funds would be used for First Global technology;

e. the fact that of the seven GBR Colombia board resolutions executed in October 2015 (which are all the GBR Colombia board resolutions in evidence before us), some refer to the bitumen, biodiesel and coal assets in Colombia, but none refers to First Global technology;

f. the fact that the resolutions' only reference to First Global is as a vehicle through which funds would be raised, and as the transferee of mineral rights to secure the debenture holders' investment;

g. the consistency between Bajaj's testimony and that of the investor witnesses who attended seminars led by Bajaj, or with whom Bajaj met, or both, in that none of those witnesses was aware of any intention to direct a portion of the invested funds to deploy First Global technology; and

h. Garcia's testimony to the effect that neither she nor Grenier nor GBR Colombia had any involvement in the development of First Global's technology anywhere in South America.

[185] With this fundamental disagreement among the respondents at the time of the solicitation of investors as backdrop, we turn to the representations made to those investors.

5.4.2.c The purposes of the offering as represented to the investors

[186] In this section we review the representations in detail. While investors were told, in one form or another, about both of the different uses described above, representations about the Colombian natural resource operations predominated.

[187] The less visible representations, that the funds would be used for First Global's working capital, were contained in the term sheet that formed part of the First Global subscription documents, that investors received and that they signed.

[188] Itwaru submits that the subscription agreements clearly stated that the investment in First Global debentures was clearly for use by First Global in First Global's business. In our view, and in the context of this case, Itwaru's is a broader description of permissible uses, since the term sheet specified "general working capital" as opposed to a sense of "anything First Global might do". In his testimony, Itwaru described what he understood the term "general working capital" to be. That description extended to what he called "paying the bills, so to speak", and the expansion of First Global's business globally, including the deployment of First Global's services in different parts of the world.

[189] Itwaru did not include in his definition any reference to lending funds to another entity for the development of natural resources, an activity that bore no relation to First Global's existing business. Having said that, even if Itwaru had included that in his understanding, without proper substantiation, we would not be bound by it.

[190] What is critical for the purposes of this proceeding is how a reasonable investor would understand that term, if they even noticed it in the subscription documents. If an investor did note that limitation on the use of funds, then in our view it would be reasonable for that investor to conclude that the funds could be used to further the company's existing business. We know of no bright line test to apply to any potential business, to determine whether use of funds for that potential business would fall within "general working capital", but in the specific circumstances before us, we have no difficulty concluding that no reasonable investor would understand the words "general working capital" to give First Global free rein to do anything it wanted with the funds, without limitation.

[191] We find that this term on the term sheet did not permit First Global to provide funds to GBR Colombia for the purpose of developing natural resource projects (as opposed to for the geographic expansion of First Global's existing technology business).

[192] We emphasize that in reaching that conclusion, we heard no expert evidence as to the meaning of "general working capital", or even if that term has a clear meaning within generally accepted accounting principles or accounting standards of any kind. Further, we are unaware of any Tribunal decision that would guide us. Staff referred us to *Quadrexx (Re)*,[21] which involved some consideration of working capital, but, like this case, involved no expert evidence as to the meaning of that term.[22] We do not opine on what that term might mean in other instances. Our finding is limited to the conclusion that in this case, the term did not extend to natural resource projects in Colombia.

[193] In any event, the First Global subscription documents made no mention of any business in Colombia, whether implementation of First Global's technology or development of natural resources.

[194] In contrast, representations by Bajaj and Aziz or in documents prepared and issued by them (including the Colombia Presentation) said the funds would be used to finance bitumen mining and biodiesel operations in Colombia. As was commonly the case generally in the events giving rise to this proceeding, the representations and the documents in which they were contained often improperly conflated GBR Colombia and GBR Ontario.

[195] The Colombia Presentation, which contained the impugned representations, was shown at the seminars held in the Richmond Hill office and sent regularly to a small group of investors, identified four uses for the funds:

a. land and road infrastructure costs;

b. mineral rights buy-out;

c. operating cash flow for biodiesel and bitumen; and

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[21] 2017 ONSEC 3 (***Quadrexx***)

[22] *Quadrexx* at para 230

d. mining equipment purchase.

[196] The Colombia Presentation did not suggest, and neither Bajaj nor Aziz told investors, that First Global would retain funds raised under its debentures or that it would use those funds to deploy First Global technology. Bajaj conceded that he knew nothing about First Global's technology services in Colombia, and that he never spoke to investors about that technology. Indeed, according to Bajaj, his own understanding largely aligned with the investors' expectations. Specifically, he testified that all the funds (except for First Global's 2%, as explained below beginning at paragraph [211]) were intended for GBR Colombia.

[197] This fundamental misalignment between First Global's representations (in the subscription documents) and the GBR Ontario Parties' representations (in person and in marketing documents) makes it unsurprising that investors' understanding about the intended use of funds differed in substance and in amount of detail.

[198] The investor witnesses testified that they understood that the funds they invested were going to be used for natural resource-related projects in Colombia. Some investors testified that they did not know of First Global. Others said they knew of First Global, but understood that it was simply an intermediary that was needed to process their investment because RRSP funds could not be sent directly to GBR Colombia, or so that interest could be paid to them. At least one investor noted the name First Global but did not understand its role or why the investor was investing in a debenture of that company.

[199] Knowledge about the Colombian operations varied from witness to witness, but generally speaking they believed at a high level that the funds would be used to start or expand the biodiesel facility, and to buy equipment and infrastructure for the bitumen project so that it could increase production. Understandably, at least some investors were more concerned with the promised return (of 14%) and with the fact that the investment would be RRSP-eligible.

[200] The fact that most investors understood that their funds would be used for the Colombian bitumen and biodiesel projects is not surprising, given the likelihood that direct personal representations from individuals such as Bajaj and Aziz would easily overcome the language contained in the First Global subscription

documents, most of which the investors testified they did not read, if they read any part of them at all. In this regard, we reject Aziz's submission that investors were told only broadly that funds would go into mining in Colombia. Some may have been told that, but many others were told specifically that the funds would be used for the bitumen and biodiesel projects, as is reflected in the Colombia Presentation, among other things.

[201] Bajaj used the seminars at the Richmond Hill office not only to solicit new investors, but also to update existing investors. However, only a limited number of existing investors attended these seminars. Apart from those few investors, and a small group who regularly received updated copies of the PowerPoint presentations by email, there was no evidence that other investors were kept up to date on the status of their investment or of the Colombia projects, including the intended asset transfers.

[202] As for Aziz, we do not accept his attempts to distance himself from responsibility for the Colombia Presentation and the representations made to investors. In one example of Aziz's attempts, he referred to the involvement of a "Jonathon" who worked with Garcia and Grenier in Colombia and who provided information to Bajaj and Aziz.

[203] He testified that the "majority of the PowerPoint presentations was created by a gentleman by the name of Jonathon that worked directly with" Garcia and Grenier in Colombia. Aziz could not remember his last name and admitted that there was no email or any other record showing draft presentations, or the content of them, being circulated by someone of that name. Further, neither Bajaj nor James (who also testified about the presentations) mentioned a Jonathon or was asked about the involvement of someone by that name.

[204] He submits that his testimony is corroborated by one email, sent in July of 2016 from Victor Goncalves (President and CEO of Threegold) to Grenier seeking information, which Grenier forwarded to "jhonattan@biominerales.com". However, we have no basis to conclude that the addressee of that email is the same person Aziz refers to, and we have no information about that person's role. Aziz's testimony on this point is unsupported by any documentary evidence, and

is inconsistent with Bajaj's own admission that Bajaj was primarily responsible for the presentations. We reject Aziz's testimony.

[205] Aziz also disputes Staff's allegations about the degree to which he participated in the seminars in the Richmond Hill office. We do accept Aziz's testimony that he was less prominent than Bajaj, and that he attended fewer seminars than Bajaj.

[206] However, we accept the testimony of investor witness JN, who had a clear recollection of having seen Aziz at a number of seminars, and also of having had a conversation with Aziz in his office after one of the seminars, during which Aziz reassured JN about the safety of the investment. JN had no apparent motive to implicate Aziz, and was not specifically challenged on his testimony. Aziz's counsel did cross-examine JN about from where or from whom JN obtained information about the investment. However, JN's testimony in chief was specific about when JN saw Aziz, and what Aziz said to JN. In contrast, the cross-examination of JN was in general terms, and JN was not confronted directly about Aziz's involvement. In fact, Aziz's counsel did not mention Aziz's name in cross-examination. We do not think JN was given a full and proper opportunity to rebut what Aziz now submits is JN's admission that he relied exclusively on information from Bajaj. We find that JN's testimony in chief was both credible and reliable.

[207] We also reject as unreasonable Aziz's assertion that he knew nothing about what was being said to investors at the seminars. That assertion is inconsistent with the documentary evidence showing that Aziz reviewed and approved the Colombia Presentation.

[208] We cannot accept Aziz's submission that the investors were told exactly where their money would go, *i.e.*, to the Colombia projects, including the coal mine. To the extent that his submission suggests that the representations alerted investors that funds would go to the coal mine, that submission is unsubstantiated. Aziz also submits that he reasonably understood that investors were told about the coal mine before funds raised were put to that use, but again he offers no basis for that understanding. We disagree with his assertion.

[209] In summary, it is more likely than not that most investors were told (whether through the Colombia Presentation or otherwise) that their funds would be used

for bitumen and biodiesel projects in Colombia. There was no explicit representation that funds would be used for a coal mine or the deployment of First Global technology, and the only representation relating to how First Global might use funds was the reference to general working capital in the subscription documents.

5.4.2.d Intended flow of funds through First Global

[210] We now turn to examine the parties' intentions about the flow of funds, as distinct from the intended ultimate uses. Consistent with other aspects of this case, we conclude that the parties did not at the time and do not now share an understanding of how the raised funds were to flow.

[211] First Global was obligated to pay its debenture holders interest at 14% per year. Bajaj testified that First Global was to lend the raised funds to GBR Colombia at an interest rate of 16% per year. Payment of this interest from GBR Colombia to First Global would enable First Global to pay the 14% per year due to First Global debenture holders. First Global would retain the additional 2%, and according to Bajaj, this constituted the entirety of First Global's entitlement to a portion of the funds raised.

[212] Bajaj stated that he had an oral commitment with Aziz to the above effect from the beginning of the Solicitation Period. As Bajaj points out, these terms were reflected in one of the GBR Colombia board resolutions signed in October 2015 and referred to above. That resolution authorizes the use of First Global to raise funds, which activity of course had already been underway for some time. The resolution authorizes Bajaj to allocate the funds raised as follows:

a. 70% to GBR Colombia;

b. 14% kept "for interest purposes";

c. 2% to First Global; and

d. a total of 14% for referral fees and office expenses for the "Canadian Operation".

[213] On its face, that resolution corroborates Bajaj's testimony that First Global was to receive only 2% of funds raised. Aziz offers a different perspective, testifying that First Global was to retain the 2% spread between the 14% and 16%

interest rates, plus an additional approximately 20% of the funds as working capital in order to fund its operations. He says that the percentages contained in the resolution, as set out above, applied only after First Global had first taken its approximately 20% for working capital.

[214] That contention is directly contradicted by the wording of the resolution, which expressly provides that each of the above percentages was a portion of the raised funds (*e.g.*, "2% of raised fund [*sic*] will be paid to FGD"), not of an amount net of a working capital allocation to First Global.

[215] Aziz says that the additional amount to be retained by First Global was the subject of discussion, and that while never specified precisely, it was approximately 20%-30% to a maximum of $1.5 million. He asserts that this was the subject of an oral agreement but never recorded in in any documents signed on behalf of GBR Colombia. Despite Aziz's imprecision, he says that First Global exceeded its entitlement when it retained $1.5 million of the $4.46 million that was raised (or approximately 34%).

[216] Itwaru gave similar testimony about the nature of the arrangement, stating that First Global was entitled to retain more than the 2% spread. However, he conceded that while he understood GBR Colombia would use some of the funds for its own purposes, he was unaware of any agreement as to the allocation, between First Global and GBR Colombia, of the balance of the funds raised.

[217] Alli was equally uncertain about when First Global could lend funds to GBR Colombia and in what amounts those loans could be. He also stated the following, although he acknowledged that these terms were not documented:

a. First Global was to receive $1.5 million by September 2015, although this timing was a point of contention among the parties at the time, since First Global took these funds in the early stages of fundraising, rather than taking a proportionate share of each amount invested as it came in; and

b. another $4.5 million was to be raised by the following month.

[218] Bajaj denies that there was any arrangement for First Global to retain more than the 2% contemplated by the resolution referred to above, and he denies that Aziz ever told him that there was any arrangement for more than 2%.

[219] In his submissions, Aziz is rightly skeptical that First Global would enter into such an arrangement. We agree with his submission that the terms described, which would give First Global a mere $88,000 to take on approximately $4.4 million in debt, make little commercial sense. As Itwaru observed, the company spent approximately that amount just on legal fees to structure the transactions.

[220] There is no answer that perfectly reconciles the oral testimony and documentary evidence on that point. As Aziz submits, the agreement that Bajaj describes makes little commercial sense, but the resolution that the two of them signed (along with Garcia and Thiviyanayagam) is clear. It specifies unambiguously that First Global was to receive only 2% of funds raised. Aziz offered no persuasive explanation as to why there was a supposed oral agreement that would override the written resolution, with significantly different terms.

[221] The conflicting evidence and the recurring assertions of oral agreements that supersede written agreements reinforce our conclusion that even the parties themselves did not share a common understanding of the relationships among the various entities and how the raised funds were to be used. In light of this fact, it is unsurprising, as we turn to examine the actual use of funds, to see that funds were not used as represented to investors.

5.4.2.e Actual use of funds

5.4.2.e.i Introduction

[222] Staff's analysis of how the funds raised were used was not seriously challenged. As we explain below, First Global retained $1.51 million of the $4.46 million raised, and only a small portion of the remaining $2.95 million went to GBR Colombia, although not to any bitumen or biodiesel assets that it owned.

[223] The flow begins with funds raised through the sale of First Global debentures being deposited into the trust account of First Global's lawyer. According to the First Global-GBR Debenture Agreement, the funds were then to go to GBR Colombia for the deployment of First Global services. Transfers of funds took place directly or indirectly through First Global, although to various entities other than GBR Colombia, as we explain below. The transfers were reflected in promissory notes, which documented GBR Colombia's obligation to repay the funds to First Global with interest at 16% per year.

[224] As it turned out, First Global received no payments of principal or interest from GBR Colombia as required by the promissory notes, but continued to advance funds to or for the benefit of GBR Colombia. First Global ultimately wrote off its receivables in respect of the promissory notes.

[225] The approximately $4.46 million raised was split between First Global and other entities, as summarized here:

a. as noted above, First Global retained approximately $1.51 million; and

b. the remaining $2.95 million was provided to or for the benefit of GBR Colombia, although not for bitumen mining or biodiesel operations owned by GBR Colombia:

i. $1.91 million was transferred to Bioclean Inc., a Canadian company owned as to 74% by Garcia;

ii. $957,000 was transferred to Threegold; and

iii. $77,000 was transferred to GBR Ontario.

[226] We explain these amounts further below.

5.4.2.e.ii First Global retained $1.5 million

[227] The first use was by First Global itself, which kept approximately $1.51 million. First Global made only limited efforts toward deploying its technology in Colombia (*i.e.*, a few conversations involving one or more of Itwaru, Alli, Aziz and Grenier), and none of the $1.51 million was used to support those efforts. This "failure to launch" in 2015 was corroborated by Aziz, Alli and Itwaru. Aziz testified that First Global did launch a mobile payment platform in Colombia in 2016 or 2017, but neither he nor any other party or witness provided any further details or established any connection between that launch and the funds raised through the sale of First Global debentures.

[228] In any event, Aziz testified that Grenier, Garcia and Faille thought that First Global had kept more than its share by retaining $1.51 million. This eroded the trust between Grenier and Garcia on the one hand and First Global on the other, eventually resulting in a December 29, 2015, termination of the First Global-GBR Debenture Agreement.

5.4.2.e.iii $2.95 million was provided to or for the benefit of GBR Colombia

[229] The remaining $2.95 million was disbursed to Bioclean, Threegold and GBR Ontario, ostensibly to or for the benefit of GBR Colombia, but as it turned out, not actually for bitumen mining or biodiesel operations owned by GBR Colombia itself as opposed to other projects or other entities in which GBR Colombia had no interest.

[230] The $2.95 million was used as follows:

a. *Coal mine* – $1 million was used to acquire or develop the Hoyo Patia coal mine, 80% of which was owned by AM Resources, a company wholly owned by Garcia indirectly through A&M USA Resources 2015 LLC (**Garcia's US company**). The allocation of $1 million to the coal mine was reflected in a GBR Colombia board resolution signed in October 2015. The allocation was ostensibly done because none of the other assets were generating revenue, and it was necessary to have an asset that was producing, in order to fund the interest payments to First Global debenture holders (although no such interest payments were ever made). In closing submissions, Bajaj asserts that he told investors that the coal mine was being added to the project in order to pay interest on time. However, his testimony does not fully support that submission, and we cannot accept it, given that:

   i. he testified only that he told investors "about the coal mine", without specifying at all (or therefore being cross-examined on) what he told them about the mine;

   ii. in his testimony, he did not mention interest payments;

   iii. neither the Colombia Presentation nor the marketing brochure contained any reference to a coal mine; and

   iv. the investors' testimony, which we accept, contradicts Bajaj's assertion.

b. *Referral fees* – $309,000 was used to pay referral fees, including $114,000 paid to Bajaj himself via his company UnfoldU Inc., and $195,000 paid to other individuals.

c. *Interest on debentures* – $301,000 was used for interest payments on the First Global debentures, and on the loans from EH (described at paragraph [61] above and discussed further below). In other words, funds raised from new investors were used to pay interest obligations to earlier investors. Bajaj and Aziz admitted that this was the arrangement, and testified that this was done in consultation with Steven Roch, a lawyer in the Montreal law firm of Colby Monet, lawyers for GBR Colombia.

d. *GBR Ontario's business expenses* – Over $300,000 was used to pay business-related expenses incurred by GBR Ontario, including $90,000 for the Richmond Hill Office lease.

e. *Transfer to a subsidiary of Bioclean* – $300,000 was transferred to Biominerales, a wholly-owned subsidiary of Bioclean, and the holder of a 60% interest in Asfaltitas, which in turn wholly owned:

   i. the La Esperanza bitumen mine; and

   ii. a biodiesel production facility in Bogotá.

f. *Threegold's business expenses* – $185,000 was used to pay business-related expenses incurred by Threegold.

g. *Payment to Garcia's US company* – In January 2016, $150,000 flowed through Threegold to Garcia's US company, purportedly to satisfy the condition reflected in an October 2015 letter from Roch as attorney for GBR Colombia, addressed to GBR Ontario, providing that acquisition of the biodiesel production plant was conditional on the repayment of a $150,000 loan, plus charges and costs. As we explain further below at paragraph [314], the loan to be repaid was to Rob Mattachione, an individual who had worked with Bajaj and Aziz in the past, and who apparently was a "former principal" of the business that owned the plant, although whether there was a debt to him is in dispute;

h. *Bajaj's expenses* – In addition to the referral fees paid directly to Bajaj and mentioned above, $141,000 of additional payments were made to Bajaj's company UnfoldU Inc., purportedly for expense reimbursement to Bajaj.

i. *Further payment to Bajaj* – $100,000 was transferred to 2329520 Ontario Inc., a Bajaj-controlled corporation, to pay referral fees and interest payments.

j. *Payment to GBR Ontario* – $78,000 was transferred to GBR Ontario.

k. *Payment to CIV Carbon Credit Ltd.* – $55,000 was paid to CIV Carbon Credit Ltd., a company that entered into transactions with Grenier and Garcia, but no witness could explain why First Global debenture funds would be used for this purpose.

5.4.2.f Conclusion about actual use of funds compared to promised use of funds

[231] Staff makes no submission that the $1.51 million kept by First Global represented a departure from the representations contained in the First Global subscription documents, which contemplated that the funds would be used for First Global's general working capital. We had no evidence about how First Global used the $1.51 million. Instead, Staff submits that the misalignment was between the representations made by the GBR Ontario Parties directly to investors, since those representations did not contemplate First Global retaining funds.

[232] Staff submits that the same applies to the remaining $2.95 million, none of which was used as represented. We note the possible exception of the $150,000 that flowed through Threegold to Garcia's US company, ostensibly to satisfy the condition associated with the biodiesel production plant (see paragraph [314] below).

[233] Returning to the representations made in the First Global subscription documents, Staff submits, and we agree, that the uses to which the $2.95 million was put cannot be described as "working capital" uses for First Global. First Global's business (mobile technology and payment transfers) was entirely distinct from that of GBR Colombia (natural resource extraction and production). When asked for his understanding of how funds raised might be used for First Global's working capital, Itwaru testified that permitted uses would be the normal business of the company, as well as an expansion of the company's business elsewhere in the world, including as a partner of another organization.

Itwaru did not claim that GBR Colombia's own activities, including natural resource extraction and production, would fall within First Global's working capital. As Alli aptly put it in his submissions, "We were not going into the mining business."[23]

[234] In summary, we conclude that it is more likely than not that of the $4.46 million raised, none of it (with the exception of the $150,000 associated with the biodiesel production plant) was used in a manner that conformed to the representations that the GBR Ontario Parties made to investors by various means, including the Colombia Presentation, brochures, in-person seminars and radio advertisements.

[235] In our analysis below of the alleged contraventions that flow from this, we address the question of where responsibility lies for the improper use of investor funds. We turn now to review the representations made to investors about whether the operations in Colombia were sufficient to fund the 14% annual return promised to First Global debenture holders.

5.4.3 Colombian Operations Representations

5.4.3.a Introduction

[236] Staff alleges that investors were told that GBR Colombia had control over operations related to its assets in Colombia, and that those operations would be sufficient to generate a 14% annual return. Staff alleges that these representations were untrue.

[237] We will examine the representations, and the evidence with respect to whether they were true, below. Before doing so, though, we must make some comments about Garcia's credibility, since her testimony and her actions figure prominently in the parties' submissions and in our analysis.

[238] The respondents, and Aziz in particular, submit that Garcia is not a credible witness. Staff accepts that we should approach her testimony with caution, but

[23] Closing Submissions of Nayeem Alli, June 28, 2021 (**Alli Submissions**), at 103

correctly submits that we can choose to accept some but not all of any witness's testimony.[24]

[239] While Garcia clearly had an interest in defending her position through her testimony even though she is not a respondent in this proceeding, we must still be mindful of the most reliable indicator of truth, *i.e.*, harmony with the other evidence in this case.[25] We will adhere to that standard.

[240] In comparing a witness's testimony to the documentary record or to other testimony, though, we must be wary about reaching unwarranted conclusions that would undermine a witness's credibility, especially where a supposed inconsistency is not as clearly evident as a party may suggest. For example, Aziz submits that there is a contradiction between:

a. Grenier's February 2016 email, copied to Garcia, that said in part: "Right now the business with the money plan to be paid in next month… will generate enough money to pay interest and promess made to investor. [*sic*]"; and

b. Garcia's testimony that she and Grenier did not know that investors were being promised interest.

[241] Aziz submits that Grenier's email (which refers to the payment of interest) demonstrates that Garcia was not being truthful when she said that she didn't know investors were receiving interest.

[242] However, Garcia's testimony was in the context of questions about the GBR Colombia MoU, which was signed in May 2015. It is entirely possible that in May 2015, Garcia was unaware of the intended terms for investors but she later became aware that they had been promised interest. We do not know, but we disagree that this is a contradiction. With that as an example, we emphasize the importance of examining Garcia's testimony (and that of other witnesses) carefully in light of other evidence in the record.

[243] We turn now to consider the representations made about operations in Colombia.

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[24] *Meharchand* at para 62

[25] *Springer v Aird & Berlis LLP*, 2009 CanLII 15661 (ON SC) at para 14

5.4.3.b The representations

[244] It is uncontroverted that the GBR Ontario Parties told potential investors that the Colombian operations were in production. Indeed, investors were told that they would receive not only the interest payments due on the debentures, but that they would receive royalty payments on sales as well.

[245] The GBR Ontario Parties also produced two marketing brochures that described the investment as secure. One stated that:

a. the biodiesel plant in Bogotá was already "fully functional", and beginning in 2016, the company would "be able to produce" more than 2 million litres of biodiesel monthly;

b. the investment would yield a "12% annual Secure Return"; and

c. there were "Signed purchase orders".

[246] The other brochure, entitled "SECURE INVESTMENTS", promised a 14% annual return and stated that the company was currently in production and had mineral rights.

[247] Aziz cautions that it is unclear at what point the bitumen and biodiesel assets would be sufficient to generate the 14% return. Aziz says that investors were not told that the Colombian assets were currently operating to that level, *i.e.*, with sufficient production at the time of the representation. Instead, investors generally understood that the project was in an early phase, and that production was expected to reach that level in the future.

[248] We cannot know what every single investor understood. Based on the evidence in the record, though, we cannot accept Aziz's submission as it relates to investors' entitlement to interest (as opposed to royalties). Both of the brochures referred to above could only have been interpreted by a reader as promising a "secure" 12% or 14% annual return (depending on the brochure). The Colombia Presentation said the same thing, promising a "100% Secured Investment with 14% per annum fixed Returns for 3 Years". None of those documents qualified the promise by saying that it was a projection, or that it would be reached some time in the future. The only reasonable interpretation of the brochures and the

Colombia Presentation is that the investor would begin receiving that rate of interest as soon as they invested, no matter the stage of production.

[249] In contrast to the description of interest payments, the documents did tie the payment of royalties to production of bitumen ("up to" $10 per ton) and/or biodiesel ("up to" 10 cents per litre). The promise of interest payments featured no such uncertainty or variability.

[250] Because production figures prominently in investors' entitlement to royalties, and in the comfort an investor might derive from the business's ability to pay the promised interest, we will now review the evidence relevant to those promises.

[251] The then-current and the future expected quantities of bitumen production were the primary components of representations and projections about revenue. Some versions of the Colombia Presentation claimed that 1,000 tons of bitumen were being produced monthly, and contained photographs that purported to show bitumen being extracted manually. Bajaj testified that this information came from Grenier and was about the La Esperanza mine, although he could offer no documentary support for that.

[252] Garcia testified that at the time the MoU was signed in early 2015, she expected bitumen production to increase to 30,000 tons/month once funds were injected.

[253] Some versions of the Colombia Presentation showed calculations based on expected bitumen production of 30,000 tons per month, the amount promised by GBR Colombia in the GBR Colombia MoU. Later versions of the presentation reduced that to 20,000 tons per month and contained what purported to be a letter of intent dated August 15, 2015, addressed to Paul James at GBR Colombia, from the VP of World Sales at Palmyra Petroleum Co. Inc., indicating that Palmyra was "ready and willing to order 20 000 tons" of bitumen monthly. The letter, which Grenier had provided to the GBR Ontario Parties, later proved to have been a forgery.

[254] It is unclear who forged the letter, but in any event, Staff correctly submits that we need not decide that question. In our view, it is the use that the GBR Ontario Parties made of the letter that is relevant. Even if they believed it to be legitimate at the time (and there is no evidence that they doubted its

authenticity), they did not take even basic steps to confirm the validity of what appeared to be a significant potential source of revenue.

[255] The basis for overall production and revenue estimates suffered another, unrelated setback. At one point, Bajaj received what he described as a "shocking call" from Grenier. In that call, Grenier told Bajaj to stop including the La Esperanza mine in presentations to investors or talking to investors about the mine, since it belonged not to GBR Colombia but to Mattachione, the purported "former principal" of the biodiesel facility, as referred to in paragraph [230]g above.

[256] After Grenier told Bajaj to stop including La Esperanza in the presentations, Bajaj substituted photographs of the biodiesel facility. He added revenue and return projections based on scenarios that contemplated biodiesel production ranging from 500,000 litres per month to 4 million litres per month. A scenario involving 2 million litres per month was highlighted. Bajaj testified that he received these numbers from Grenier, but he could not recall whether he received any documentary support for them.

[257] At the hearing before us, in support of the contention that the assets were generating enough revenue to pay interest to investors, Aziz submits that Grenier consistently gave reassurance to that effect. Aziz also points to Garcia's testimony that in February of 2016 there were potential coal sales that would generate $100,000 per month in revenue, and $50,000 per month of revenue from biodiesel. Whether those figures were reliable or not, we note that there was no reasonable basis to assume that First Global debenture holders would benefit from sales of coal (as opposed to bitumen or biodiesel).

[258] With respect to the potential for generating revenue from bitumen, Bajaj similarly sought comfort in unverified projections. He submits that Garcia and Grenier said they had a mineral reserve in the Rio Negro mine of approximately 1.26 million tons. The portion of the geologist's report excerpted in the Colombia Presentation suggested a possible inference of 1.1 million tons, but that the work plan for the mine contemplated the existence of 1.26 million tons. One need not be a mining expert to distinguish between an established reserve and a possible inference. The possible inference here ought to have offered little if any comfort.

[259] Bajaj says that he did research and calculated that the per ton price at 90% purity would range from $1,000 to $1,400. His research appears to have been limited to a simple search for the term "gilsonite price" on the website of a global and generic marketplace that is for all types of products and is not specific to natural resources. We heard no evidence about the reliability of such a source, or more importantly whether Bajaj had any reasonable basis to adopt that range as a benchmark against which to compare Grenier's estimates.

[260] According to Bajaj, Grenier advised that the bitumen was 82% pure, the price of which would be at least $500 per ton, yielding a reserve value of approximately $630 million. This information was reflected in the Colombia Presentation, which represented a net asset value of $441 million after deducting production costs of $189 million.

[261] The Colombia Presentation juxtaposed the supposed $441 million net asset value of the bitumen reserve against the $12 million amount of the first tranche of First Global debentures, purportedly to demonstrate that investment in the debentures would be fully secured.

[262] The Colombia Presentation then combined the projected $84 million annual revenue from the bitumen operations (based on a production estimate of 20,000 tons per month) with the projected $12 million annual revenue from the biodiesel operations to project a total annual revenue of $96 million.

5.4.3.c Actual production

[263] The optimistic and largely unfounded projections stand in stark contrast to what appears to have been the reality in mid-2015 and beyond. For example, emails from Grenier in June and July specified that there was no production at Rio Negro.

[264] There is no evidence that there was ever any bitumen production at any facility other than the mine that Grenier advised in the summer of 2015 was not one of the assets that would be transferred to GBR Colombia (*i.e.*, La Esperanza).

[265] As for biodiesel, we heard reference to two different facilities. Some evidence related to a smaller existing plant that was producing although in limited quantities. Other evidence referred to Garcia and Grenier's intention to establish

a bigger plant in a different location, and their need for funds to undertake that expansion and move.

[266] There is no evidence that biodiesel was ever produced or could be produced at the bigger facility. Doing so would require a licence for the use of methanol, a highly controlled substance in Colombia that is a necessary catalyst in the production process. Such a licence was still outstanding as late as March 2016. Understandably, we had no evidence of any biodiesel sales to customers.

5.4.3.d Conclusion about the truthfulness of the Colombian Operations Representations

[267] Once again, there were some inconsistencies in the various representations made to investors. Some investors may have understood when they invested that the facilities were not yet producing (and therefore selling) enough product to generate the necessary funds to pay interest on the debentures, but that that goal would be attained within a reasonable time. Others would not have had that understanding, especially in light of the categorically positive representations in the Colombia Presentation and the brochures.

[268] The representations about generating funds to pay interest do not mean that each dollar of revenue (or profit) must flow directly to debenture holders. As we discussed above, First Global bore the obligation to pay interest on the debentures, no matter what the level of production of the Colombian assets. Having said that, the ability of the Colombian operations to generate revenue was important, since investors would reasonably derive comfort from that in assessing the risk of losing their investment.

[269] In that regard, the Colombian Operations Representations materially misstated the extent to which the operations were, or would imminently, be able to provide that sense of security.

5.4.4 Security Representations

5.4.4.a Introduction

[270] We turn now to Staff's allegations that it was represented to investors that the First Global debentures would be fully guaranteed and secured by assets owned

by GBR Colombia. Staff alleges that these representations were untrue. We agree both that the representations were made and that they were untrue.

[271] The representations were unequivocal, with a clear message that investment in the First Global debentures was completely secure and guaranteed by assets owned by GBR Colombia, with no risk. The representations appeared repeatedly in the radio advertisements, the Colombia Presentation and the brochures.

[272] As we explain in greater detail below, those representations were false when made and they continued to be false throughout the Solicitation Period.

5.4.4.b The representations

[273] There can be little controversy about the content of many of the representations made to investors on this topic. While some representations were made orally, many were in documents and radio advertisements, the content of which is not in dispute.

[274] The radio advertisements that Bajaj placed referred to "14% secure interest" and to the fact that the investment was "guaranteed", "absolutely safe", "completely secure", "100% secure", and "fully secure against our company's asset".

[275] The Colombia Presentation described the investment as being "Secured Investments", because:

a. an investment made through an RRSP or TFSA was in a "Highly Regulated Industry";

b. the investment was "100% Secured";

c. the investment was "guaranteed by a <u>first charge</u> against all of the assets of [GBR Colombia] including Mineral rights" [emphasis in the original]; and

d. the guarantee would be at least 142% of the debenture amount over the term of the debenture (a figured derived by adding three years of interest at 14% to the principal), so both the investor's principal and interest were "protected".

[276] The GBR Ontario Parties also produced the two marketing brochures referred to above, both of which described the investment as secure. One stated that:

a. "Global Bioenergy Resources" had two offices, one in Richmond Hill and one in Bogotá; and

b. Global Bioenergy Resources was "a Canadian company" that had "secured the rights to mine… bitumen in Colombia".

[277] The other brochure, entitled "SECURE INVESTMENTS", promised that both principal and interest were secured against the assets of the company, and stated that the company was currently in production and had mineral rights.

[278] With respect to risk, the Colombia Presentation said that the need for risk mitigation was minimal, because, among other things:

a. the "exploration risk", which would typically account for 70 to 75% of the total risk of an investment of this type, was "not applicable";

b. "minerals and mining is a rich, hard asset";

c. current demand exceeded supply for bitumen; and

d. there was no risk associated with invested capital or return on the investment, since those were 100% guaranteed against the assets.

[279] The content of the Colombia Presentation and the radio advertisements is indisputable and is unequivocal. The message was abundantly clear – the investments were fully secured, both as to principal and interest, by the assets of the Colombian operation. The investor witnesses' testimony as to what they were told was consistent with the above, was not successfully challenged on cross-examination, and we accept it.

5.4.4.c Witnesses' testimony about the assets and interests

[280] In assessing the truthfulness of those representations, we confront the myriad of factual issues that arise in this proceeding about the various assets involved. Some of those issues relate to the particular kind of rights, *e.g.*, whether the rights constitute a title to land, exploration rights only, or other mineral rights. Other issues relate to identifying the owner or owners of the rights.

[281] In her affidavit, Garcia includes what purports to be a list of the companies and assets in which she says she had a controlling interest, directly or indirectly, as

of May 2, 2018. Her testimony accords with Aziz's version of what she and Grenier told Aziz.

[282] Garcia's affidavit also includes documents that, according to her, substantiate her testimony about the assets. Aziz challenges that testimony, submitting that it is unclear how the cited documents support her assertions.

[283] In his affidavit, Aziz includes a list of relevant assets that is nearly identical to Garcia's, except that he includes a bitumen mine by the name of "SGS Baranquilla", which he conceded on cross-examination was not pledged to secure the First Global debentures. That correction aside, Aziz testified that Garcia and Grenier told him that Garcia ultimately controlled all the subject assets.

[284] Whatever may have been the truth about whether Garcia controlled the various assets and was therefore in a position to cause them to be transferred to GBR Colombia, the more important question is whether the assets were ever transferred to that company.

[285] On this point, it is common ground that there were discussions, and some documentary references, to intentions to transfer assets to GBR Colombia. What those intentions were is less clear. For example, Bajaj admitted that he could not remember if, when he was beginning to raise funds using the Northern Coast subscription documents, he had figured out what form of security would be used.

[286] Whether those intentions translated into action is also unclear. For example, Aziz describes discussions he had with Garcia and Grenier about the intended transfer of assets. He testified that not all the assets in Colombia under their control would be associated with the First Global debentures. Initially, Garcia and Grenier stated that two assets would be transferred to GBR Colombia and used as security for the First Global investors:

a. the **La Esperanza** mine, a bitumen mine that was wholly owned by Asfaltitas Colombianas SAS, a company owned as to 60% by Biominerales Colombia SAS, in which Garcia had approximately a 74% interest; and

b. the **biodiesel facility**, a facility in Bogotá wholly owned by Biominerales Colombia SAS, producing biodiesel from waste cooking oil, and which Garcia says was never profitable, despite approximately $1.4 million of

capital raised from Canadian investors through GBR having been invested in it.

[287] Aziz states that for reasons unknown to him, Garcia and Grenier later decided that at least one and possibly two assets would be used instead of the La Esperanza mine.

[288] The asset that was certainly to be used, according to Aziz's account of what Garcia and Grenier decided, was often referred to as "the **Rio Negro mine**", although it was not always clear from all witnesses and documents whether the asset being described was:

a. as Garcia stated, the **Rio Negro Mining Exploration Title** that she owned along with her son purportedly contained bitumen deposits, and is a title that she says benefited from $50,000 invested from funds raised from Canadian investors through GBR, but was an exploration title only, since no actual mining title was ever obtained; or

b. the **Asfaltitas mine**, an asset near Rio Negro, owned 60% by AM Resources SAS (which in turn was indirectly wholly owned by Garcia) and in which GBR Colombia never had any ownership interest, according to Garcia.

[289] Aziz testified that he was always referring to what he understood to be the Rio Negro bitumen mine, not the Asfaltitas mine. He says that it was at least the Rio Negro mine that Garcia and Grenier said would replace La Esperanza, and possibly the Asfaltitas mine as well.

[290] However, Aziz also testified in his affidavit that "the ultimate agreement was that *those* assets (*i.e.*, both the Rio Negro mine and the Asfaltitas mine) would belong to [GBR Colombia] and secure investor funds." [emphasis in the original]

[291] We note the incongruity in the certainty of Aziz's assertion about there having been an "ultimate agreement", and his uncertainty about which assets were included (*i.e.*, whether the Asfaltitas mine would be included). We do not question Aziz's honesty in making these assertions, but his uncertainty is a gap that is emblematic of the manner in which much of the business that is the subject of this hearing was conducted.

[292] Having said that, we return to the central question. Were any of these assets transferred to GBR Colombia? Garcia is definitive in answering no. She testified that GBR Colombia never had any ownership interest in any of the assets identified on the list attached to her affidavit, primarily because the minimum fundraising of $5 million had not been achieved. At the highest, GBR Colombia may have had an interest in the Rio Negro Mining Exploration Title, clearly not a revenue-producing asset.

[293] Garcia's is the only direct testimony we have that speaks clearly to the question of whether GBR Colombia had an ownership interest in the subject assets.

[294] No other witness was in a position to testify directly on the topic, although Alli did testify that he participated in a conference call in November 2015 with Roch (GBR Colombia's lawyer) and staff from First Global's audit firm, in which (according to Alli) Roch gave some sort of confirmation that the Colombian assets were secured, except that the confirmation was temporary "until the confirmation came from [GBR Colombia] or Colby Monet [Roch's firm]." Alli fixes the time of the conference call by referring to preliminary work the firm was doing for First Global's 2015 audit.

[295] We place no weight on Alli's testimony on this point, because:

a. a supposed confirmation that is temporary until a confirmation is received does not, in our view, constitute a confirmation;

b. the auditor's testimony, which we accept as being more reliable than Alli's as to the timing of work on the 2015 audit, was that the firm did no work on the 2015 audit until 2016;

c. Alli did not suggest to the auditor in cross-examination that this call happened in 2015, thereby depriving the auditor of a fair opportunity to address Alli's testimony; and

d. Itwaru did not corroborate Alli's testimony, a notable divergence given the importance of the issue.

5.4.4.d Documentary evidence about the assets and interests

5.4.4.d.i Introduction

[296] We will now discuss a number of documents that may bear upon the question. We exercise caution when reviewing the documents in the record. Provenance and authenticity are sometimes in question, and the documents contain various inconsistencies that make us hesitant to rely on some of them in all their respects.

[297] The most relevant are set out in the following paragraphs. In considering these, we disagree with Staff's submission that all of them (except the letters from Roch, referred to beginning at paragraph [308] below) presuppose that the transfer of assets has taken place. We explain further as we consider the precise language in the documents.

5.4.4.d.ii First Global-GBR Colombia Debenture Agreement

[298] The First Global-GBR Colombia Debenture Agreement dated August 21, 2015, is signed by Aziz on behalf of GBR Colombia and by Itwaru on behalf of First Global. Each individual is named as the recipient of notices to his respective company.

[299] The agreement records that GBR Colombia will assist First Global in raising capital by referring potential investors to First Global and by "providing" GBR Colombia assets as collateral. We acknowledge that the words "will assist", literally construed, speak to the future and are not definitive about whether the transfer of assets or rights has already taken place. However, the agreement explicitly refers to assets that "are pledged as part of this Agreement".

[300] In the agreement, GBR Colombia represents that it is the sole and exclusive owner (or agent or representative of the owner) of the "pledged" assets and that GBR Colombia has the sole and unfettered right to pledge those assets. The agreement does not, however, identify the specific assets referred to.

[301] On balance, it appears that the parties intended that certain unspecified assets would be transferred by, or would have been transferred prior to, the agreement. Whether the assets were transferred or not is unclear.

5.4.4.d.iii Promissory notes

[302] As explained above, most of the funds raised by First Global were loaned to GBR Colombia. These loans were documented by promissory notes, one for each of the eleven advances made between August 25 and December 23, 2015.

[303] The first of the promissory notes, for $400,000 and dated August 25, 2015, served as a template for the remaining ten notes. It provides that "[v]alue received shall be guaranteed by a first charge against all of the assets of [GBR Colombia]…".

[304] The words "shall be" are temporally ambiguous. We do not read them as purporting to create an immediate security interest, and there is no evidence that anyone did. Indeed, as is discussed below, even after delivery of some of the promissory notes, efforts were still underway to ensure that the assets were available to GBR Colombia. Such efforts would be unnecessary if the security interest had already been established.

5.4.4.d.iv GBR Colombia board resolution mentioning a lien

[305] One of the seven October 2015 GBR Colombia board resolutions referred to above is entitled "Offering lien against all the assets of GBR to Investors". In it, the board resolves that it "allows to raise funds through a First Global Data Ltd. (First Global debentures) and GBR will transfer Mineral Rights to First Global debentures to Secure Investors Investments. [*sic*]" The board further resolves to "pay the investors" a number of benefits, including that the "Debentures shall be guaranteed by a first charge against all the assets of [GBR Colombia] […] and this will include the mineral rights of the [GBR Colombia]. [*sic*]"

[306] The resolution suffers from the same temporal ambiguity as the promissory notes, although the words "will transfer" are more clearly prospective than are "shall be". Further, the legal imprecision of the remaining language of the resolution hinders the drawing of reliable conclusions, as does the fundamental inconsistency between: (i) the contemplated "transfer" of "mineral rights" to First Global directly, and (ii) the contemplated guarantee of the First Global debentures by a first charge against all of GBR Colombia's assets.

[307] We do not read the resolution as purporting to create an immediate security interest, for reasons similar to those expressed above regarding the promissory notes.

5.4.4.d.v Roch letters

[308] The next documents we examine attracted considerable attention during the hearing.

[309] Garcia attached to her affidavit two letters appearing to be on the letterhead of the Montreal law firm of Colby Monet, solicitors for GBR Colombia, and signed by Roch. The letters are dated October 8, 2015 (four days before the GBR Colombia board resolutions are dated) and are headed in bold, underlined, all capital letters, "UNDER ALL RESERVES". That English phrase is a literal translation of the French "sous toutes réserves", which typically means "without prejudice" and sometimes means "subject to confirmation".

[310] The letters are addressed "to whom it may concern" at GBR Ontario. Each letter describes itself as a "letter of comfort" and purports to confirm that GBR Colombia has acquired certain rights.

[311] One letter refers to "the rights of the Rio-Negro Mine in Colombia, a surface covering over… 650 hectares". The letter advises that Colby Monet have "prepared" the transfer of the mineral claims in Colombia for GBR Colombia as requested. Roch warns that the "transfer may take a certain period of time" to appear on the registry, but promises that they will follow up and ensure that the claims are transferred at the registry as swiftly as possible.

[312] We find this letter to be ambiguous as to what formal steps had already been taken, and as to what steps remained to be taken. In any event, we question the utility of the letter given its "without prejudice" nature, a characterization that is clear from the heading but mysterious given the content of the letter and the absence of anything approaching an attempt to resolve issues.

[313] The parties before us did not address this supposed "without prejudice" character of the letter, so we do not rely on it. Even without taking that into account, the letter does not suffice as reliable confirmation that any assets had

been transferred. This is particularly so in light of subsequent communications, as described in detail below.

[314] The other letter refers to "the rights to the biodiesel production in Colombia". It provides that the "acquisition of the biodiesel production plant is conditional to [*sic*] the repayment of a loan to the former principals in the amount of… $150,000… plus any additional charges and costs." Colby Monet promises to follow up and ensure that "the repayments are made and that the titles are transferred at the as [*sic*] swiftly as possible."

[315] The letter is ambiguous as to whether the "acquisition" that is conditional upon the loan repayment is of the biodiesel plant itself as opposed to of production rights (if there is a difference in the context of this letter), since the latter are reported to have already been acquired. The letter is also ambiguous as to who the "former principals" are, and even as to who loaned whom the $150,000 that is mentioned, although as we have discussed above, at least some of the parties understood the reference to be to Mattachione, the apparent owner of the La Esperanza mine. Finally, as with the previous letter, the utility of the letter is questionable given its supposed "without prejudice" nature. Once again, even putting that consideration aside, the letter does not suffice as reliable confirmation that any assets had been transferred, particularly given the apparently unsatisfied condition and subsequent communications.

5.4.4.d.vi Absence of clear documentary support

[316] Paul James (GBR Colombia's CEO) testified that as part of his task to help provide an "insurance wrap" around the Colombian bitumen assets, he tried to conduct what he considered to be due diligence about the various properties in Colombia. In email correspondence, he asked Grenier for information and documents, including evidence of title to land, or agreements to access the mining sites and to carry on mining activity on those sites, government permits to allow the same, and information about the biodiesel facility.

[317] James received information from Grenier and from others, but he did not fully understand some of the documents he was provided (often because they were in Spanish and had not been translated), and he was not satisfied with the reliability of some of the information. In particular, he noted the absence of

documentation that clearly established ownership of the land. He continued to follow up with Grenier and with Roch, but the typical response was that things were in progress.

[318] James communicated his concerns to Aziz (who shared some of James's concerns, including about an inability to fully understand the documents), as well as to Bajaj and Thiviyanayagam, but his concerns were never resolved.

[319] As Aziz conceded on cross-examination, none of the documents he reviewed established that GBR Colombia owned any of the Colombian assets.

5.4.4.e Other circumstantial evidence about the transfer of assets

[320] Given the limitations of the documentary evidence that arguably purports to grant rights, and given the scant oral testimony on this issue, we must consider other circumstantial evidence from which we may be able to draw inferences about the question. We turn to consider that evidence now.

[321] Circumstantial evidence about the transfer of assets includes oral and written communications about the status of any such transfer, and about any preconditions that applied before the transfer could be completed.

[322] Aziz submits that Grenier repeatedly assured him and Bajaj that title to the Colombian assets had been transferred, or was in the process of being transferred, to GBR Colombia. Grenier said that Roch was taking steps to effect the transfers. We note that in mid-June 2015, Grenier wrote an email in which he referred to putting the Rio Negro and La Esperanza mines into GBR Colombia, but he made clear that the assets were not yet owned by GBR Colombia.

[323] Faille also provided information to Bajaj on behalf of Grenier, including an assurance in August 2015 that an unspecified "we" had purchased the mineral rights, and not the land, for the La Esperanza and Rio Negro mines within the past year. He also noted that the reserves were worth billions.

[324] When Bajaj was asked whether he stopped the fundraising efforts when he learned that the bitumen assets had not been transferred to GBR Colombia, he referred to the two letters from Roch, referred to above.

[325] As to whether there were any preconditions to the transfer of assets to GBR Colombia, the various witnesses differ significantly.

[326] Garcia testified that GBR Colombia was incorporated for the purpose of transferring La Esperanza and the biodiesel facility to GBR Colombia once Bajaj and Thiviyanayagam had raised $5 million. According to her, once that minimum was reached, Bajaj and Thiviyanayagam would jointly be entitled to a 50% interest in GBR Colombia. She testified that any preparatory steps taken toward transferring the assets were just that, and the actual transfer would not be completed until $5 million had been raised. Garcia says that it was important to impose the minimum, since she required certainty about raising the necessary funds to ensure development of the assets without undue costs and delays.

[327] In contrast, Bajaj testified that the $5 million figure in the GBR Colombia MoU was a target, not a condition – a position that is consistent with the words "up to $5 million" in the MoU. Further, Bajaj submits that had there been a condition requiring a minimum raise of $5 million, an escrow account would have been established for the raised funds, until that minimum was met.

[328] Garcia justifies the discrepancy between her understanding and that of Bajaj by saying that there was an oral agreement that existed in parallel to the MoU. Bajaj denies the existence of such an agreement.

[329] Garcia's testimony is difficult to accept on its face, given the clear contradiction between the explicit text of the MoU (which Garcia signed, and which said "up to $5 million") and the terms of the oral agreement that Garcia claims existed.

[330] Bajaj's testimony is also problematic, though. He testified that the $5 million figure was a target, but he was unable to explain what would happen if fundraising reached $5 million. He testified that even if the GBR Ontario Parties raised less than $5 million, he would become a shareholder in GBR Colombia, which would own bitumen mines worth hundreds of millions of dollars. We have great difficulty accepting that if the GBR Ontario Parties raised only a nominal amount, Bajaj still reasonably expected to own 25% of that business.

[331] The confusion continued beyond the initial stages. The parties' uncertainty about which assets, if any, were to be transferred or had been transferred to GBR Colombia is exemplified by the call from Grenier to Bajaj we referred to above, that Bajaj described as "shocking". In that call, Grenier told Bajaj to stop including that mine in presentations to investors, since the mine belonged not to

GBR Colombia but to Rob Mattachione, an individual who had worked with Bajaj and Aziz in the past.

[332] Until that call, Bajaj was confident that the La Esperanza mine was one of the assets that would be transferred to GBR Colombia. Despite this, upon receiving the call he complied with Grenier's instruction and removed references to the mine from the Colombia Presentation. That such an apparently significant change in the assets that backed the First Global debentures could happen at all, could happen so suddenly, could happen without any formal documentation but only on the strength of a phone call from Grenier to Bajaj, and could happen without notice to or consent from investors who had already provided funds, demonstrates Bajaj's cavalier manner in managing the millions of dollars invested by the First Global debenture holders.

[333] In the days between the first advance from First Global (August 25, 2015) and the GBR Colombia board meeting in Montreal in mid-October 2015, there were numerous red flags about whether GBR Colombia held the assets as expected:

a. on August 31, Grenier wrote in an email that "Global" was held by Garcia alone;

b. on September 5, in response to an inquiry from Bajaj, Faille advised that the mineral rights were in Garcia's name and that "the lawyer is working on it", in response to which Bajaj asked for a letter transferring the rights (associated with the Rio Negro mine) to GBR Colombia;

c. also on September 5, Grenier wrote about transfer paperwork that remained to be done; and

d. on September 16, Grenier wrote two emails that clearly implied that the bitumen claim had not yet been transferred to GBR Colombia.

[334] As Aziz testified in his affidavit, "final documentation was always *about* to come" [emphasis in the original]. This candid and apt description is at odds with the GBR Ontario Parties' position now that they reasonably believed at the time that any assets had been transferred. Similarly, Aziz submits that he was reassured by Roch, among others, that GBR Colombia owned the assets "being offered up"

as security, words that are inconsistent with an understanding that the transfer had been concluded.

[335] The issue had still not been resolved by the time of the GBR Colombia board meeting in mid-October. As discussed above, the two "without prejudice" letters from Roch and one of the GBR Colombia board resolutions signed at that meeting mention, among other things, existing or potential security interests against certain assets. The resolution, which is not clearly drafted, contains these notable elements:

a. it is titled "Offering lien against all the assets of [GBR Colombia] to Investors";

b. GBR Colombia "will transfer Mineral Rights to [First Global] to Secure Investors Investments"; and

c. the debentures "shall be guaranteed by a first charge against all of the assets of [GBR Colombia]… and this will include the mineral rights of [GBR Colombia]".

[336] We noted above Garcia's testimony that the GBR Colombia board resolutions were not effective. According to her, the resolutions were to remain undated and held in escrow until $5 million had been raised. We do not accept her testimony. It is contradicted by the documentary evidence, in which all mentions of a $5 million figure portray the number as a target, not a minimum. it is uncorroborated by any other evidence, including by any contemporaneous or subsequent covering note or communication. Garcia did not explain why there would be an oral and undocumented agreement to this effect. This disparity in the evidence is not about an insignificant detail. This is a critical point, about which one would reasonably expect to see some corroboration. We find that it is more likely than not that there was no such oral agreement.

[337] The lack of clarity and certainty did not improve in the ensuing months. For example:

a. on October 28, Roch sent an email that suggested a documentation deficiency and that continued to leave doubt about the ownership of one of the assets;

b. on December 12, Grenier wrote an email noting that the biodiesel facility was not owned by GBR Colombia, and stating that GBR Colombia had "not respected the commitment toward this business";

c. on February 29, 2016, Bajaj emailed Aziz with a list of items needed "to fix to protect the investors", including a legal transfer of the bitumen, biodiesel and coal assets; and

d. on March 9, 2016, Grenier wrote in an email that by the beginning of the following week, there would be "notarized paper" showing that the Rio Negro mine (as to 100%) and the Hoyo Patia coal mine (as to 40%) would belong to GBR Colombia.

[338] In contrast, investors received repeated assurances and were not kept well informed of issues relating to the supposed intended transfer of assets. For example, in early July 2015 when Northern Coast advised that it would no longer be involved with the group because of Grenier's criminal activities (including money laundering and creating false documents), none of that information was conveyed to existing or potential investors. Without any follow-up or due diligence in light of what should have been very concerning information, Bajaj and Aziz appear to have deliberately kept that information to themselves.

5.4.4.f Conclusion about the truthfulness of the Security Representations

[339] Before concluding about the truthfulness of the Security Representations, we must address a submission made by Aziz. He asserts that there are various things in the record (including documents and evidence of oral communications) that "could conceivably have transferred ownership or granted security" in respect of some or all of the subject assets. He submits that whether any of that did have the effect of transferring ownership or creating a security interest is a matter of Colombian law, and therefore a question we are not in a position to determine in the absence of any testimony (most likely expert testimony), which Staff did not adduce.

[340] If the question before us were one of Colombian law, we would agree with Aziz's submission. However, we reject the underlying premise of the submission.

[341] As we have noted, Garcia's testimony was the only direct evidence before us as to whether GBR Colombia ever had an ownership or security interest in the assets. She unequivocally denies that this was so. We have reason to find her testimony to be unreliable in some respects, but on this issue her testimony is consistent with the exchange of correspondence, referred to above, that took place in the latter half of 2015 and early 2016.

[342] All of that evidence, taken together, is sufficient for us to conclude on a balance of probabilities that no title or security interest was ever transferred to or for the benefit of GBR Colombia. While the respondents did not bear the initial burden of proving the contrary, they knew what Staff's position was on this issue, and if they considered Staff's position to be incorrect, they had every opportunity to adduce evidence to rebut the conclusion that naturally flows from the evidence that Staff put forward. They did not, and we heard no reason why that was impossible or even difficult.

[343] Reaching that conclusion involves no assessment of Colombian law. We simply accept Garcia's testimony on this point, corroborated as it is by numerous contemporaneous communications.

[344] In reaching that conclusion, we are mindful of Aziz's submission about Grenier's history and, impliedly, about how Grenier would not have been a credible witness had he testified. We need not resolve that question, though, when assessing whether the appropriate assets were ever transferred to GBR Colombia. As Aziz himself observed, Grenier was always saying that final documentation was about to come. Either Grenier was telling the truth at the time or he was not, but either way the communications back and forth would not have consistently reflected an absence of such final documentation if that documentation had already been received. Clearly, no one believed at the time that the transactions had been completed. Not once did anyone ask why others were still pursuing documentary proof when that proof already existed. Aziz's submission on this point is illogical, no matter whether Grenier can be trusted or not.

5.5 Staff's allegations of fraud contrary to s. 126.1(1)(b)

5.5.1 Introduction

[345] With that factual background, we turn to consider the alleged contraventions of the Act arising out of the representations. We begin with Staff's allegation that the GBR Ontario Parties perpetrated a fraud on the First Global debenture holders.

[346] For Staff to prove its allegation of fraud, Staff must establish two things:

a. the *actus reus*, a mostly objective element (except for the subjective requirement that the act have been a voluntary act of the person alleged to have committed it,[26] a consideration not in issue here), which must consist of:

   i. a prohibited act, which may be an act of deceit, falsehood, or some other fraudulent means; and

   ii. deprivation caused by that act; and

b. the *mens rea*, or subjective or mental element, which must consist of:

   i. subjective knowledge of the act referred to above; and

   ii. subjective knowledge that the act could have as a consequence the deprivation of another.[27]

[347] While a corporation cannot be described as having "knowledge" in the same way that an individual does, a s. 126.1(1)(b) allegation is established against the corporation where Staff proves that the corporation's directing minds knew or ought reasonably to have known that the corporation perpetrated a fraud.[28]

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[26] *R v Théroux*, [1993] 2 SCR 5 at para 17 (***Théroux***)

[27] *Théroux* at para 24, cited in *Quadrexx* at para 19

[28] *Al-Tar Energy Corp (Re)*, 2010 ONSEC 11 at para 221

5.5.2 Did the GBR Ontario Parties engage in an act of deceit, falsehood or some other fraudulent means?

5.5.2.a Introduction

[348] We start our analysis by considering the first of the four elements listed above, *i.e.*, the first of two parts of the *actus reus* test. Did the GBR Ontario Parties engage in an act of deceit, falsehood or other fraudulent means?

5.5.2.b Scope of the Statement of Allegations

[349] Aziz makes two objections to Staff's closing submissions on this topic, arguing that some of those submissions are outside the scope of the Statement of Allegations.

[350] First, Aziz submits that Staff unfairly broadens the range of alleged misrepresentations. We disagree.

[351] In the Statement of Allegations, Staff particularizes its fraud allegation as follows:

a. the GBR Ontario Parties soliciting investments in the face of First Global's and the GBR Ontario Parties' contradictory representations regarding the intended use of their investment funds;

b. the representations regarding the First Global debentures being fully secured by a charge against assets owned by GBR Colombia were untrue;

c. the funds raised from the sale of First Global debentures were used in a manner contrary to the representations;

d. the GBR Ontario Parties knew or ought to have known that the various representations were false or misleading, in particular:

   i. some funds went to coal mining projects in respect of which GBR Colombia had no ownership interest;

   ii. no assets were pledged by GBR Colombia as security;

   iii. GBR Colombia made no interest payments to First Global under the promissory notes; and

iv. some funds went to make interest payments on the First Global debentures and the GBR debenture.

[352] Aziz objects to Staff submitting that funds were put to uses different from those represented. However, his objection is limited to contrasting at a high level the organization of Staff's closing submissions with the organization of a portion of the Statement of Allegations. He does not develop that submission by identifying any variances that are substantive, as opposed to merely being different in structure and wording.

[353] We see no differences that are substantive or that might cause any unfairness to Aziz or either of the other GBR Ontario Parties. Paragraph 10 of the Statement of Allegations explicitly alleges the *actus reus*, *i.e.*, that the capital raised from the sale of First Global debentures was used in a manner contrary to the representations. It particularizes that allegation by mentioning First Global's retention of $1.5 million and the use of $2.9 million to or for the benefit of GBR Colombia. Paragraph 46 of the Statement of Allegations repeats that apportionment, explicitly alleging that the funds were not used for bitumen mining and/or biodiesel operations purportedly owned by GBR Colombia.

[354] Paragraph 50 of the Statement of Allegations alleges the *mens rea, i.e.*, that Bajaj and Aziz knew or ought to have known that the Use of Funds Representations (among others) were false or misleading. It is true that paragraph 51, which follows that allegation and which particularizes the *mens rea*, does not explicitly mention some of the uses Staff complains of in its submissions (*e.g.*, referral fees, GBR Ontario and Threegold business expenses). However, in alleging the *mens rea* component of the fraud allegation, paragraph 50 incorporates by reference paragraph 46, *i.e.*, the allegation that none of the funds were used for bitumen and/or biodiesel.

[355] Taking these provisions of the Statement of Allegations together, Staff expressly alleges that Bajaj and Aziz knew or ought to have known that the funds raised were generally not put to the promised uses. Neither Bajaj nor Aziz suffers any prejudice by the absence of an explicit editorial link. We therefore reject Aziz's submission that Staff has unfairly broadened the case regarding misrepresentations.

[356] Aziz's second objection is that at times in its submissions, Staff relies on the "other fraudulent means" element of "deceit, falsehood or other fraudulent means", but the Statement of Allegations refers only to misrepresentations and not to "other fraudulent means". We reject Aziz's submission that this is unfair.

[357] Staff's allegation that Aziz, Bajaj and GBR Ontario perpetrated a fraud is clear both on its face and in its essential content. Each of "deceit", "falsehood" and "other fraudulent means" involves dishonesty. Aziz offered no support for the proposition that Staff's allegation must conform to that wording, and we see no policy reason to reach that conclusion. The Statement of Allegations leaves no mystery about the case Aziz and the other respondents had to meet. Further, once again Aziz did not attempt to identify any prejudice resulting from Staff's choice of words. Broadly speaking, any defence to "deceit" or "falsehood" would necessarily incorporate everything needed to defend against "other fraudulent means", given that all the material facts are set out in the Statement of Allegations.

[358] We therefore reject both of Aziz's objections about Staff's closing submissions.

5.5.2.c Analysis of "deceit, falsehood or other fraudulent means"

5.5.2.c.i Use of Funds Representations

[359] We return now to the first element that Staff must establish in order to prove its fraud allegation. Did the GBR Ontario Parties engage in an act of "deceit, falsehood or other fraudulent means"? We consider that question first with respect to the Use of Funds Representations.

[360] Even if a representation is not literally false at the time it is made (*e.g.*, a statement of intention as to future use of funds), a respondent may be found to have committed the fraud if they adopt some other fraudulent means in connection with that representation. The Supreme Court of Canada, in the leading case of *Théroux*, stated that whether an act falls within "other fraudulent means" must be determined objectively, with reference to what a reasonable person would consider to be a dishonest act.[29] Even where deceit or falsehood

[29] *Théroux* at para 14

cannot be established, a situation may still be dishonest and therefore be "other fraudulent means".

[361] That description applies to unauthorized diversions of funds[30] because they generally constitute, in the words of the Supreme Court of Canada, "the wrongful use of something in which another person has an interest, in such a manner that this other's interest is… put at risk."[31] It is the unauthorized nature of the diversion that is the wrongful use at the heart of the dishonesty contemplated by "other fraudulent means". The separate question of whether a wrongful use puts one's interest at risk (as contemplated in the above quotation) is part of the analysis of deprivation. That is the second element of the *actus reus*, which we will address below.

[362] We have found that none of the raised funds were used as Bajaj and Aziz promised, with the possible exception of the $150,000 that flowed through Threegold to Garcia's US company. Other than that amount, no funds were directed to bitumen or biodiesel assets owned by GBR Colombia or GBR Ontario. Clearly there were bitumen and biodiesel assets of some sort, over which Garcia and/or her associates and related companies apparently had some interest, but that is a very different thing. When investor funds were allocated to entities and uses that did not meet the stated criteria, the investors did not get what they bargained for. This diversion of funds to other purposes constitutes the first of the two elements of the *actus reus* of a fraud.

[363] In this case, the unauthorized diversions included the payment of interest to the First Global debenture holders, and the payment of expenses and referral fees associated with the fundraising process. Those uses of funds are dishonest, as payments to unrelated third parties would be.[32] Just because the impugned uses have some connection to the securities used to raise the funds does not change that conclusion.

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[30] *Théroux* at para 15

[31] *R v Zlatic*, [1993] 2 SCR 29 at para 19 (***Zlatic***)

[32] *Rezwealth Financial Services Inc (Re)*, 2013 ONSEC 28 at para 265; *New Found Freedom Financial (Re)*, 2012 ONSEC 46 at para 193

[364] Accordingly, we conclude that with respect to the Use of Funds Representations, Bajaj and Aziz engaged in acts that constituted "other fraudulent means" within the meaning of s. 126.1(1)(b). Because Bajaj was indisputably a directing mind of GBR Ontario, and carried out all the impugned activities in that capacity, it follows that GBR Ontario also engaged in the same acts. The conclusion about "other fraudulent means" applies equally to GBR Ontario.

5.5.2.c.ii Colombian Operations Representations

[365] We will now consider whether Bajaj and/or Aziz engaged in an act of deceit, falsehood or other fraudulent means with respect to the Colombian Operations Representations.

[366] We concluded above that the Colombian Operations Representations materially misstated the extent to which the operations were, or would imminently, be able to provide that sense of security. In that regard, we reject the implications of Aziz's submission that "[N]one of the investor witnesses testified that they were actually told that the Colombia projects were immediately capable of generating a 14% return." That submission does not mirror Staff's allegation, but even if they are substantially similar, we focus on the representations that were indisputably made (in the Colombia presentation and the brochures), not on recollections of conversations long past. We focus on the indisputable truth that at no time did production in Colombia remotely approach what was suggested in those representations. Taking all of this together, the representations were false.

[367] We also conclude that both Bajaj and Aziz were responsible for making those representations, although Aziz to a lesser extent than Bajaj.

[368] Accordingly, Staff's proof that Bajaj and Aziz made the false representations satisfies the first element of the *actus reus* in s. 126.1(1)(b). Because Bajaj was indisputably a directing mind of GBR Ontario, and made all the misrepresentations in that capacity, it follows that GBR Ontario is also responsible for those misrepresentations. The conclusion about s. 126.1(1)(b) applies equally to GBR Ontario.

5.5.2.c.iii Security Representations

[369] We now consider whether the Security Representations constitute an act of deceit, falsehood or other fraudulent means.

[370] The GBR Ontario Parties' representations that investment in First Global debentures would be 100% secure, guaranteed by assets held by GBR Colombia, and risk-free, were false. There was no evidence before us, and there was no reliable evidence at the time of the capital raise, that any such security existed. We think it more likely than not that there was no such security.

[371] Accordingly, Staff has established the first of two components of the *actus reus* with respect to the representations about the security of the investment. Both Bajaj and Aziz were responsible for making these representations, although Aziz to a lesser extent than Bajaj.

[372] Once again, Staff's proof that Bajaj and Aziz made the false representations satisfies the first element of the *actus reus* in s. 126.1(1)(b). Because Bajaj was indisputably a directing mind of GBR Ontario, and made all the misrepresentations in that capacity, it follows that GBR Ontario is also responsible for those misrepresentations. The conclusion about s. 126.1(1)(b) applies equally to GBR Ontario.

5.5.3 Was there a deprivation caused by the dishonest act, *i.e.*, the unauthorized diversion of funds?

5.5.3.a Use of Funds Representations

[373] Having found that Staff has proven the first element of the *actus reus* in respect of each of the three sets of representations, we turn to the second element; namely, did that first element cause a deprivation? We begin with the Use of Funds Representations.

[374] The investor witnesses testified that they have lost their entire investment.

[375] It appears that none of the $4.46 million raised was returned to investors. Staff need not prove that, though, since a risk of prejudice to economic interests causes a deprivation,[33] and that risk of prejudice can be established where

[33] *Théroux* at para 13

investors are induced, by dishonest means, to purchase or hold an investment, even if doing so causes no actual economic loss.[34] Accordingly, we are not required to engage in an assessment of the relative risks of the authorized use of funds and the unauthorized use of funds.

[376] There is a causal link between a diversion of invested funds like the one that occurred in this case, and a risk of prejudice to those funds. In these circumstances, the investors unwittingly took on risks they did not bargain for.

[377] Because of the causal link between the diversion and a risk of prejudice, and because Staff relies here on "other fraudulent means" (*i.e.*, unauthorized diversion of funds) Staff need not prove that investors actually relied on the act that proved to be dishonest.[35] Staff has proven the dishonest act undertaken voluntarily by the respondents, and a deprivation caused by that dishonest act. Staff has therefore established the *actus reus* elements of its fraud allegations.

[378] In reaching that conclusion, we attach no weight to Staff's submission that investors in the First Global debentures were generally unsophisticated, and that there is no evidence that any of them properly qualified as an accredited investor. The investors who testified at the hearing represent only approximately 5% of the total number of investors. While we have no reason to believe that the investors who testified were an unrepresentative sample, we have no evidence upon which we can conclude that they were representative.

[379] Little turns on that, until we reach Staff's next submission that the GBR Ontario Parties specifically targeted investors who were neither knowledgeable nor experienced. We reject the implication, if one was intended, that the GBR Ontario Parties deliberately preyed on more vulnerable investors to improve the chances of concluding a transaction. There is no direct evidence to support that implication, and we decline to draw that inference from the limited evidence in the record about the investor group's characteristics, which could just as easily be attributable to who Bajaj's and Aziz's contacts were, and their referral network.

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[34] *Quadrexx* at para 21

[35] *R v Riesberry*, 2015 SCC 65 at para 26

[380] Returning to the specific element of the fraud allegation, we conclude that the Use of Funds Representations were a substantial cause of the deprivation suffered by all investors.

5.5.3.b Colombian Operations Representations

[381] We reach the same conclusion about the Colombia Operations Representations.

[382] It was evident from the investor witnesses' testimony that they were focused on the return on their investment, and the ability of their invested funds to earn them that return. We conclude that it is more likely than not that the materially misleading overstatement of the existing or imminent production by the Colombian operations to generate sufficient funding to provide the promised 14% return did in fact induce many, if not most, investors to purchase First Global debentures.

[383] The false representations therefore contributed to their deprivation, in the form of a complete loss of their principal and most or all of the interest they expected to receive from their investment.

5.5.3.c Security Representations

[384] We reach the same conclusion about how the Security Representations caused the same deprivation, for the same reasons set out above about the Colombian Operations Representations.

[385] We accept the testimony of the investor witnesses who actually relied on the representations, and we find that their reliance was reasonable. The false representations therefore contributed to their deprivation.

5.5.4 Did each respondent have subjective knowledge of the fraudulent act?

5.5.4.a Introduction

[386] We turn to consider the mental element of the fraud allegations, which is established where: the respondent is subjectively aware that (i) they are undertaking a prohibited act; and (ii) the prohibited act could cause deprivation.[36]

[36] *Théroux* at para 21

[387] In doing so, we bear in mind that subjective awareness may be established by showing that the respondent was reckless.[37] If one is aware that there is danger that their conduct could bring about the prohibited result, but persists despite the risk, that person is reckless and that subjective element is proven.[38]

[388] We also highlight the words "reasonably ought to know" in s. 126.1(1). This constructive knowledge principle makes clear that Staff may prove the element of knowledge of the fraudulent act by establishing that the respondent reasonably ought to have known that the impugned act, practice or course of conduct perpetrates a fraud.

5.5.4.b Use of Funds Representations

5.5.4.b.i Introduction

[389] We begin with the Use of Funds Representations.

[390] In order to prove the first of the two elements, *i.e.*, that the respondent was subjectively aware that they were undertaking a prohibited act, Staff need not show that the respondent regarded the act as dishonest. In the case of a dishonest means (*e.g.*, unauthorized diversion of funds), subjective awareness of the prohibited act is proven where the person knowingly undertook the act. It is not necessary to prove that they knew that the act that they undertook was prohibited.[39]

[391] We have already found that both Bajaj and Aziz made, or were at least aware of, all of the impugned representations made to investors. For each of the two of them, it then remains to be determined whether he was aware, or ought to have been aware, of the diversion of funds in a manner contrary to those representations.

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[37] *Théroux* at para 25

[38] *Sansregret v The Queen*, [1985] 1 SCR 570 at para 16

[39] *Théroux* at para 22

[392] Bajaj's and Aziz's knowledge that funds were being diverted is evidenced by the following, among other things:

a. both Bajaj and Aziz signed the GBR Colombia resolutions in October 2015, one of which documented that 30% of the raised funds would be used for purposes other than sending to GBR Colombia;

b. one of the resolutions that both Bajaj and Aziz signed approved the use of $1 million for the coal mine, and in correspondence from Bajaj to Grenier (copied to Aziz, among others), Bajaj raised the concern that the $1 million had been "raised for Bitumen and Bio-diesel";

c. Aziz signed the First Global-GBR Debenture Agreement and the promissory notes documenting transfers of raised funds, and none of these documents referred to any funds going to GBR Colombia, contrary to the Colombia Presentation, of which he was fully aware; and

d. Bajaj and Aziz had control over GBR Ontario and Threegold bank accounts and authorized various uses of funds in a manner inconsistent with the Use of Funds Representations.

[393] We conclude that both Bajaj and Aziz knew that raised funds were being diverted to unauthorized purposes. Staff has proven the first part of the *mens rea* with respect to the Use of Funds Representations.

5.5.4.c Colombian Operations Representations

[394] We now consider that first part of the *mens rea* in the context of the Colombian Operations Representations.

[395] We agree with Staff's submission that both Bajaj and Aziz knew, or ought to have known, that the Colombian assets were not generating any appreciable revenue at all, let alone enough to support the 14% interest obligation that First Global had to its debenture holders. At a minimum, Bajaj and Aziz were reckless on this point, as is demonstrated by:

a. their near-total reliance on unsupported and uncorroborated information (including estimates of production) from Grenier, whom they knew had a background that ought to have raised significant red flags;

b. their engagement in "diligence" that was cursory and superficial at best, *e.g.*, a visit to what purported to be a mining facility using manual methods, without knowing with any certainty what that facility was;

c. their wishful transformation of tentative possibilities (*e.g.*, a "possible inference") into concrete projections;

d. their being advised that the La Esperanza mine was not available to support the First Global debentures, but continuing the fundraising without verifying whether there was production at other facilities;

e. their approval of investment in the coal mine because they knew that, in Aziz's words, the other assets "were experiencing regulatory delays and would not be able to generate an immediate return to pay interest to investors"; and

f. their approval of the use of new investor funds to pay interest to previous debenture holders.

[396] In each of those instances, they were aware or were at least reckless. Staff has proven this part of the *mens rea*.

5.5.4.d Security Representations

[397] In our analysis above regarding the *actus reus* of the Security Representations, *i.e.*, the various ways in which the GBR Ontario Parties represented to investors that their investment was secure, we reviewed the various correspondence and discussions, in which Bajaj and Aziz were fully involved, and from which it was clear that assets had not been transferred and no security interest had been created.

[398] Aziz's own testimony that final documents were always about to come (according to Grenier) exemplifies the lack of care that Bajaj and Aziz took to ensure that the Security Representations were fulfilled. We reject Aziz's submission that he reasonably believed that the GBR Colombia assets had been transferred or were in the process of being transferred. We do not accept that he believed (reasonably or otherwise) that the assets had been transferred. The term "in the process of being transferred" is so vague as to be meaningless in this context, especially because by his own description that process was infinitely long. In any

event, the Security Representations in which he participated were not qualified or limited in a way that would have given the investors to whom they were made the benefit of appreciating the level of uncertainty.

[399] Bajaj's testimony and submissions also underscore the cavalier attitude that he and Aziz had on this issue. Bajaj testified that it was First Global's responsibility "to secure the asset [*sic*] to protect the investor", and that Aziz was overseeing First Global's efforts in that regard. That view is not shared by others, it is inconsistent with the documentary record, and we reject it.

[400] Even if his view was factually correct, his supposed understanding fundamentally misconceives where responsibility lay. It was the GBR Ontario Parties, not First Global or its principals, who made the Security Representations. Indeed, the First Global subscription documents that Bajaj used made no mention of the Colombian operations, or Colombian assets, or use of such assets to secure the investment. Yet Bajaj persisted in reassuring every investor, in writing and orally, that the investment was 100% secure, including because of a charge on the assets.

[401] We find that Bajaj and Aziz were aware that the Security Representations were false, or they were at least reckless as to their accuracy.

5.5.4.e Self-reliance vs reliance on others

[402] We now consider the extent to which the GBR Ontario Parties purported to rely on others, as opposed to on their own diligence, such as it was.

[403] We have found that Staff has proven the first part of the *mens rea* with respect to the GBR Ontario Parties and all three sets of impugned representations. In other words, the GBR Ontario Parties were aware that the representations were false, or were at least reckless as to their accuracy.

[404] We alluded briefly to Bajaj's and Aziz's testimony and submissions that they carried out due diligence, and therefore that they reasonably believed that the representations were true.

[405] A defence of due diligence is available to an allegation of fraud contrary to s. 126.1(1)(b) of the Act. Because we do not accept that the GBR Ontario Parties in fact conducted due diligence, though, our findings above about *mens rea* do

not reflect that defence. In the following paragraphs, we explain why we reject the GBR Ontario Parties' position on this issue.

[406] Their lack of diligence goes back to the initial connection with Faille and Grenier, even before First Global was involved. The issues with Grenier's past, which led to Northern Coast terminating the arrangements with the GBR Ontario Parties, came to light because of Northern Coast's own due diligence. Before that revelation, Bajaj had not even searched the internet for Grenier's or Faille's names. Even after the revelation, and after Northern Coast advised that on its lawyer's instructions it would no longer be involved in fundraising with the group, neither Bajaj nor Aziz treated these developments as the red flags they ought to have been. Aziz testified that this was due to Grenier's charisma and (what he believed to be) the fact that Garcia had control of the assets.

[407] Bajaj and Aziz did travel to Colombia on numerous occasions and they say they believe they witnessed production first-hand. However, they are imprecise about which assets they viewed (*e.g.*, Bajaj's submission that in January 2015 he and Thiviyanayagam visited "the Bitumen mine"). We think it more likely than not that the reason for their imprecision is, as Aziz conceded, that they were not clear at the time which assets they were viewing. Bajaj recorded videos and took some pictures, and while these appear to depict activity consistent with a manual digging process and a production facility of some sort, nothing in the video or pictures helps to identify which asset is portrayed.

[408] On one of the trips that Bajaj and Thiviyanayagam took, they traveled with some investors. Bajaj submits that everyone was very satisfied with the bitumen mine after that trip, but nothing about his testimony on the subject gives a reasonable basis for him or for the investors to be very satisfied. Their inspection was superficial at best, especially given the uncertainty about which property they were visiting. Further, we have no evidence that anyone in the group had any expertise whatsoever that they could use to assess independently the accuracy of what they were being told by Grenier and Garcia.

[409] This over-reliance on others is illustrated by Aziz's testimony that on a visit to Colombia, he visited the assets and was introduced to someone he understood to be a geologist, who purported to confirm the accuracy of information Aziz had

previously received about the productivity of the La Esperanza and Rio Negro mines. We have no evidence that Aziz (or Bajaj) confirmed the identity of the individual he was told was a geologist, or that he obtained any confirmation in writing.

[410] As to the question about ownership of the Colombian assets, and whether those assets had been transferred to GBR Colombia, neither Bajaj nor Aziz was diligent.

[411] Aziz shared Paul James's concern about not understanding most of what was contained in documents sent to them by Grenier and others, since most of the documents were in Spanish. Aziz had only one document translated. Despite there being no compelling reason not to have the remaining documents translated, Bajaj and Aziz acquiesced in a suggestion that the group ask Garcia to explain to them what the documents meant. Apart from the fact that doing so would not be an effective form of diligence, Aziz did not recall that Garcia ever provided a written translation of any of the documents.

[412] Bajaj would sometimes ask Grenier to address a concern Bajaj had, but Bajaj's pursuit of these concerns was generally half-hearted. In one instance in June 2015, when Grenier provided what appeared to be a geologist's report about the Rio Negro property, Bajaj wondered why the report showed that ownership of the land was not available. Bajaj asked Grenier by email. In his reply email, Grenier said simply that it just meant that the land title information had not been supplied to the geologist. It is possible that this innocent explanation was correct, but there is no evidence that Bajaj did any further investigation to find out.

[413] Bajaj and Aziz portray themselves as conduits of information that they received from others. For example, Bajaj testified that all the figures contained in the Colombia Presentation came from Grenier. Aziz submits that all of the information that was presented to investors came to Bajaj and Aziz from Garcia and Grenier, who made Bajaj and Aziz feel like partners, or from Roch, their lawyer. They now question the veracity of that information, as well as Garcia and Grenier's attempts to legitimize the representations that they made. Bajaj and Aziz point to the following actions by Garcia and Grenier, among other things:

a. Garcia and Grenier involved Roch, a lawyer at an established firm, upon whom Aziz testified that he relied;

b. Grenier regularly sent them pictures of the Colombian projects;

c. Grenier received multiple iterations of the Colombia Presentation and never advised that the contents were incorrect; and

d. Garcia and Grenier repeatedly sent information to Bajaj and Aziz, as did Faille (whom Garcia described as a longstanding friend and business partner) on behalf of Garcia and Grenier.

[414] In addition, Bajaj and Aziz point to answers that Garcia and Grenier gave to requests from Paul James, who was with GBR Ontario from February 2015 to the end of 2016. James assisted with operational functions but was brought in to help put an "insurance wrap" around the Colombian bitumen assets, a task that required him to conduct some due diligence about those assets.

[415] James communicated directly with Grenier, Faille and Roch. Information came from all three, although primarily from Grenier, who sent it sporadically and in fragments, with promises that they would do their best to send complete information. Roch gave James similar reassurance. Grenier promised James that the necessary documents existed, and that the Rio Negro asset was real and presented a lucrative opportunity.

[416] Grenier also sent:

a. what purported to be the contact information for the Colombian lawyers responsible for GBR Colombia, who would be working with Roch to effect the various transactions;

b. what appeared to be a certified appraisal of "what was in the ground";

c. a finished 43-101 report, which James understood to be a geologist's report about the quantity of a certain mineral could be found in one location; and

d. documents that James said appeared to contain or verify the mineral rights and mining reports relating to certain assets.

[417] The skepticism that Bajaj and Aziz now admit to, about all of the information they received from Grenier and Garcia, ought to have been applied at the time, when Bajaj and Aziz were making the various representations to investors. Had Bajaj and Aziz been appropriately skeptical, had they responded appropriately to red flags (*e.g.*, Grenier's past, and the numerous purported oral agreements contradicting written agreements or resolutions), had they engaged their own legal counsel (as opposed to relying on First Global's or GBR Colombia's, neither of which represented GBR Ontario or its principals), had they obtained translations of documents in Spanish, or had they engaged independent professionals to evaluate the information they were receiving, they might have a due diligence defence available to them. Having taken none of those steps, they cannot benefit from such a defence.

5.5.5 Did each of the GBR Ontario Parties have subjective knowledge that the fraudulent act could have as a consequence the deprivation of another?

[418] The final element Staff must prove as part of its fraud allegations is that each of the GBR Ontario Parties subjectively knew that the impugned act could have as a consequence the deprivation of another.

[419] As we have discussed above, the deprivation at issue in this case arises because the investors' funds were directed to destinations, and subjected to risks, that the investors had not bargained for and that were not disclosed to them.

[420] To satisfy this element of the test for fraud, Staff need not prove directly what was in a respondent's mind. In certain cases, we may infer a subjective awareness of the consequences from the dishonest act itself.[40]

[421] With respect to the Use of Funds Representations, we draw that inference. We have already concluded that Bajaj and Aziz knew that investor funds were being directed to uses other than those that they had disclosed to the investors. A different use of funds inherently subjects those funds to different risks, and we find that Bajaj and Aziz understood that. They may have been motivated by what they considered to be good intentions in the best interests of investors. They may have felt that they were reducing risk, not increasing it. However,

[40] *Théroux* at para 20

neither of those possibilities assists them. It is a change of risk, not an increase in risk, that makes out the fraud, and good intentions (even had they existed) do not bear upon the *mens rea* of a fraud allegation.

[422] We draw the same inference with respect to the Colombian Operations Representations and the Security Representations. In both cases, Bajaj and Aziz continued to raise funds even when they knew or ought to have known that representations contained in the Colombia Presentation and the brochures were false. They may have believed that production at hoped-for levels, and that a transfer of assets to GBR Colombia, or a security interest in those assets, would be effected imminently. Once again, even if they did hold those hopes and expectations, that does not preclude a finding that Staff has proved the second part of the *mens rea*.

5.5.6 Conclusion regarding fraud in relation to the First Global debentures

[423] Bajaj and Aziz made, or participated in the making of, two sets of contradictory representations to investors about how the invested funds would be used:

a. for First Global's "working capital", according to the First Global subscription documents; and

b. for the bitumen and biodiesel operations of GBR Colombia, according to the presentations, brochures and oral statements directed to those investors.

[424] Bajaj and Aziz did not attempt to reconcile those conflicting representations or to explain clearly to investors how the conflicts could be resolved. Further, even putting aside the representations contained in the First Global subscription documents, Bajaj and Aziz did not update existing or potential investors as to how their funds would be deployed within GBR Colombia's operations, as circumstances changed. Investors were not told, for example, that what would eventually amount to almost 25% of the total funds raised ($1 million of $4.46 million) would go to a coal mine.

[425] As to the security of the investments, Bajaj and Aziz made promises (*e.g.*, "100% secured") that were completely at odds with the reality. The delay in assets being moved into GBR Colombia did not dampen their enthusiasm as

expressed to existing and potential investors. They were reckless about whether or not there were in fact any assets securing the investment.

[426] We reject the submission that Staff was required to prove a negative, *i.e.*, that title was not actually transferred. Similarly, we reject the submission that we should find that one or more of the documents in the record might have transferred title, and that an expert in Colombian law was required in order for us to reach any conclusion on this topic. Staff led evidence from Garcia, who stated categorically that there were never any assets in GBR Colombia securing the First Global debentures. She was not successfully cross-examined on this point, *e.g.*, by confronting her with evidence to the contrary. Her testimony stands and we accept it.

[427] We conclude that Bajaj and Aziz perpetrated fraud contrary to s. 126.1(1)(b), as described above. Bajaj was indisputably a directing mind of GBR Ontario, and therefore GBR Ontario is equally liable for the fraud. This is so whether or not Aziz was also a directing mind of GBR Ontario, an issue we need not resolve.

[428] Aziz submits that he was "not a protagonist in an elaborate scheme", but rather a victim of deception. We accept that characterization as far as it goes, but it is no defence for Aziz or Bajaj that they did not deliberately set out to defraud the First Global investors. They made unqualified promises to investors, and they were reckless about whether those promises could be kept. They ignored red flags along the way, and they purported to rely on undocumented oral agreements that directly contradicted the written record. The casual and careless approach they adopted is unsuitable where funds are to be raised from the public. Indeed, their approach was a far cry from the care they ought to have taken.

5.6 Staff's allegations of representations prohibited by s. 44(2)

[429] We turn now to Staff's allegations that First Global and the GBR Ontario Parties breached s. 44(2) of the Act, in that:

a. First Global made the Colombia Operations Representations and the Security Representations; and

b. the GBR Ontario Parties made the Use of Funds Representations, the Colombian Operations Representations, and the Security Representations.

[430] In general, an alleged breach of s. 44(2) presents three potential issues:

a. whether the respondent made a statement;

b. whether the statement was untrue or omitted information necessary to prevent the statement from being false or misleading in the circumstances in which it was made; and

c. whether a reasonable investor would consider the subject of the statement to be relevant in deciding whether to enter into or maintain "a trading or advising relationship" with the respondent who made the statement.

[431] We begin with the third of those, *i.e.*, whether a trading relationship existed or was intended, between any potential reasonable investor and the respondent who made the statement. We conclude that there was no actual or intended trading relationship within the meaning of s. 44(2), and we therefore need not consider the first two issues mentioned above.

[432] The term "trading relationship" is not defined in the Act. We must therefore examine the context in which it appears, *i.e.*, "to enter into or maintain a trading… relationship." The plain meaning of the word "relationship", in its ordinary sense, evokes an ongoing connection involving enduring or repetitive behaviour. The word "maintain" in s. 44(2) highlights this enduring character. The alternative ("enter into") clearly aims the provision not only at existing participants in the subject relationship, but also at potential participants.

[433] There can be no question that for as long as an investor holds a security of an issuer, the investor and issuer are in a relationship. The question is whether it is a relationship that falls within the provision. To answer that question, we must look to the fact that the nature of the enduring or repetitive behaviour is defined by the qualifier "trading".

[434] We also look to the rest of s. 44, to give additional context. Section 44 has only one other subsection apart from s. 44(2). Subsection 44(1) provides that a person or company may make a representation about their registration status

under the Act only if that representation is true and it specifies the particular category of registration. The subsection aims to ensure that investors can know whether or not they are dealing with a registrant, and if so, the category of registrant.

[435] Subsection 44(1) of the Act does not apply to the facts of this case. However, we still find it useful in assessing the purpose of s. 44(2). While we do not place significant weight on its presence, we note that it governs registrants or others who make representations about being a registrant. This reinforces our conclusion that the "trading or advising relationship" envisaged by s. 44(2) is of a nature typically provided by registrants, *i.e.*, to act on behalf of investors to assist with their trading on an ongoing basis, and to advise investors on an ongoing basis about investment decisions they may make.

[436] Staff refers to the Tribunal's 2013 decision in *Winick (Re)*.[41] In that case, the respondent Winick directed a transfer agent to send misleading correspondence to potential investors in two issuers of which Winick was the directing mind. The Tribunal dismissed Staff's allegation that by giving that direction, Winick breached s. 44(2). The Tribunal found that while the misstatements might have related to a trading relationship with the transfer agent (a conclusion that the Tribunal contemplated as possible but did not opine on), they did not relate to a trading relationship with Winick himself.[42]

[437] While the facts in *Winick* are distinct from those in this case, *Winick* does reinforce the importance not just of identifying who was responsible for a communication that contained untrue or misleading statements, but also of carefully identifying who the parties are in the relationship that is governed by s. 44(2), *i.e.*, a trading or advising relationship.

[438] We turn now to consider each of the respondents against whom the allegation is made.

[439] The only relationship between First Global and an investor was that of issuer and security holder. If s. 44(2) were to apply in the circumstances of this case, then

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[41] *Winick (Re)*, 2013 ONSEC 31 (***Winick***)

[42] *Winick* at paras 157-158

every issuer might be said to be in a trading relationship with every holder of that issuer's securities, even if a security holder made one purchase one time. That cannot be the correct interpretation.

[440] We reach a similar conclusion with respect to Bajaj and Aziz. There is no evidence that either of them was seeking to establish an ongoing trading relationship with any of the investors. They played a role in concluding a one-time investment in one particular security. That role, while significant for a particular investor, did not create a trading relationship. In this regard, we distinguish the Tribunal's decision (cited by Staff) in *Black Panther (Re)*,[43] in which the respondent was both issuer and salesperson, and the securities issued were short-term promissory notes with the intention (realized, in some instances), that investors would receive a return of their principal and would then reinvest. Those facts align much more closely with the concept of a trading relationship. We find no such relationship here.

[441] Accordingly, we dismiss Staff's s. 44(2) allegations against First Global and the GBR Ontario Parties.

6. GBR DEBENTURE

6.1 Introduction

[442] That concludes our analysis with respect to the First Global debentures. One other debenture is featured in Staff's allegations. What Staff describes as the "GBR Debenture" refers, according to Staff, to two loans made by investor EH. The loans were of $350,000 on July 2, 2015, and $100,000 ($98,000 cash plus a $2,000 interest credit) on August 13, 2015.

[443] EH made the payments to Roch in trust. Staff alleges that the loans were to GBR Ontario, but Aziz disputes that characterization. He submits that EH invested directly in Bioclean Inc. (the Canadian company owned as to 74% by Garcia) and Biominerales SAS (presumably Biominerales Colombia SAS, owned 99% by Bioclean Inc. and 1% by Garcia), although that submission does not align completely with his own testimony. We address this issue below.

[43] 2017 ONSEC 1

[444] Staff alleges that the loans were not documented until October 1, 2015, after they had already been made. Staff submits (but it is disputed) that at that time EH was given a debenture term sheet that included the following terms:

a. the debenture would pay simple interest of 4% per month (a rate that was also reflected in an October 31, 2015, letter from Paul James to EH);

b. the investment was 100% secured and was guaranteed by a first charge against all the assets of GBR Colombia (a representation that was consistent with the Security Representations made with respect to the First Global debentures); and

c. the first charge was, at a minimum, equal to 142% of the amount that EH invested (a representation that was consistent with that contained in the Colombia Presentation).

[445] Staff alleges that Aziz and GBR Ontario (but not Bajaj) perpetrated securities fraud in respect of this debenture because they essentially repeated the Security Representations to EH. We agree, and we conclude that Aziz and GBR Ontario breached s. 126.1(1)(b) of the Act as alleged.

[446] Staff also alleges that the facts relating to the GBR debenture give rise to a breach of s. 44(2) of the Act by Aziz and GBR Ontario. For the same reasons given above beginning at paragraph [429], we dismiss that allegation.

6.2 Additional background facts

[447] EH's investment came about as a result of EH being referred to Aziz by EH's accountant. Aziz had an initial meeting with EH and EH's spouse, at which Aziz discussed various potential investment vehicles. After rejecting vehicles such as segregated funds, Aziz said to EH that the only investment that fit EH's desired profile was the ongoing project in Colombia.

[448] A subsequent meeting was arranged in July 2015, at which EH, EH's spouse and EH's son attended, along with Aziz and Faille. EH testified that Aziz and Faille both spoke in favourable terms about a bitumen project in Colombia. They showed EH a PowerPoint presentation, stated that the investment was secured, and characterized the project as profitable and as yielding a big return with zero risk. EH found the pitch that Aziz and Faille gave to be believable, as a result of

which EH agreed during the meeting to invest $350,000, with interest to be paid to EH at 14% per year.

[449] Aziz testified that even though he attended the meeting, it was Faille, not he, who presented the biodiesel and bitumen investment opportunity. He testified that EH's investment was in "Biominerales SAS", although neither the question nor his answer was clear as to whether this was Biominerales Colombia SAS or Biominerales Pharma SAS. In his submissions, Aziz asserts that the investment was in Biominerales SAS (again, with no specificity as to which corporation he meant), and in Bioclean, although when he testified he did not mention Bioclean as receiving the investment.

[450] Aziz also submits that Bioclean Inc. and Biominerales SAS sent EH a receipt for EH's investment. We saw no actual receipt from either of those entities, although Roch sent a letter to EH on July 16, 2015, soon after the initial $350,000 investment. In that letter, Roch wrote that:

a. his firm was "counsel for Bioclean and Biominerales" and had been retained to assist with financing of "both corporations [*sic*] projects in Columbia [*sic*]"; and

b. "we shall act as escrow agents on the financing and to that effect we have received an amount of $350,000.00 from you for the investment in the Columbia project. [*sic*]"

[451] The letter did not specify which corporate entity was intended by "Biominerales", did not mention GBR Colombia or GBR Ontario, and did not explain what the escrow conditions were, if any.

[452] Aziz submits that Staff cannot show the representations made to EH to have been false because:

a. EH was not told that that the investment was in GBR Colombia;

b. EH invested directly in Bioclean Inc. and Biominerales SAS; and

c. on Staff's evidence, those companies owned the biodiesel facility, so they held title to assets that could have been pledged as security.

[453] We disagree. The last point is not persuasive, since even if EH's investment were in one or both of those companies, and even if the company or companies in which EH invested had assets that could have been pledged as security, that possibility might be of no value to EH unless the assets actually were pledged. While it is theoretically possible that a civil claim against the defaulting owner of the assets might be productive even without a security interest over those assets, it would require impermissible speculation, and a suspension of common sense, to conclude that EH would be equally well protected without the creation of a proper security interest.

[454] As to the terms of the arrangement, Aziz testified that EH was offered 12% interest per year plus a royalty. There is no evidence to corroborate this, and no explanation as to why the terms of this debenture would be different than the First Global debentures, but nothing turns on the discrepancy.

[455] Aziz's position that he was minimally involved is once again contradicted by documentary and other evidence. EH was clear that Aziz was EH's primary contact, a fact that is reflected in an email sent by Bajaj shortly after EH's initial $350,000 investment, stating that "Maurice raised 350,000. Congratulations Maurice the Great."

[456] On August 13, 2015, about a month after EH's initial investment, Faille called EH to solicit an additional investment. Aziz was not on the call. Faille offered that if EH would invest an additional $100,000, the interest rate would increase to 48% per year for the entire $450,000 investment. EH agreed to invest the additional $100,000, by paying $98,000 and giving a $2,000 credit against future interest payments.

[457] EH asked for documentation to confirm the terms of the investment. Staff points to, among other things, the debenture term sheet that it submits EH received. Aziz submits that we ought to give the term sheet no evidentiary value, because during the hearing EH did not specifically recall ever having received the document. We draw the inference that EH did receive the sheet, an inference we find flows naturally and reasonably from the following:

a. EH recalled seeing the accredited investor certification form (on GBR Ontario letterhead) signed by Faille and James, with a blank line for EH's

signature (and which identifies the issuer of the debenture as "Global Bioenergy Resources Ltd.", presumably a mistaken reference to GBR Ontario, which is Global Bioenergy Resources Inc., as no party suggested that Global Bioenergy Resources Ltd. existed);

b. the accredited investor certification is marked "Page 1/2", although it is not clear by whom;

c. the term sheet, which is also on GBR Ontario letterhead, is marked "Page 2/2", although it is not clear by whom;

d. the two pages both bear the same effective date, October 1, 2015; and

e. EH provided the documents together to Staff.

[458] The term sheet provides that "The Debentures [*sic*] shall be guaranteed by a first charge against all the assets of [GBR Colombia]". The document appears to incorporate elements from a template (possibly the one used for the First Global debentures), since there was only one debenture issued to EH but the term sheet refers several times to "Debentures" plural, and the investment is described as being eligible for registered accounts (which, presumably, it was not, given that unlike First Global, none of the GBR entities was a public company).

[459] Whether or not the term sheet is patched together from a First Global template, it is on the letterhead of GBR Ontario, it refers to $450,000 as the principal amount, and it cites the interest rate EH testified to (*i.e.*, 4% simple interest per month). It is clearly intended to apply specifically to EH's investment.

[460] EH received regular interest payments for a few months, but then those stopped. EH inquired of Faille, but according to EH, Faille "disappear[ed]" and was rude. Aziz testified that EH contacted him in late 2015 or 2016 to inquire, that he spoke to Grenier, and Grenier advised that he was unable to pay interest at 4% per month.

[461] On June 28, 2016, Faille wrote to EH on letterhead of Bioclean Canada Inc., purporting to confirm that Bioclean Canada Inc. was three months late on "the interest payment", and that the situation would be resolved within the next 45 days. We note that the corporate name Bioclean Canada Inc. differs from

Bioclean Inc., and does not appear elsewhere in documentation relating to EH's investment. We received no evidence to explain the connection, if any, between Bioclean Canada Inc. and Bioclean Inc., or between Bioclean Canada Inc. and the GBR companies.

[462] EH went without interest payments for over a year until after a trip to Colombia made on Grenier's invitation. During that visit, EH agreed that $200,000 in outstanding interest would be added to the principal amount of the debenture, and that the interest rate would be reduced to 14% annually and paid on the $650,000. These terms were recorded in a July 6, 2017, letter, on GBR Colombia letterhead, signed by Aziz as vice-president of operations of GBR Colombia, that also provided that EH's "investment is guaranty [*sic*] by a title mining [*sic*] (Rio Negro Mining Title…)", which appears to be the same property that was purportedly used to secure the First Global debenture holders' investment.

[463] After EH returned from visiting Colombia, Aziz personally paid ten months' interest payments (with some assistance from Alli, First Global's CFO). He has not been repaid.

[464] EH has not received any of the invested principal or any additional interest payments.

6.3 The reliability of EH's testimony

[465] Aziz urges us to exercise caution with respect to EH's testimony. In the months leading up to the hearing, and during the hearing itself, EH candidly expressed concerns about being able to recall details. We therefore accept Aziz's submission that we should approach EH's testimony cautiously.

[466] Having said that, much of the evidence concerning EH's investment is, as Aziz concedes, not controversial. Indeed, there is no disputed fact about which EH testifies that is not corroborated both by direct evidence and by circumstantial evidence.

[467] For example, EH's testimony about having been told orally by Aziz and Faille that the investment was secure was vague, especially on cross-examination. EH was candid in admitting that Aziz and Faille were not specific about the form of security. EH is experienced in private mortgage lending and therefore familiar

with security interests, but EH is a layperson. Despite that vagueness, EH's testimony was consistent with the overwhelming evidence of the Security Representations made to investors in the First Global debentures. In any event, the idea of a legal security interest is reflected in the July 2017 letter to EH, signed by Aziz, referred to above.

6.4 Staff's allegations of fraud contrary to s. 126.1(1)(b)

6.4.1 Introduction

[468] With that factual background, we turn to our analysis of Staff's allegation that Aziz and GBR Ontario perpetrated securities fraud in respect of the GBR debenture issued to EH. Staff bases this allegation on its claim that Aziz and GBR Ontario falsely represented that the GBR debenture was secured by assets in Colombia.

6.4.2 Did Aziz and GBR Ontario engage in an act of deceit, falsehood or some other fraudulent means?

[469] EH dealt with several individuals about the investment in the GBR debenture, and viewed Faille as the "boss" of GBR. However, Aziz was EH's primary contact and it was Aziz who received EH's funds.

[470] For the reasons we explained above, we accept EH's evidence that both Aziz and Faille characterized the bitumen operations as profitable and that there was "zero" risk associated with the investment. We also accept that EH was told that the investment was "secured" because of all the assets that "they" had. This testimony is entirely consistent with incontrovertible evidence of representations that we have already found Aziz and GBR Ontario made to investors with respect to the First Global debentures. Further, while EH candidly admitted to memory challenges, EH's testimony was not successfully challenged in any material respect, *e.g.*, by documents inconsistent with their testimony.

[471] It is immaterial whether, in the July 2015 meeting with EH, it was Faille or Aziz who actually spoke the representations to EH about the security of the investment. Even if Faille made them, Aziz was present at the meeting and involved in the discussion. Faille and Aziz were there on behalf of GBR Ontario, presenting to EH. If Faille made misrepresentations and Aziz did not intervene in

any way to correct them, then by his silence he adopted those misrepresentations.

[472] Aziz attempts to avoid any responsibility for EH's investment in the GBR debenture by submitting that the investment was in companies owned by Garcia and Grenier, in which Aziz played no role. We cannot accept that submission. It is certainly true that the evidentiary record is inconsistent about the entity or entities to which EH's funds flowed. However, it would be perverse if different respondents, each associated with a different entity, could together participate in a sequence of events whereby some documents given to the investor suggested the investment was in one entity, and other documents suggested the other entity, and then each respondent successfully denies any connection to the investment.

[473] In this case, much of the documentary evidence about EH's investment suggests that EH's loans went to GBR Ontario or GBR Colombia or both. The accredited investor form, the debenture term sheet, and Aziz's July 2017 letter to EH all support that conclusion.

[474] Ultimately, though, nothing turns on the precise identity of the corporation(s) into which the investment was made. No matter what the answer is to that question, EH understood that the funds were going to be used for the Colombian projects, and that the investment would be secured by the assets in Colombia. That did not happen.

[475] We find that Aziz represented to EH that EH's investment in the GBR debenture was secured by assets in Colombia. The representation was false. Staff has established the first element of the *actus reus*.

6.4.3 Was there a deprivation caused by the dishonest act?

[476] Staff has also established the second element of the *actus reus, i.e.,* that the dishonest act caused a deprivation to EH.

[477] At a minimum, EH's funds were put to a use that was materially riskier than she understood, given the absence of any security. Further, even though Staff need not prove reliance, it cannot be seriously challenged that EH relied on the various representations in choosing to invest. Finally, it is undisputed that EH received

some interest payments, but lost hundreds of thousands of dollars of principal and forewent significant interest payments that were due.

[478] Each of these constitutes a deprivation.

6.4.4 Did each respondent have subjective knowledge of the dishonest act?

[479] Staff submits, and we have already found, that Aziz knew or ought to have known that neither GBR Ontario nor GBR Colombia owned, or had a security interest in, the Colombian assets during the Solicitation Period. Even if that were not true, Aziz was, at a minimum, reckless as to whether the security interest existed. That recklessness is sufficient to constitute awareness for the purpose of this analysis.

[480] The Solicitation Period overlaps with the period during which Aziz solicited EH's investment. Accordingly, this element of the *mens rea* is established.

6.4.5 Did each respondent have subjective knowledge that the fraudulent act could have as a consequence the deprivation of another?

[481] In this case, we may infer from the fraudulent act itself that Aziz knew or ought to have known that the misrepresentation to EH could cause a deprivation. EH's ability to receive a return of principal was based in significant part on there being assets to secure the investment. To Aziz's knowledge, the absence of any such assets exposed EH to significantly greater risk, thereby depriving her.

6.4.6 Conclusion regarding fraud in relation to the GBR debenture

[482] Staff has established that Aziz perpetrated securities fraud in respect of the GBR debenture. At all times, Aziz was acting on behalf of the issuer GBR Ontario, of which he was one of two principals and the only active principal with respect to EH. In matters involving EH, Aziz was GBR Ontario's directing mind. We therefore conclude that both Aziz and GBR Ontario contravened s. 126.1(1)(b) of the Act in respect of the GBR debenture.

7. FIRST GLOBAL PURPORTED LICENCE TRANSACTIONS

7.1 Introduction

[483] Staff's final set of allegations relates to First Global's financial reporting of certain transactions that were reflected in agreements entered into between individuals

and First Global (primarily through its subsidiary First Global Data Technologies Inc.).

[484] We find that First Global incorrectly recognized revenue relating to these agreements. That revenue appeared in First Global's comparative financial statements for the year ending December 31, 2016, and in its quarterly interim financial reports for each of the first three quarters of 2017. The misstatement was material, and later resulted in a restatement of financial results for those periods.

[485] For reasons we explain below, we conclude that First Global is entitled to the benefit of a due diligence defence in respect of all those financial reports except the interim report for the third quarter of 2017. We find that by filing that report, First Global breached Ontario securities law. We also deem Itwaru and Alli to have not complied with Ontario securities law with respect to that report.

[486] The agreements come in one of two forms, which we will refer to together as the **Licence Agreements**:

a. an "international special purpose license agreement" (an **International Licence Agreement**); or

b. a "technology licence agreement" that is accompanied by a "marketing agreement" (together, **Technology Licence and Marketing Agreements**).

[487] Staff submits that despite differences in form, the substance of all Licence Agreements was the same. We refer to the transactions contemplated by the Licence Agreements collectively as **Licence Transactions**.

[488] Staff submits that despite the way the Licence Agreements are described, the Licence Transactions are simple loans, in that the individual would advance a sum to First Global (sometimes described as an up-front licence fee), First Global would pay fixed monthly fees to the individual (described as royalty or marketing fees), and First Global would then, at the end of the term of the agreement, be required to repay to the individual the sum originally advanced.

[489] Staff alleges that:

a. no true licences were ever issued and no one took steps or intended to take steps to market or deploy First Global's technology;

b. in quarterly interim and year-end financial reporting over an approximately one-year period, First Global reported the licence transactions as revenue, when in fact some of those transactions were liabilities (either financial liabilities because they were borrowings, or non-financial liabilities because they represented deferred revenue);

c. First Global later restated its financial reports and its Management Discussion and Analysis (**MD&A**) to correct the error;

d. for the 21 months ended September 30, 2017, the restatement reduced revenue from $17.4 million to $4.7 million and increased First Global's net loss from $505,000 to $12.4 million; and

e. as a result, First Global's financial reports were not prepared in accordance with generally accepted accounting principles (**GAAP**) and contained material misstatements, thereby contravening a number of provisions of Ontario securities law, which provisions we enumerate in our analysis below.

7.2 Evidence

7.2.1 Additional background facts

[490] Itwaru testified that International Licences were offered in two ways.

[491] In the first, in return for the funds provided by the licensee, the licensee would have the right to receive revenues from First Global's deployment of its mobile payment infrastructure in a specific territory. Itwaru did not specify any activities that the licensee would have to undertake, other than that they would have to provide funding.

[492] Itwaru described the second as being like a franchise opportunity, in that the licensee could own an instance of First Global's money remittance software so that the licensee could market the software. However, as Staff notes, the

licensee would receive the contemplated periodic payments and have the right to return of capital without having to do anything.

[493] Itwaru explained that there were delays preventing implementation, so the licensees did not carry out any work on First Global's behalf.

[494] As for the validity of the accounting approach, Itwaru observed that the program was introduced in 2015. Alli submits that all licensees knew and acknowledged that there would be a period during which First Global would use the licensee's "capital" to "build the market, in essence a ramp up period", after which "it" would be handed over.[44] He maintains that the strategy was to leverage the licensees' networks to market the technology.

[495] Two purported licensees testified at the hearing. One was EH, the investor in the GBR debenture described above. Both EH and JF, the other licensee, testified that as far as they understood, they were not required to do anything other than advance funds (the licence fee) to entitle them to the periodic payments (at 12% per year) and to a return of their licence fee at the end of the term of the agreement.

[496] None of the First Global Parties adduced evidence to support Alli's submission that the licensees knew and acknowledged that there would be a ramp-up period. We think Alli comes close to the true nature of the agreements when he says that the amount paid by the licensee was capital, and that the funds would be used to build the market.

[497] JF expected their $125,000 licence fee to be returned to them within three years. JF's periodic payments stopped around June 2018 after five payments, and they have not received their licence fee.

[498] EH entered into two Technology Licence and Marketing Agreements in 2017, and paid licence fees totalling $260,000. EH received periodic payments until 2018 and received a return of $99,000 of the $260,000 licence fee.

[44] Alli Submissions at 12

[499] First Global reported the Licence Transactions as revenue in:

a. its comparative financial statements for the year ended December 31, 2016; and

b. its interim financial reports for the quarters ending March 31, June 30, and September 30, 2017.

[500] First Global later restated those financial reports (the **Restatements**) to change the accounting treatment of the Licence Transactions. For those instances where First Global had collected cash as part of the Licence Transaction, First Global reclassified the cash amount from revenue to borrowings; for those instances where First Global had not collected cash, First Global reversed both the revenue entry and the accounts receivable entry. The Restatements appeared in First Global's:

a. comparative financial statements for the year ended December 31, 2017; and

b. interim financial reports for the quarters ending March 31, June 30, and September 30, 2018.

7.2.2 Expert opinion evidence

7.2.2.a Introduction

[501] Staff adduced expert opinion evidence through Trisha LeBlanc, a Chartered Professional Accountant and the National Practice Leader – Financial Reporting Advisory Services at Grant Thornton LLP. LeBlanc was well qualified to give opinion evidence about the application of International Financial Reporting Standards (**IFRS**), and no party challenged her qualifications.

[502] The use of appropriate accounting standards in financial reporting by public companies is dictated by National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* (**NI 52-107**), which requires public companies to prepare their financial statements in accordance with generally accepted accounting principles. Canadian accounting practice applies IFRS to public companies.

[503] LeBlanc referred to the standards that applied at the time of the Licence Agreements and Licence Transactions she reviewed. Some changes were made to IFRS at the relevant time, but no specific change was identified that would bear on our conclusions. In fact, LeBlanc testified that there were no significant changes to IFRS relating to revenue and financial instruments for the year-end 2016 and 2017 reporting periods.

[504] LeBlanc testified that for the sake of faithful representation in financial reporting, the concept of "substance over form" is a guiding principle. Alli agreed with this approach, and we adopt LeBlanc's assertion that analysis for this purpose must be "based on an understanding of the terms and conditions of each contract as well as considering the overall substance of the transaction, regardless of its legal form."

[505] IAS 18 is an accounting standard that is particularly relevant here. It defines revenue as the "gross inflow of economic benefits… arising in the course of the ordinary activities of the entity". IAS 18.14 provides that revenue may be recognized if:

a. significant risks and rewards of ownership have been transferred;

b. the selling entity retains neither continuing managerial involvement nor effective control over the goods sold;

c. the amount of revenue can be reliably measured;

d. the economic benefits associated with the transaction will likely flow to the selling entity; and

e. the costs associated with the transaction can be reliably measured.

[506] With that background, we turn to LeBlanc's analysis of the Licence Agreements and Licence Transactions.

7.2.2.b Four groupings of the Licence Transactions

7.2.2.b.i Introduction

[507] LeBlanc reviewed a subset of the Licence Agreements:

a. all Licence Agreements for the restatement of financial results for the year ending December 31, 2016; and

b. Licence Agreements representing $3 million in respect of the nine-month period ending September 30, 2017.

[508] These 43 agreements totaled approximately $6.5 million. For her analysis, LeBlanc divided those agreements into four categories, each of which contained agreements with the same characteristics, and each of which we will address in turn.

7.2.2.b.ii Group 1

[509] Group 1 consisted of sixteen agreements totaling approximately $1.3m. All were International Licence Agreements. The following notable terms appeared in these agreements:

a. the licensee could demand repayment of the licence fee on termination of the agreement;

b. the licensee could request redemption of the licence fee at any time, although First Global reserved the right to refuse redemption any time within the first five years;

c. First Global reserved the right to refuse redemption before the end of the fifth year of the licence term; and

d. the licensee was to be paid a minimum annual royalty of 12% of the licence fee.

[510] In analyzing these agreements, LeBlanc made certain assumptions, which Alli accepted and Itwaru did not dispute:

a. unless the Licence Agreement was terminated before the end of its term, it automatically terminated at the end of the term;

b. First Global was obliged to redeem the licence fee at the end of the term of the agreement;

c. if the first of these assumptions was incorrect, and the agreement was not terminated, the periodic royalty payments would continue into perpetuity; and

d. the amount of the royalty was equal to the market rate of interest.

[511] The licensee therefore had an unqualified right to be repaid the licence fee under the termination provisions or the redemption provisions at the end of the term. First Global did not have the right to refuse payments. As First Global acknowledged, the Licence Agreements would therefore be a financial liability under IAS 32.19. The licence fee paid under the agreement is not revenue, because the initial fair market value of the liability is the amount of the licence fee received, so there is no remaining inflow of economic benefits.

7.2.2.b.iii Group 2

[512] Two agreements made up Group 2. They totaled $50,000 and were the same as those in Group 1, except that the term specified in paragraph [510]b above did not apply. Accordingly, First Global's right to refuse redemption was not time-limited. As a result, the licensee's right to demand repayment of the licence fee arose only on termination, since First Global reserved its right to refuse redemption at any time, not just in the first five years.

[513] Because First Global did not have an unqualified right to avoid paying the licence fee at the end of the term of the agreement, these Licence Agreements were financial liabilities.

7.2.2.b.iv Group 3

[514] Group 3 consists of 23 Licence Agreements totaling approximately $4 million. All are Technology Licence and Marketing Agreements. LeBlanc opined that it was necessary to consider the two documents (the Technology Licence Agreement and the Marketing Agreement) together.

[515] Once again, the key elements of the agreements were that:

a. the licensee could demand repayment of the licence fee upon termination of the agreement; and

b. First Global was required to pay a minimum periodic payment equal to 12% per year (which payment is called a "Marketing Fee" in the agreement, and which LeBlanc assumed to be a market rate of interest).

[516] LeBlanc assumed that the licensees signed the two agreements together. In most cases, the Technology Licence Agreement provided for a licence fee that was equal in amount to the termination fee in the Marketing Agreement. In the

three cases in which the amount of the termination fee was left blank in the Marketing Agreement, LeBlanc assumed that the two fees were equal.

[517] There are no redemption provisions in these agreements.

[518] LeBlanc concluded that with one exception, the Licence Agreements in this group were financial liabilities, for essentially the same reasons as applied to the first two groups of agreements.

7.2.2.b.v Group 4

[519] The last group of agreements consisted of two Technology Licence Agreements totaling $1,190,000, without corresponding Marketing Agreements. There are therefore no terms requiring repayment of the licence fee (or of a termination fee) at the end of the term. Similarly, there are no terms requiring periodic payments to the licensee. In neither case was the licensed software delivered to the licensee at the time the transaction was originally accounted for.

[520] For one of the two agreements, the licence fee was paid, but not for the other.

[521] LeBlanc concluded that these two agreements were not financial liabilities of First Global, because they did not include a contractual obligation for First Global to repay the licence fee at the end of the term, and First Global was under no obligation to make periodic payments to the licensee.

[522] However, she concluded that revenue was improperly recognized for this grouping, because the first two of the five tests set out in paragraph [505] above were not met. In both cases this was because the licensed software was not delivered, *i.e.*:

a. the significant risks and rewards of ownership were not transferred; and

b. the selling entity did not give up effective control of the goods that were supposedly sold.

[523] As a result, LeBlanc concluded, these transactions ought to have been recorded as deferred revenue at the time of the transaction.

7.2.2.c Materiality

[524] LeBlanc opined that the difference between First Global's original accounting and the restated accounting was material within the meaning of IFRS.

[525] We agree. The test under IFRS, which aligns with the standard we would apply in any event, is whether the subject item(s) could "influence the economic decision that users" of financial statements may make.[45] Because the newly restated numbers related to revenue, a key indicator for any company, and because the restated numbers were different from the original by orders of magnitude, any reasonable user of First Global's financial statements and reports would find the difference to be significant.

[526] The differences were also well above the materiality thresholds established for general purposes for First Global's 2016 and 2017 audits.

[527] We therefore have no difficulty accepting LeBlanc's opinion on materiality.

7.2.2.d Conclusion on the accounting treatment

[528] In his submissions, Alli expressly acknowledges and accepts LeBlanc's approach and analysis about the appropriate accounting treatment. We do as well. In our view, the transactions were, in substance, loans. Attempts to characterize them as licence agreements were efforts to prefer form over substance.

[529] While Alli accepts LeBlanc's analysis, he emphasizes that the analysis is limited, in that it does not take account of the context at the time, and in particular the involvement of First Global's auditor. We turn to examine that aspect now.

7.2.3 Financial reporting and involvement of First Global's auditor

7.2.3.a Introduction

[530] In March 2016, First Global approached Fareed Sheik, the principal of his own audit firm, to conduct audit work for First Global, beginning with First Global's comparative financial statements for the year ended December 31, 2015.

[531] Sheik conducted the audit. Whether Sheik also carried out an advisory role with respect to the Licence Agreements is in dispute.

[532] In his submissions, Alli repeatedly relies on what he describes as advice and recommendations that Sheik gave to First Global. Sheik emphatically denies that he did so. Sheik made clear that he played a conventional audit role, in that he

[45] IAS 8.5

audited financial statements. He neither conducted any forensic audits nor provided consulting or advisory services.

[533] That Sheik was not providing consulting or advisory services to First Global's management is reinforced by the fact that as with any public company auditor, he reported to First Global's shareholders, not its management. As LeBlanc confirmed, a company's financial statements are the responsibility of management, not of the auditor.

[534] We accept LeBlanc's general description of the role of an auditor, and we accept Sheik's description of the nature of his relationship with First Global and its shareholders. Both descriptions conform with common and accepted practice, and we saw no evidence to suggest that Sheik's engagement departed from that usual practice.

[535] We turn now to review the various stages of Sheik's involvement with First Global.

7.2.3.b 2015 audit

[536] Sheik's first involvement with First Global, which began in March 2016, was his retainer to audit the 2015 year-end financial statements.

[537] In fiscal 2015, First Global had few material revenue transactions. The audit was not controversial.

7.2.3.c 2016 audit

[538] Planning for the fiscal 2016 audit began in early 2017. In the audit planning memorandum dated February 14, 2017, Sheik recorded the substance of a concern expressed by the chair of First Global's audit committee about "the aggressive approach of revenue recognition by the management through the sale of licenses".

[539] Sheik reviewed the terms of the Licence Agreements against the criteria for revenue recognition and concluded that overall, the agreements met those criteria, assuming that there was delivery of the software to the licensee for immediate use. In the case of one licensee, he relied on that company's confirmation that it had used the software that was to be delivered under the Licence Agreement.

[540] While reviewing the Licence Agreements, Sheik became concerned that the terms relating to periodic payments and the repayment of the licence fee at the end of the term were more consistent with financing agreements than with sales contracts. In mid-April 2017, Sheik met with Itwaru, Alli and Vieira to discuss these concerns. Itwaru and Alli maintained that the agreements were sales contracts, and suggested that the wording could be amended to address the concerns. Itwaru and Alli promised to send revised wording to Sheik.

[541] Sheik completed the 2016 year-end audit on April 30, 2017. He had not received revised Licence Agreements by that time, although Itwaru observed that Sheik had not required that step to be taken before the audit could be completed.

[542] First Global reported the relevant transactions as revenue. Sheik issued a clean audit opinion. Itwaru emphasizes that nothing was withheld from Sheik, and Sheik was not misled by anyone at First Global, before reaching his conclusion.

[543] Alli testified that the Licence Agreements were revised sometime after the mid-April meeting, including by the introduction of the Marketing Agreement.

7.2.3.d Events during 2017

[544] In its unaudited interim financial reports for the first and second quarters of 2017, First Global continued to report the Licence Transactions as revenue. Sheik assisted with creating schedules but did no accounting or bookkeeping. We reject Alli's characterization of Sheik's work as constituting a "review", since that is inconsistent with Sheik's testimony and the documentary record, and it was not put to Sheik on cross-examination.

[545] First Global filed its Q2 financial report on August 29, 2017. Approximately one month later, First Global hired Victoria Ringelberg, an experienced Chartered Public Accountant, as a part-time CFO to replace Alli, who had recently left First Global. The Licence Agreements came to Ringelberg's attention because of their materiality as a revenue item and because they had receivables associated with them.

[546] After reviewing the Licence Agreements and making internal inquiries, Ringelberg reached preliminary conclusions that:

a. First Global ought to show a contingent liability in respect of the licensees' right to repayment;

b. the periodic royalty payments in fact appeared to be interest payments;

c. no actual marketing efforts were being undertaken by the licensees;

d. First Global software had not in fact been delivered to licensees;

e. the Licence Agreements may have been securities;

f. it was a red flag that the receivables had been outstanding for months, and First Global had not accrued a royalty;

g. it was a red flag that First Global was recording revenue when the licence fee had not been paid; and

h. the amounts at issue were material.

[547] Ringelberg expressed her concerns to Itwaru. Following those discussions, Itwaru agreed that First Global should stop selling licences. Ringelberg suggested, and Itwaru agreed, that First Global should hire legal counsel to assist with an understanding as to whether the licences were securities. The two of them discussed the possible need for First Global to restate First Global's financial statements.

[548] Ringelberg also expressed her concerns to Sheik. In explaining her concerns to him, Ringelberg noted that the Licence Agreements were not being revised, and that periodic payments continued to be made. Sheik testified that after discussing the issue with Ringelberg, he concluded that the licence fees could not be booked as revenue, and that the additional information Ringelberg gave him caused him to change his view about the appropriate accounting treatment.

[549] As for Alli, he submits that he was not aware of the revenue recognition issue until it was raised by Ringelberg to Sheik. We cannot accept that submission, as we are unable to reconcile it with Alli's acknowledgment that he attended the April 2017 meeting (referred to in paragraph [540] above), at which Sheikh had raised concerns about the issue.

[550] At a special First Global board meeting on October 26, 2017, Ringelberg discussed her concerns and recommended that the board establish a special committee to review the Licence Agreements and their treatment. She believed that the assessment should be completed before First Global filed its Q3 interim financial report. Various discussions ensued, but Ringelberg was dissatisfied with First Global's response. She resigned about a month after she had started, although her decision was due at least in part to the amount of time that the position was requiring. A special committee was ultimately formed, but not formally until April 2018. We saw no evidence that the committee undertook any work.

[551] Alli returned to First Global in late November 2017. He fixes the date as November 29, immediately prior to First Global filing its Q3 interim financial report. However, Staff submits that the correct date was November 27. In any event, it appears from an email that Sheik sent to Alli on November 29 that Alli was back in the role no later than November 28. In that email, Sheik said to Alli:

> Based on our discussion yesterday regarding the FGD Q3 financial release my suggestion is not to book any [licence] revenue in Q3 till the fog around it is cleared relating to the proper accounting treatment and meeting the revenue recognition criteria of IFRS.

[552] Sheik also advised against Alli's suggestion that First Global simply add a note to the financial statements describing the issue. Sheik pointed out that notes to financial statements are to explain numbers that appear in the statements, and it would not be appropriate to use notes to disclose management's plan to review the policy and the planned process for "cleaning up the mess that has been created".

7.2.3.e 2017 audit

[553] In conducting the 2017 year-end audit, Sheik expressed his firm view that revenue should not be recognized from the Licence Transactions. He identified the issue as a significant risk in the audit and contemplated that the amounts received by First Global might have to be booked as borrowings.

[554] He advised that revenue booked had to be reversed and that 2016 revenues might have to be restated. Initially, Itwaru was particularly concerned about this,

especially given his view that Sheik had not previously raised the possibility of restating 2016 revenues, and given that, according to him, changes had been made to the agreements based on Sheik's input. By May 2018, Itwaru and Alli agreed with Sheik's views on the appropriate accounting treatment.

7.2.3.f Restatements

[555] First Global yielded to Sheik's revised view. On August 2, 2018, First Global issued its 2017 comparative financial statements and MD&A, and restated its 2016 comparative financial statements. Later in 2018, First Global restated its interim financial reports for the first, second and third quarters of 2017. The restatements corrected the improper revenue recognition.

[556] For the 21 months ended September 30, 2017, the restatement reduced revenue from $17.4 million to $4.7 million and increased First Global's net loss from $505,000 to $12.4 million. As we noted above, we agree with LeBlanc's conclusion that this restatement was material.

[557] We turn now to consider the alleged contraventions of Ontario securities law arising from First Global's filing of financial statements that recognized revenue from the Licence Agreements.

7.3 Analysis

7.3.1 First Global

7.3.1.a Allegations

[558] Staff alleges that First Global's failure to ensure that its financial reports were prepared in accordance with GAAP resulted in the following contraventions:

a. in respect of the comparative financial statements for the year ended December 31, 2016, a breach of s. 78(1) of the Act and of s. 3.2(1)(a) of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* (**NI 52-107**), both of which require the filing of comparative year-end financial statements prepared in accordance with GAAP;

b. in respect of the interim financial reports for each of the quarters ending March 31, June 30 and September 30, 2017, a breach of s. 77(1) of the

Act and of s. 3.2(1)(a) of NI 52-107, both of which require that such statements be prepared in accordance with GAAP; and

c. the comparative financial statements and the interim financial reports were misleading or untrue in a material respect, and thereby breached s. 122(1)(b) of the Act, which prohibits the making of a false or untrue statement in any financial statement that is required to be filed under Ontario securities law.

7.3.1.b Clause 122(1)(b) of the Act, prohibiting false or misleading statements

[559] With respect to s. 122(1)(b) of the Act, we asked counsel to address the question of whether the Tribunal has jurisdiction to address allegations of a breach of that provision, given that its text describes an "offence", thereby appearing to contemplate that an allegation falling under that provision would be the subject of a quasi-criminal proceeding in the Ontario Court of Justice.

[560] We agree with Staff's submission that we should apply the decision of the Court of Appeal for Ontario in *Wilder v Ontario Securities Commission,*[46] in which the Court:

a. noted the objects and purposes of the Act and the need for remedial flexibility in addressing misconduct; and

b. held that the courts and the Tribunal have overlapping jurisdiction to address the conduct prohibited by s. 122 of the Act.

[561] We agree with Staff's proposed analytical framework, *i.e.*, that we should consider whether the respondent has engaged in conduct contrary to the prohibition in s. 122. If the respondent has done so, we should make a finding to that effect and it will then be for the panel presiding over the sanctions hearing to determine whether such conduct warrants an order under s. 127(1) of the Act.

[46] 2001 CanLII 24072 (ON CA)

7.3.1.c Availability of a due diligence defence for First Global

[562] We have found that the subject financial statements and reports were required to be filed and were not prepared in accordance with GAAP as required, and we have found that the misstatement was material.

[563] Those findings should lead to the conclusion that each of these contraventions by First Global has been proven, unless First Global can establish that it was duly diligent in attempting to comply with Ontario securities law in preparing and filing its financial statements. Staff conceded that a due diligence defence is available, but submitted that none of the First Global Parties has met the necessary standard.

[564] For reasons we explain below, we reach a different conclusion on that question for the Q3 2017 interim financial report than we do for the other financial statements:

a. with respect to those financial statements that were filed before October 2017, *i.e.*, before Ringelberg pressed her concerns and Sheik changed his views, we conclude that the First Global Parties are entitled to the benefit of a due diligence defence; and

b. with respect to the Q3 2017 interim financial report, which was filed on November 29, 2017, we conclude that the First Global Parties are not entitled to the benefit of a due diligence defence.

[565] For the first of those two categories, the First Global Parties were proceeding based on agreements that their lawyer had helped them prepare. We accept that Itwaru and Alli believed that the accounting treatment being applied was acceptable. Even though Sheikh raised a concern in mid-April 2017, shortly before concluding the 2016 year-end audit, he was content to give a clean opinion for that audit despite his concerns and despite the fact that nothing had been done to address those concerns before he signed off.

[566] Staff correctly notes that ultimate responsibility for the preparation of financial statements resided with First Global's management. However, we do not accept

the premise underlying Staff's purported "note"[47] (as opposed to a submission) that Itwaru and Alli cannot rely on First Global's auditor to relieve themselves of the responsibilities of accurate disclosure and to ground a due diligence defence. If Staff's use of the word "note" was deliberate and intended to report an established general principle, we disagree with Staff's formulation of the general principle. If Staff intended to submit that on the facts of this case, Itwaru and Alli cannot rely on the auditor to ground their due diligence defence, that is a different matter, and one we address below.

[567] As for the general principle, a party's reliance on an auditor to ground a due diligence defence does not necessarily relieve the party of their responsibility, and neither Itwaru nor Alli suggested that it does. The question is whether under the circumstances, and despite the party's ultimate responsibility, the party ought nevertheless to be entitled to avoid being found to have contravened s. 122(1)(b).

[568] The due diligence defence expressly provided for in s. 122(2) would be meaningless if this were not at least a possibility, and we do not find either of the authorities cited by Staff on this point to be persuasive. Indeed, both decisions contemplate that the defence is available. In *Flag Resources (Re)*, the Alberta Securities Commission found[48] that in the circumstances of that case, the individual who was president and CFO and a director of the issuer did not take reasonable and sufficient steps to avail himself of the defence. Similarly, this Tribunal concluded in *Sino-Forest Corporation (Re)*[49] that in the circumstances of the case, the respondents did not exercise reasonable due diligence.

[569] In this case, we accept Itwaru's assertion that following the meeting in mid-April 2017, just before the conclusion of the 2016 audit, he felt reassured by the review by Sheik and Vieira that First Global's revenue recognition practices were appropriate. Itwaru also took some comfort from the fact that while Alli (the CFO) was not a Chartered Professional Accountant, First Global's controller was,

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[47] Closing Submissions of Staff of the Ontario Securities Commission, March 29, 2021, at para 948

[48] 2010 ABASC 143 at para 161

[49] 2017 ONSEC 27 at paras 1272-1273

as was the chair of First Global's Audit Committee, who had served on the boards of several public companies.

[570] Staff suggests that First Global ought to have retained an accounting firm to provide an opinion on the issues relating to the Licence Transactions. That submission would be more persuasive had the accounting issue not been squarely raised with the auditor before the audit was concluded, and had the auditor not specifically focused on the issue before giving a clean opinion despite the concerns. In the circumstances at the time, it was reasonable for First Global management to conclude that appropriate experts had opined on the accounting treatment.

[571] Apart from the possibility of obtaining a formal opinion, Staff does not indicate what else, in its submission, First Global and its management would have to have done to entitle them to the benefit of the due diligence defence. Sheik himself convened the meeting with Itwaru and Alli to discuss the accounting issue, he turned his mind to the issue, he heard comments from Itwaru and Alli, and he obtained information about one of the agreements before giving a clean audit opinion. Even though the outcome of all of that turned out to be incorrect, those efforts distinguish this case from those in which a particular issue escapes the auditor's attention, or worse, those cases in which management actively conceals issues or information from the auditor.

[572] In our view, while First Global management's response ultimately proved to be incorrect from an accounting standpoint, it is not blameworthy under the circumstances. Auditors raise concerns all the time; some must be addressed before the audit opinion is issued, but some are deemed by the auditor not to be consequential enough to impede issuance of a clean audit opinion. Here, it was reasonable for First Global management to infer that the revenue recognition issue fell into the latter category.

[573] There were no material developments with respect to the revenue recognition issue between the conclusion of the 2016 year-end audit and Ringelberg's arrival in October of 2017. We find that First Global management were duly diligent in respect of the statements filed before that time (*i.e.*, the 2016 year-end statements and the Q1 and Q2 2017 interim financial reports).

[574] We emphasize that our finding must not be taken to relieve management of its responsibilities with respect to financial statements; nor does it dilute those responsibilities. Management continues to be ultimately responsible for the preparation and filing of financial statements. The question here is whether members of management did everything they reasonably should have to satisfy themselves that the financial statements filed before October 2017 were compliant. We conclude that they did.

[575] We do not reach the same conclusion with respect to the interim financial report for the third quarter of 2017 (ending September 30), issued on November 29, 2017. By the time that report was issued:

a. Ringelberg had clearly expressed her concerns;

b. Sheik had changed his views and recommended restatement;

c. Itwaru agreed that First Global should stop selling licences and that First Global should hire legal counsel to assist with an understanding as to whether the licences were securities;

d. Ringelberg and Itwaru discussed the possible need for First Global to restate;

e. about five weeks had passed since the special First Global board meeting at which Ringelberg discussed her concerns, recommended that the board establish a special committee to review the matter, and recommended that the assessment be completed before First Global filed its Q3 interim financial report; and

f. Sheik had sent his November 29 email to Alli, advising that First Global not book any revenue from the Licence Agreements until the issue was resolved.

[576] All of these developments should have raised serious red flags. The only reasonable step for First Global management to take in light of those red flags would have been to restate its results, or at least to hold off filing its interim report until the special committee had concluded a thorough examination of the issue and resolve the question. First Global management made no serious attempt to do anything in that direction.

[577] Itwaru submits that he took proactive steps to improve the quality of First Global's finance department by hiring Ringelberg and by giving her authority to investigate and resolve the accounting issue. We accept that he took steps, but he did not follow through once Ringelberg had investigated.

7.3.1.d Conclusion about First Global

[578] Given that the special committee did no real work on the issue, and no other efforts were made to resolve the question once it was identified, the due diligence defence cannot be available to First Global in respect of the Q3 2017 interim financial report.

[579] We therefore find that First Global contravened s. 77(1) of the Act, s. 3.2(1)(a) of NI 52-107, and s. 122(1)(b) of the Act.

7.3.2 Role of Itwaru and Alli

[580] We must now consider whether pursuant to s. 129.2 of the Act we should deem Itwaru and/or Alli not to have complied with Ontario securities law, because they authorized, or permitted or acquiesced in First Global's non-compliance. We conclude that we should, because they authorized the non-compliance.

[581] At the time of the impugned financial reporting, Itwaru and Alli were CEO and CFO of First Global, respectively. Alli had only recently returned as CFO, but he was fully aware of, and engaged in, the revenue recognition issue. Itwaru and Alli were also both directors. They signed the financial reporting documents that contained the impugned accounting treatment. They executed certificates of compliance (52-109FV1 and 52-109FV2) of those documents.

[582] Alli is adamant that it was Sheik who recommended that First Global create a Marketing Agreement, and Alli says that it was that step that "put us in this position". We reject this submission because: (i) there is no evidence that Sheik recommended the creation of a Marketing Agreement; (ii) even if he did, it was management's responsibility to ensure its agreements were legally sound and that the accounting treatment was proper; and (iii) in any case, it was not the Marketing Agreement that put First Global in the position it was in, since the problem predated the creation of that agreement.

[583] Itwaru submits that he was always focused on a proper resolution, and some emails from him corroborate that. However, Staff points to other emails and testimony that undermine that submission, and Itwaru's words were not backed up by action. We cannot accept his submission that he should not be blamed for some directors' initial reluctance to restate the financial statements. He was not required to take orders from the board, and it was his choice to authorize and certify the financial statements.

[584] We accept Itwaru's characterization of his approval of the financial statements as "a mistake, not an intent to falsely inflate". But a mistake it was, and it is one for which he should be held accountable.

[585] Accordingly, each of Itwaru and Alli is deemed to have contravened Ontario securities law because he authorized First Global's non-compliance as set out in paragraph [558] above.

7.4 Conclusion about purported licence transactions

[586] For the reasons set out above:

a. we dismiss Staff's allegations in respect of First Global's 2016 year-end financial statements, and the Q1 and Q2 interim financial reports;

b. we conclude that First Global contravened s. 77(1) and s. 122(1)(b) of the Act, and s. 3.2(1)(a) of NI 52-107, in respect of the Q3 interim financial report, and that Itwaru and Alli are deemed to have not complied with Ontario securities law in that respect, pursuant to s. 129.2 of the Act.

8. POTENTIAL DEFENCE FOR BAJAJ OF REASONABLE RELIANCE ON LEGAL ADVICE

[587] Before we reach our overall conclusion on the merits hearing, we wish to note that none of the respondents expressly asserted, and made submissions regarding, a defence of reasonable reliance on legal advice in respect of any of the allegations. However, Bajaj, who was unrepresented by counsel in this hearing, made some submissions that could be read as purported reliance on such a defence. Out of an abundance of caution, we address that defence now, and conclude that it is not available to him.

[588] Two lawyers played a role in the events giving rise to this proceeding. Steven Roch, of Colby Monet in Montreal, acted for Garcia, Grenier, GBR Colombia and at least some of the companies in which Garcia had a controlling interest (*e.g.*, Biominerales Colombia SAS and Bioclean Inc.). Jay Vieira was First Global's counsel.

[589] Bajaj had interactions with both lawyers, including (in the case of Vieira) in meetings facilitated by First Global. The fact that Bajaj was expected to have these kinds of interactions was recorded in one of the GBR Colombia resolutions signed in October 2015 (the "Appointment of Security Lawyer" resolution). That resolution provides that Bajaj will "deal with" Viera and Roch for all financial transactions and any other matter related to GBR Colombia.

[590] Despite that resolution, and despite the fact that Bajaj became a director of GBR Colombia some time after it was incorporated, Bajaj cannot rely on advice given by Roch, GBR Colombia's counsel, because:

a. Bajaj was not instructing Roch on behalf of GBR Colombia;

b. Bajaj's involvement in the impugned activities was on behalf of GBR Ontario, not GBR Colombia;

c. Roch was not acting for Bajaj or any of Bajaj's companies; and

d. Roch was not acting for GBR Ontario (despite the suggestion to the contrary in the summary of Roch's anticipated evidence, prepared by Staff and referred to in paragraph [86] above, which suggestion is contradicted by the evidence before us, including that of Aziz).

[591] GBR Ontario did not retain counsel at any time during the subject events. That choice had unfortunate consequences for GBR Ontario, Bajaj and Aziz. One of those consequences is that Bajaj cannot rely on the defence of reasonable reliance on legal advice with respect to any of the alleged contraventions.

[592] Similarly, Bajaj cannot rely on advice given by Vieira, First Global's counsel, because:

a. Bajaj had no position with First Global and was not instructing Vieira; and

b. Vieira was not acting for Bajaj, GBR Ontario, or any of Bajaj's companies.

[593] Even if Bajaj had a relationship with Roch or Vieira that would justify reliance on their advice, we would conclude that the defence remains unavailable on the facts of this case. A respondent who asserts the defence must establish that:

a. the lawyer had sufficient knowledge of the facts on which to base the advice;

b. the lawyer was qualified to give the advice;

c. the advice was credible given the circumstances under which it was given; and

d. the respondent made sufficient enquiries and relied on the advice.[50]

[594] The respondent must also adduce clear evidence of the communication they had with their lawyer, so that it can be determined with reasonable certainty the question asked and the answer given. There is no such record here, so we could not give Bajaj the benefit of the defence in any event.

[595] One example illustrates the importance of clear communication. Bajaj submits that Itwaru and Alli arranged a meeting with Viera to prepare debenture forms. Bajaj asserts that there were a couple of meetings in which Bajaj asked Viera whether "we are following OSC guidelines", and Viera replied affirmatively. The imprecision in Bajaj's submission (*i.e.*, "OSC guidelines") highlights the necessity of there being a clear and specific record of advice sought and received in order for this defence to be available.

[596] We considered whether Bajaj could avail himself of this defence, but for the above reasons we concluded that he could not.

9. ALLEGATIONS OF CONDUCT CONTRARY TO THE PUBLIC INTEREST

[597] Finally, we address the fact that in addition to specifically alleged contraventions of the Act, Staff alleges in numerous instances in the Statement of Allegations that the impugned conduct is "contrary to the public interest". As the Tribunal has previously noted,[51] the words "contrary to the public interest" do not appear in the Act.

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[50] *Mega-C Power Corp (Re)*, 2010 ONSEC 19 at para 261

[51] *Solar Income Fund Inc (Re),* 2021 ONSEC 2 at paras 70-76

[598] In the Statement of Allegations, in all instances but one, Staff identified no conduct, other than the alleged contraventions of the Act, that would warrant an order under s. 127 of the Act.

[599] The one possible exception is in paragraph 66 of the Statement of Allegations. Staff alleges that First Global, Itwaru and Alli engaged in conduct contrary to the public interest by failing "to take reasonable or appropriate steps to ensure that the GBR [Ontario] Parties did not make false or misleading statements to investors or fail to provide investors with information necessary to prevent the statements made from being false or misleading". It appears from the language used in that allegation that Staff seeks to link to the allegation of a contravention of s. 44(2) of the Act, which we dismissed as explained above.

[600] However, the Statement of Allegations identifies no source of the alleged obligation of First Global, Itwaru and Alli to supervise the activities of the GBR Ontario Parties. Such an obligation may exist, but it was neither supported in the Statement of Allegations nor argued in Staff's closing submissions, in which Staff did not pursue any allegation of conduct contrary to the public interest. We therefore treat that allegation as having been abandoned.

10. CONCLUSION

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

a. all of the respondents illegally distributed the First Global debentures, contrary to s. 53(1) of the Act;

b. GBR Ontario and Bajaj engaged in the business of trading in securities without being registered, contrary to s. 25(1) of the Act, and Aziz is deemed to have not complied with Ontario securities law in that respect, pursuant to s. 129.2 of the Act;

c. GBR Ontario, Bajaj and Aziz perpetrated fraud, contrary to s. 126.1(1)(b) of the Act, with respect to the First Global debentures;

d. GBR Ontario and Aziz perpetrated fraud, contrary to s. 126.1(1)(b) of the Act, with respect to the loans from EH;

e. First Global contravened s. 77(1) and s. 122(1)(b) of the Act, and s. 3.2(1)(a) of NI 52-107, in respect of First Global's Q3 interim financial

report, and Itwaru and Alli are deemed to have not complied with Ontario securities law in that respect, pursuant to s. 129.2 of the Act;

f. Staff's allegations that First Global and the GBR Ontario Parties contravened s. 44(2) of the Act are dismissed; and

g. Staff's allegations of conduct contrary to the public interest are considered to have been abandoned.

[602] The parties shall contact the Registrar by 4:30pm on September 30, 2022, to arrange an attendance in respect of a hearing regarding sanctions and costs. The attendance is to take place on a date that is mutually convenient, that is fixed by the Governance & Tribunal Secretariat, and that is no later than October 31, 2022.

[603] 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 Tribunal, one-page written submissions regarding a date for the attendance. Any such submissions shall be submitted by 4:30pm on September 30, 2022.

Dated at Toronto this 15th day of September, 2022

"Timothy Moseley"

Timothy Moseley

"Lawrence P. Haber"

Lawrence P. Haber

"Mary Anne De Monte-Whelan"

Mary Anne De Monte-Whelan

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B. Ontario Securities Commission

B.2
Orders

B.2.1 Durham Asset Management Inc. and Dami Corporate Bond Fund

Headnote

Securities Act (Ontario) section 147 – Relief granted to extend the time limit pertaining to the distribution of securities of an investment fund under its simplified prospectus by 137 days – Due to an administrative error, the fund failed to file a pro forma prospectus in accordance with the timelines stipulated for a renewal of a prospectus under the legislation, as a result of which the prospectus lapsed – Relief granted subject to a 90-day cancellation right being given to investors who purchased securities of the fund after the lapse date - Securities Act (Ontario).

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5 as am., s. 147.

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O 1990, CHAPTER S.5, AS AMENDED
(the Act)

AND

IN THE MATTER OF
DURHAM ASSET MANAGEMENT INC.
(the Filer)

AND

DAMI CORPORATE BOND FUND
(the Fund)

ORDER

Background

The Ontario Securities Commission (the **Commission**) has received an application from Durham Asset Management Inc. (the **Filer**), as investment fund manager of DAMI Corporate Bond Fund, (the **Fund**) for an order pursuant to section 147 of the Act that the time limit pertaining to the distribution of securities of the Fund under its simplified prospectus, fund facts and annual information form dated June 15, 2021 be extended to October 29, 2022 (the **Exemption Sought**).

Representations

This order is based on the following facts represented by the Filer.

A. The Filer

1. The Filer is a corporation under the laws of Ontario with its head office in Ajax, Ontario.

2. The Filer is registered as an investment fund manager, portfolio manager, exempt market dealer and commodity trading manager in Ontario.

3. The Filer is the manager, trustee and portfolio manager of the Fund.

4. Neither the Filer nor the Fund is in default of securities legislation in any jurisdiction, except as stated herein with respect to the lapse date of the Fund.

B. The Fund

5. The Fund is an open-ended mutual fund trust established under the laws of Ontario and is a reporting issuer as defined in the securities legislation of Ontario.

6. Securities of the Fund are currently distributed in Ontario pursuant to a simplified prospectus, fund facts and annual information form, each dated June 15, 2021 (together, the **Current Prospectus**).

7. The Fund is not listed on any stock exchange.

8. The Fund is authorized to issue an unlimited number of Series A, Series F, and Series I Trust Units, of which, as of the date of this decision 742.20 Series A Units, 43,263.52 Series F Units, and 0.0 Series I Units are issued and outstanding.

C. Exemption Sought

9. Due to an administrative error, the Fund failed to file a *pro forma* prospectus in accordance with the timelines stipulated for a renewal of a prospectus under the Act.

10. As a result, the Current Prospectus of the Fund lapsed on June 15, 2022 (the **Lapse Date**) and the Fund was required to cease the distribution of securities on the Lapse Date.

11. New investors in the Fund received delivery of the most recently filed fund facts of the Fund. The Current Prospectus of the Fund is available upon request.

12. There have been no material changes in the affairs of the Fund since the date of the Current Prospectus. Accordingly, the Current Prospectus represents the current information of the Fund.

13. The Fund suspended all sales of units effective August 25, 2022.

14. During the period between the Lapse Date and the date that sales were suspended (the **Interim Period**) the Fund sold 17,208.2 units having an aggregate value of $157,000.00.

15. The Filer intends to file a renewal prospectus for the Fund (the **Renewal Prospectus**) and obtain a final receipt therefore on or before October 29, 2022.

16. Granting the Exemption Sought would not affect the accuracy or currency of the information contained in the Current Prospectus nor would it be prejudicial to the public interest or the existing securityholders as there has been no material change in the affairs of the Fund since the date of the Current Prospectus.

17. Given the disclosure obligations of the Fund, should a material change in the affairs of the Fund occur, such change will be disclosed in an amendment to the Current Prospectus.

18. All purchasers of units prior to the receipting of the Renewal Prospectus will receive delivery of the most recently filed fund facts document(s) of the Fund and the Current Prospectus will still be available upon request.

19. If the Exemption Sought is not granted, it would be necessary to prepare and file a preliminary prospectus in respect of the Fund in order to re-qualify the distribution of the Fund's securities. It would be impractical to file a preliminary prospectus for the Fund and more efficient to grant the Exemption Sought in order to enable the Fund to continue the distribution of its securities under the Current Prospectus, subject to the terms of this order, until such a time as a final receipt is issued for the Renewal Prospectus.

Order

The Director is satisfied that this order meets the test set out in the Act for the Commission to make the order.

The order of the Director under section 147 of the Act is that the Exemption Sought is granted to the Fund provided that:

1. Every security holder of record of the Fund who purchased securities of the Fund during the Interim Period (each, an **Affected Securityholder**) is provided with the right:

    (a) to cancel (**Cancellation Right**) such trades within 90 days of the receipt of a statement (the **Statement of Rights**) describing the Cancellation Right, which is to be mailed by the Filer to the Affected Securityholder; and

    (b) to receive, upon the exercise of a Cancellation Right, the purchase price paid on the acquisition of such securities and all fees and expenses incurred in effecting such purchase.

2. The Filer mails a copy of the Statement of Rights and a copy of this order to each Affected Securityholder no later than 10 days after the date of this decision; and

3. If the net asset value per security of the Fund on the date that an Affected Securityholder exercises the Cancellation Right is less than the price per security paid by the Affected Securityholder at the time of purchase, the Filer shall reimburse the difference to the Fund.

Dated this 13th day of September, 2022.

"Darren McKall"
Manager, Investment Funds and Structured Products
Ontario Securities Commission

Application #: 2022/0410

B.2.2 LifeWorks Inc.

Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – The issuer ceased to be a reporting issuer under securities legislation.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(10)(a)(ii).

September 16, 2022

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the Jurisdiction)

AND

IN THE MATTER OF
THE PROCESS FOR CEASE TO BE
A REPORTING ISSUER APPLICATIONS

AND

IN THE MATTER OF
LIFEWORKS INC.
(the Filer)

ORDER

Background

The principal regulator in the Jurisdiction has received an application from the Filer for an order under the securities legislation of the Jurisdiction of the principal regulator (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 passport application):

(a) the Ontario Securities Commission is the principal regulator for this application; and

(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 each of the provinces and territories of Canada (other than Ontario).

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.

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.

Order

The principal regulator is satisfied that the order meets the test set out in the Legislation for the principal regulator to make the order.

The decision of the principal regulator under the Legislation is that the Order Sought is granted.

"Erin O'Donovan"
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2022/0418

B.2.3 Black Swan Graphene Inc. – s. 1(11)b)

Headnote

Subsection 1(11)(b) – Order that the issuer is a reporting issuer for the purposes of Ontario securities law – Issuer is already a reporting issuer in British Columbia and Alberta – Issuer's securities listed for trading on the TSX Venture Exchange as a capital pool company – Continuous disclosure requirements in British Columbia and Alberta are substantially the same as those in Ontario – Issuer has a significant connection to Ontario.

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(11)(b).

IN THE MATTER OF
THE SECURITIES ACT
R.S.O. 1990, c. S. 5, AS AMENDED
(the "Act")

AND

IN THE MATTER OF
BLACK SWAN GRAPHENE INC.
(the "Filer")

ORDER
(Paragraph 1(11)b))

UPON the application of the Filer to the Ontario Securities Commission (the "**Commission**") for an order pursuant to paragraph 1(11)(b) of the Act that, for the purposes of Ontario securities law, the Filer is a reporting issuer in Ontario;

AND UPON considering the application and the recommendation of the staff of the Commission;

AND UPON the Filer having represented to the Commission as follows:

1. The Filer is a company incorporated under the *Business Corporations Act* (British Columbia), with its head office located at 1410 – 120 Adelaide Street West, Toronto, ON, M5H 1T1.

2. The authorized share capital of the Filer consists of an unlimited number of common shares (the "**Common Shares**"), of which 283,938,008 Common Shares are issued and outstanding as of August 4, 2022.

3. The Filer is a reporting issuer in British Columbia and Alberta and is not a reporting issuer in any other jurisdiction. The Filer became a reporting issuer in British Columbia on July 14, 2010 and in Alberta on July 16, 2010. The Filer's principal regulator is the British Columbia Securities Commission.

4. The continuous disclosure documents filed by the Filer under the *Securities Act* (British Columbia) (the "**BC Act**") and the *Securities Act* (Alberta) (the "**AB Act**") are available on the System for Electronic Document Analysis and Retrieval ("**SEDAR**"). The Filer's first electronic filing on SEDAR occurred on June 14, 2010.

5. The Filer is not on the lists of defaulting reporting issuers maintained pursuant to the BC Act or the AB Act , and is not in default of any requirement of either the BC Act or the AB Act or the rules and regulations made thereunder.

6. The continuous disclosure requirements of the BC Act and the AB Act are substantially the same as the continuous disclosure requirements under the Act.

7. On August 2, 2022 the Filer competed its "Qualifying Transaction" (as that term is defined in TSX Venture Exchange Policy 2.4 – *Capital Pool Companies*) whereby the Filer, among other things: (i) acquired all of the issued and outstanding shares in the capital of Black Swan Graphene Inc. and Black Swan Graphene Inc. became a wholly-owned subsidiary of the Filer; (ii) changed its name from "Dragonfly Capital Corp." to "Black Swan Graphene Inc."; and (iii) its common shares will commence trading on the TSXV as a Tier 2 Industrial Issuer under the trading symbol "SWAN" (on August 9, 2022). No other securities of the Filer are listed, traded or quoted on any stock exchange or trading or quotation system.

8. The Filer is not in default of any of the rules, regulations or policies of the TSXV.

9. The Filer is not an OTC reporting issuer under Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*.

10. Prior to the Qualifying Transaction, the Filer had selected the British Columbia Securities Commission as its principal regulator due to the fact that at that time its head office was located in the Province of British Columbia.

11. Pursuant to section 18 of Policy 3.1 of the TSX Venture Exchange Corporate Finance Manual (the **TSXV Manual**), a listed-issuer, which is not otherwise a reporting issuer in Ontario, must assess whether it has a "Significant Connection to Ontario" (as defined in Policy 1.1 of the TSXV Manual) and, upon becoming aware that it has a significant connection to Ontario, promptly make a *bona fide* application to the Commission to be designated a reporting issuer in Ontario.

12. The Filer has determined it has a significant connection to Ontario in accordance with the policies of the TSXV. Specifically, (i) the Filer's head office is located in Toronto, Ontario and (ii) its President and Chief Executive Officer, its Chief Financial Officer and Corporate Secretary, and its VP Corporate Development are all residents of Ontario. Accordingly, the Commission is the

appropriate body to serve as the Filer's principal regulator, pursuant to section 3.4(4) of National Instrument 11-202 *Process for Prospectus Reviews in Multiple Jurisdictions*.

13. The Commission will be the principal regulator of the Filer once the Filer has obtained reporting issuer status in Ontario. Upon granting of this Order, the Filer will amend its SEDAR profile to indicate that the Commission is its principal regulator.

14. None of the Filer, any of its officers or directors, or any shareholder holding sufficient securities of the Filer to affect materially the control of the Filer has:

    (a) been subject to any penalties or sanctions imposed by a court relating to Canadian securities legislation or by a Canadian securities regulatory authority;

    (b) entered into a settlement agreement with a Canadian securities regulatory authority; or

    (c) been subject to any other penalties or sanctions imposed by a court or regulatory body that would be likely to be considered important to a reasonable investor making an investment decision.

15. None of the Filer, any of its officers or directors, or any shareholder holding sufficient securities of the Filer to affect materially the control of the Filer, is or has been subject to:

    (a) any known ongoing or concluded investigations by a Canadian securities regulatory authority, or a court or regulatory body, other than a Canadian securities regulatory authority, that would be likely to be considered important to a reasonable investor making an investment decision; or

    (b) any bankruptcy or insolvency proceedings, or other proceedings, arrangements or compromises with creditors, or appointment of a receiver, receiver manager or trustee, within the preceding 10 years.

16. None of the Filer's officers or directors, or any shareholder holding sufficient securities to materially affect the control of the Filer, is or has been at the time of such event, an officer or director of any other issuer which is or has been subject to:

    (a) any cease trade order or similar order, or order that denied access to any exemptions under Ontario securities law, for a period more than 30 consecutive days, within the preceding 10 years; or

    (b) any bankruptcy or insolvency proceedings, or other proceedings, arrangements or compromises with creditors, or appointment of a receiver, receiver-manager or trustee, within the preceding 10 years.

AND UPON the Commission being satisfied that granting this Order would not be prejudicial to the public interest;

IT IS HEREBY ORDERED pursuant to paragraph 1(11)(b) of the Act that the Filer is a reporting issuer for the purposes of Ontario securities law.

DATED at Toronto, Ontario on this 16th day of September, 2022.

"Lina Creta"
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2022/0374

B.2.4 0755461 B.C. Ltd. – s. 144

Headnote

Section 144 of the Securities Act (Ontario) – application for partial revocation of a cease trade order – concurrent application filed in British Columbia – issuer cease traded due to failure to file certain continuous disclosure documents required by Ontario securities law – issuer has applied for partial revocation of the cease trade order to permit the issuer to proceed with a private placement – issuer will use proceeds from private placement to accredited investors to prepare and file continuous disclosure documents and pay related fees – partial revocation granted subject to conditions.

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 127 and 144.
National Policy 12-202 Revocation of Certain Cease Trade Orders.

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED
(the Act)

AND

IN THE MATTER OF
0755461 B.C. LTD.

ORDER
(Section 144)

WHEREAS the securities of 0755461 B.C. Ltd. (formerly, Pro Minerals Inc.) (the **Applicant**) are subject to a cease trade order issued by the Director dated September 24, 2012, pursuant to paragraph 2 of subsection 127(1) and subsection 127(4.1) of the Act (the **ON Cease Trade Order**), directing that all trading in the securities of the Applicant cease until the ON Cease Trade Order is revoked by the Director;

AND WHEREAS the Applicant has applied to the Ontario Securities Commission (the **Commission**) for a partial revocation of the ON Cease Trade Order pursuant to section 144 of the Act ;

AND UPON the Applicant having represented to the Commission that:

1. The Applicant was incorporated in the province of British Columbia under the *Business Corporations* Act (British Columbia) on April 21, 2006 and was dissolved on October 5, 2015. On April 19, 2022, the Applicant was restored under the *Business Corporations Act* (British Columbia) as 0755461 B.C. Ltd.

2. The Applicant's head office is located at 833 Seymour Street, Suite 3606, Vancouver, British Columbia, V6B 0G4.

3. The Applicant is a reporting issuer under the securities legislation of the provinces of Ontario, British Columbia, Quebec, and Alberta. The Applicant is not a reporting issuer in any other jurisdiction in Canada.

4. The Applicant's authorized share capital consists of an unlimited number of common shares (**Common Shares**). The Applicant has 73,643,467 Common Shares issued and outstanding. Other than the issued and outstanding Common Shares, the Applicant has no securities outstanding.

5. The Applicant's securities are not listed on any stock exchange or quotation system.

6. The ON Cease Trade Order was issued as a result of the Applicant's failure to file the following continuous disclosure materials as required by Ontario securities law:

    (a) audited annual financial statements for the year ended April 30, 2012;

    (b) management's discussion and analysis (**MD&A**) relating to the audited annual financial statements for the year ended April 30, 2012;

    (c) certificates required to be filed in respect of the financial statements referred to in subparagraph (a) above as required by National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (**NI 52-109**);

    (collectively, the **Unfiled Documents**).

7. The Unfiled Documents were not filed in a timely manner as a result of financial difficulties.

8. Subsequent to the failure to file the Unfiled Documents, the Applicant also failed to file the following documents:

   (a) annual audited financial statements for the years ended April 30, 2013, to April 30, 2022;

   (b) interim unaudited financial reports for the interim periods ended July 31, 2012 to January 31, 2022;

   (c) MD&A relating to the annual audited financial statements and interim unaudited financial reports referred to in subparagraphs (a) and (b) above; and

   (d) certificates required to be filed in respect of the financial statements referred to in subparagraphs (a) and (b) above under NI 52-109

   (together with the Unfiled Documents, the **Unfiled Continuous Disclosure**).

9. The Applicant's securities are also subject to:

   (a) a cease trade order dated December 6, 2012 issued by the Alberta Securities Commission, pursuant to subsection 33.1 of the *Securities Act* (Alberta), directing that all trading in the securities of the Applicant cease until the order is revoked or varied (the **AB Cease Trade Order**);

   (b) a cease trade order dated September 10, 2013 issued by the British Columbia Securities Commission (the **BCSC**), pursuant to subsection 164 of the *Securities Act* (British Columbia), directing that all trading in the securities of the Applicant cease until the order is revoked or varied (the **BC Cease Trade Order**); and

   (c) a cease trade order dated September 25, 2012 issued by the Autorité des marchés financiers pursuant to sections 265, 267 and 318 of the *Securities Act*, R.S.Q., c. V-1.1 directing that all trading in the securities of the Applicant cease until the order is revoked or varied (together with the BC Cease Trade Order, AB Cease Trade Order, and ON Cease Trade Order, the **Cease Trade Orders**).

10. The Applicant is seeking a partial revocation of the ON Cease Trade Order to permit the Applicant to complete a private placement (the **Private Placement**) of an amount up to $100,000 by way of: (i) the issuance of up to 74,850,299 Common Shares at a price of $0.000668 per Common Share; and (ii) an offering of unsecured convertible debentures (the **Unsecured Debentures**) in the principal amount of up to $50,000 convertible into Common Shares at a conversion price of $0.000668 per Common Share, with each Unsecured Debenture to be issued in the principal amount of $1,000, bearing interest at an annual rate of 10% payable in arrears in equal installments semi-annually, and maturing on the date is 24 months from the date of issuance. The Convertible Debentures may only be converted after the full revocation of the Cease Trade Orders.

11. Each distribution made in respect of the Private Placement will comply with the accredited investor prospectus exemption contained in section 73.3 of the Act and section 2.3 of National Instrument 45-106 *Prospectus Exemptions*.

12. The Private Placement is intended to take place in Ontario and British Columbia.

13. The Applicant has also filed an application with the BCSC for a partial revocation of the BC Cease Trade Order.

14. The Applicant intends to use the proceeds of the Private Placement to resolve outstanding fees, prepare audited financial statements and pay all other costs associated with applying for a full revocation of the Cease Trade Orders.

15. The Applicant intends to prepare and file continuous disclosure documents and pay all outstanding fees within a reasonable period of time following the completion of the Private Placement. The Applicant also intends to apply to the applicable securities regulators to have the Cease Trade Orders fully revoked.

16. Other than the failure to file the Unfiled Continuous Disclosure, the Applicant is not in default of any of the requirements of the Act or the rules and regulations made pursuant thereto. The Applicant's SEDAR and SEDI profiles are up to date.

17. The Applicant intends to allocate the proceeds from the Private Placement as follows:

Description	Cost
Accounting, audit and legal fees associated with the preparation and filing of the relevant continuous disclosure documents, as well as the preparation of the materials for the annual meeting, the Private Placement, and the applications for the partial revocation order and the full revocation order:	$10,000

Filing fees associated with obtaining the partial revocation order and the full revocation order, including fees payable to the applicable regulators, including the Commission:	$85,887.15
Legacy accounts payable, including accounting and legal fees, consulting fees and outstanding transfer agent fees:	$4,112.85
Total:	$100,000

18. The Applicant reasonably believes that the Private Placement will be sufficient to bring its continuous disclosure obligations up to date and pay all related outstanding fees.

19. As the Private Placement would involve a trade of securities and acts in furtherance of trades, the Private Placement cannot be completed without a partial revocation of the ON Cease Trade Order and the BC Cease Trade Order.

20. The Private Placement will be completed in accordance with all applicable laws.

21. Prior to completion of the Private Placement, the Applicant will:

    (a) provide any subscriber to the Private Placement with:

        (i) a copy of the Cease Trade Orders;

        (ii) a copy of the partial revocation order for which the application has been made; and

    (b) obtain from each subscriber a signed and dated acknowledgment which clearly states that all of the Applicant's securities, including the securities issued in connection with the Private Placement, will remain subject to the Cease Trade Orders, and that the issuance of a partial revocation order does not guarantee the issuance of a full revocation order in the future.

22. Upon issuance of this order, the Applicant will issue a press release announcing the order and the intention to complete the Private Placement. Upon completion of the Private Placement, the Applicant will issue a press release and file a material change report. As other material events transpire, the Applicant will issue appropriate press releases and file material change reports as applicable.

AND UPON considering the application and the recommendations of staff of the Commission;

AND UPON the Director being satisfied that to do so would not be prejudicial to the public interest;

IT IS ORDERED, pursuant to Section 144 of the Act, that the ON Cease Trade Order is partially revoked solely to permit the trades in securities of the Applicant (including for greater certainty, acts in furtherance of trades in securities of the Applicant) that are necessary for and are in connection with the Private Placement, provided that:

(a) prior to completion of the Private Placement, the Applicant will:

    (i) provide to each subscriber under the Private Placement a copy of the Cease Trade Orders;

    (ii) provide to each subscriber under the Private Placement a copy of this order; and

    (iii) obtain from each subscriber under the Private Placement a signed and dated acknowledgment, which clearly states that all of the Applicant's securities, including the securities issued in connection with the Private Placement, will remain subject to the Cease Trade Orders, and that the issuance of a partial revocation order does not guarantee the issuance of a full revocation order in the future.

(b) The Applicant will make available a copy of the written acknowledgements referred to in paragraph (a)(iii) to staff of the Commission on request; and

(c) This order will terminate on the earlier of the closing of the Private Placement and 60 days from the date hereof.

DATED this 14th day of September, 2022.

"Marie-France Bourret"
Corporate Finance
Ontario Securities Commission

OSC File #: 2022/0267

B.2.5 Nomad Royalty Company Ltd.

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 – issuer has outstanding warrants exercisable into securities of acquiror – warrant holders no longer require public disclosure in respect of the issuer – relief granted.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s.1(10)(a)(ii).

DÉCISION Nº: 2022-IC-1049773

Nº dossier SEDAR: 7533

August 30, 2022

[TRANSLATION]

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
QUÉBEC AND
ONTARIO
(the "Jurisdictions")

AND

IN THE MATTER OF
THE PROCESS FOR CEASE TO BE
A REPORTING ISSUER APPLICATIONS

AND

IN THE MATTER OF
NOMAD ROYALTY COMPANY LTD.
(the "Filer")

ORDER

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 *Autorité des marchés financiers*is the principal regulator for this application;

(b) the Filer has provided notice that subsection 4C.5(1) of *Regulation 11-102 Passport System*, CQLR c V-1.1, r 1 (**Regulation 11-102**) is intended to be relied upon in each of British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador; 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

Terms defined in *Regulation 14-101 respecting Definitions*, CQLR c V-1.1, r 3, Regulation 11-102 and, in Québec, in *Regulation 14-501Q on definitions*, CQLR c V-1.1, r 4 have the same meaning if used in this order, unless otherwise defined.

Representations

This order is based on the following facts represented by the Filer:

1. The Filer is a corporation governed by the *Canada Business Corporations Act*, RSC 1985, c C-44 (the **CBCA**), after having previously been continued from the British Columbia *Business Corporation Act*, SBC 2002 c 57 (the **BCBCA**) on December 20, 2019. Its head office is located in Québec.

2. On May 1, 2022, the Filer and Sandstorm Gold Ltd. (the **Purchaser**) entered into an arrangement agreement (the **Arrangement Agreement**) providing for, among other things, the acquisition by the Purchaser of all of the issued and outstanding common shares of the Filer (the **Filer Shares**), by way of a plan of arrangement under the CBCA (the **Arrangement**).

3. The Arrangement was completed on August 15, 2022.

4. The Purchaser is a reporting issuer in all of the provinces and territories of Canada. Its head office is located in British Columbia. The Purchaser's common shares are listed on the Toronto Stock Exchange (**TSX**) and the New York Stock Exchange (**NYSE**).

5. The Filer is a reporting issuer in all of the provinces and territories of Canada.

6. The Arrangement was approved by the shareholders of the Filer at a special meeting of the shareholders held on August 9, 2022 (the **Meeting**) by 99.73% of the votes cast by shareholders entitled to vote at the Meeting, excluding the votes cast by certain persons required to be excluded pursuant to *Regulation* 61-101 *respecting Protection of Minority Security Holders in Special Transactions*, CQLR c V-1.1, r 33 and by the Superior Court of Québec during a final hearing held on August 12, 2022.

7. The full details of the Arrangement and the intention of the Filer to make an application to cease to be a reporting issuer are contained in a management proxy circular of the Filer dated July 11, 2022, a copy of which (in English only) is available under the Filer's profile on SEDAR at www.sedar.com.

8. Pursuant to the Arrangement:

   (a) on August 15, 2022, the Purchaser acquired the Filer Shares in exchange for 1.21 common shares of the Purchaser (the **Purchaser Shares**) per one Filer Share; and

      (i) the holders of such acquired Filer Shares have ceased to have any rights as holders of the Filer Shares;

      (ii) the names of such holders have been removed from the register of holders of the Filer Shares maintained by or on behalf of the Filer; and

      (iii) the Purchaser has been recorded as the holder of the Filer Shares so transferred and the legal and beneficial owner thereof.

   (b) each holder of the Filer's restricted share units (the **RSUs**), whether or not vested, received a cash payment for each RSU;

   (c) each holder of the Filer's performance share units (the **PSUs**), whether or not vested, received a cash payment for each PSU;

   (d) each holder of the Filer's deferred share units (the **DSUs**) received a cash payment for each DSU; and

   (e) each holder of any stock options to acquire the Filer Shares, whether or not vested, received in exchange for each Filer stock option a fully vested stock option from the Purchaser to purchase from the Purchaser a number of Purchaser Shares calculated according to the terms provided in the Arrangement plan attached as Schedule A to the Arrangement Agreement.

9. The authorized capital of the Filer consists of an unlimited number of the Filer Shares and an unlimited number of preferred shares issuable in one or more series. As of the date hereof, there are 61,469,857 shares outstanding, and no preferred shares issued and outstanding. All the Filer Shares are held by the Purchaser. The Filer Shares are listed on the TSX, the NYSE and the Frankfurt Stock Exchange (**FSE**).

10. The Filer Shares were delisted from the TSX as at the close of business on August 16, 2022, from the FSE as at the close of business on August 17, 2022 and from the NYSE as at the close of business on August 25, 2022. The Filer is no longer required to comply with the continuous disclosure requirements under Section 15(d) of the Securities Exchange Act of 1934. Pursuant to Rule 12h-3 under the U.S. Securities Exchange Act of 1934, the Filer's duty to file reports under

the Act of 1934 were suspended immediately upon the filing of Form 15. Accordingly, the Filer is no longer required to comply with any of the continuous disclosure requirements in the United States.

11. As at the date hereof, there are 21,991,846 warrants to purchase common shares of the Filer issued and outstanding (the **Warrants**) entitling the holders thereof (each, a **Warrant Holder**), upon the exercise of each Warrant to subscribe to Purchaser Shares.

12. The Warrants registered on the TSX were delisted from the TSX at the close of business on August 16, 2022.

13. The Warrants are held by approximately 1,670 Warrant Holders, which includes the beneficial Warrant Holders as at June 17, 2022, and the registered Warrant Holders as at August 12, 2022, residing in the following jurisdictions:

    (a) 136 in Ontario;

    (b) 78 in Alberta;

    (c) 201 in British Columbia;

    (d) 36 in Québec;

    (e) 10 in Saskatchewan;

    (f) 10 in Manitoba;

    (g) 6 in New Brunswick;

    (h) 6 in Nova Scotia;

    (i) 1 in Newfoundland and Labrador;

    (j) 1 in the Northwest Territories;

    (k) 1,143 in the United States; and

    (l) 42 in other foreign jurisdictions (other than the United States).

14. Upon completion of the Arrangement, the Warrants may be exercisable only for Purchaser Shares and may no longer be exercisable for Filer Shares.

15. Under the Arrangement, the Purchaser is obligated to meet the Filer's obligations upon exercise of the Warrants and such number of Purchaser Shares have been reserved for issuance.

16. The Filer is not required to remain a reporting issuer in any jurisdiction in Canada under any contractual arrangement between the Filer and the Warrant Holders.

17. The Filer cannot rely on the simplified procedure set out in section 19 of *National Policy 11-206 respecting Process for Cease to be a Reporting Issuer Applications* (**National Policy 11-206**) as the Filer's outstanding securities are beneficially owned, directly or indirectly, by more than 15 securityholders in each of the jurisdictions of Canada and more than 51 securityholders in total worldwide. Moreover, the Filer is unable to rely on the modified procedure set out in National Policy 11-206 as the Filer is a corporation existing under the CBCA and does not meet the criteria listed in Section 20 of National Policy 11-206 in respect of foreign issuers.

18. The Filer has no intention to seek a financing in the future by issuing any further securities to the public and has no intention of issuing any securities other than the issuance of securities to the Purchaser or its affiliates.

19. The Filer is not in default of securities legislation in any jurisdiction in Canada, except for the filing of the Filer's condensed consolidated interim financial statements for the three and six months ended June 30, 2022 and 2021, the Filer's management's discussion and analysis for the three and six months ended June 30, 2022 and the corresponding certification of interim filings of the Chief Executive Officer and Chief Financial Officer of the Filer under Form F2 of *Regulation 52-109 respecting Certification of Disclosure in Issuers' Annual and Interim Filings*, CQLR c V-1.1, r 27.

20. The Filer is not an OTC reporting issuer under *Regulation 51-105 respecting Issuers Quoted in the U.S. Over-the-Counter Markets*, CQLR c V-1.1, r 24.1.

21. No securities of the Filer, including debt securities, are traded in Canada or another country on a marketplace as defined in *Regulation 21-101 respecting Marketplace Operation*, CQLR c V-1.1, r 5, or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported.

22. Upon granting the Order Sought, the Filer will no longer be a reporting issuer in any of the provinces of Canada.

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.

“Marie-Claude Brunet-Ladrie”
Directrice de la surveillance des émetteurs et initiés

OSC File # : 2022/0352

B.2.6 Spyglass Resources Corp. – s. 144(1)

Headnote

Section 144(1) – Application to vary a cease trade order – cease trade order varied to permit beneficial shareholders, who are not insiders or control persons, to sell securities outside of Canada, subject to conditions.

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
SPYGLASS RESOURCES CORP.
(the "ISSUER")

ORDER
(section 144(1) of the Act)

WHEREAS the securities of the Issuer are subject to a cease trade order issued by the Director of the Ontario Securities Commission (the "**Commission**") on May 10, 2016, under paragraph 2 of subsection 127(1) and subsection 127(4.1) of the Act directing that trading in the securities of the Issuer, whether direct or indirect, cease until further order by the Director (the "**Cease Trade Order**");

AND WHEREAS a cease trade order with respect to the Issuer's securities was also issued by the Alberta Securities Commission on May 6, 2016, the Manitoba Securities Commission on May 9, 2016, British Columbia Securities Commission on May 12, 2016, and the Autorité des marchés financiers on May 24, 2016;

AND WHEREAS the Issuer's securities are not listed on and do not trade on any exchange in Canada;

AND WHEREAS an application was made on behalf of a shareholder of the Issuer to the Commission pursuant to section 144(1) of the Act to vary the Cease Trade Order;

AND UPON the Director being satisfied that:

a) the terms and conditions to the Cease Trade Order put Ontario resident shareholders of the Issuer at a disadvantage to certain shareholders who are free to trade their shares over a foreign market;

b) effective June 23, 2016, the Canadian Securities Administrators harmonized the response to a specified default under National Policy 11-207 *Failure-to-File Cease Trade orders and Revocations in Multiple Jurisdictions* to include standard carve-out language permitting shareholders to sell securities of an issuer subject to a cease trade order over a foreign organized regulated market if certain conditions are satisfied; and

c) it is not prejudicial to the public interest to vary the Cease Trade Order under section 144(1) of the Act;

IT IS ORDERED that, pursuant to section 144(1) of the Act, the Cease Trade Order be varied by including the following section:

DESPITE THIS ORDER, a beneficial securityholder of the Reporting Issuer who is not, and was not at the date of this order, an insider or control person of the Reporting Issuer, may sell securities of the Reporting Issuer acquired before the date of this order if both of the following apply:

(a) The sale is made through a "foreign organized regulated market", as defined in section 1.1 of the Universal Market Integrity Rules of the Investment Industry Regulatory Organization of Canada; and

(b) The sale is made through an investment dealer registered in a jurisdiction of Canada in accordance with applicable securities legislation.

DATED this 16th day of September, 2022.

"Erin O'Donovan"
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2022/0414

B.2.7 SEI Investments Canada Company and Long Duration Credit Bond Fund

Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – Application for the Fund to cease being a reporting issuer under applicable securities law – relief granted.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(10)(a)(ii).

September 12, 2022

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the Jurisdiction)

AND

IN THE MATTER OF
THE PROCESS FOR CEASE TO BE
A REPORTING ISSUER APPLICATIONS

AND

IN THE MATTER OF
SEI INVESTMENTS CANADA COMPANY
(the Filer)

AND

LONG DURATION CREDIT BOND FUND
(the Fund)

ORDER

Background

The principal regulator in the Jurisdiction has received an application from the Filer, on behalf of the Fund, for an order under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) that the Fund has ceased to be a reporting issuer in all jurisdictions of Canada in which the Fund is a reporting issuer (the **Order Sought**).

Under the Process for Cease to be a Reporting Issuer Applications (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 4C.5(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island, Quebec, Newfoundland and Labrador, Northwest Territories, Yukon, and Nunavut.

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.

Representations

This order is based on the following facts represented by the Filer:

1. the Fund 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 Fund, 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 Fund, 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 Fund has ceased to be a reporting issuer in all of the jurisdictions of Canada in which the Fund is a reporting issuer; and

5. the Fund is not in default of securities legislation in any jurisdiction.

Order

The principal regulator is satisfied that the order meets the test set out in the Legislation for the principal regulator to make the order.

The decision of the principal regulator under the Legislation is that the Order Sought is granted.

"Darren McKall"
Investment Funds and Structured Products Branch
Ontario Securities Commission

Application File #: 2022/0382

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B.3
Reasons and Decisions

B.3.1 Pembroke Private Wealth Management Ltd. and Pembroke Canadian All Cap Fund

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from 15.3(2), 15.6(1)(a)(i) and 15.6(1)(d) of National Instrument 81-102 Investment Funds to permit a mutual fund, that has not distributed securities under a simplified prospectus in a jurisdiction for 12 consecutive months, to include in their sales communications performance data for the period when the fund was not a reporting issuer – relief also granted from section 2.1 of National Instrument 81-101 Mutual Fund Prospectus Disclosure for the purposes of the relief requested from Item 5 of Part I of Form 81-101F3 Contents of Fund Facts Document, to permit the mutual fund to include in its fund facts, the past performance data for the period when the fund was not a reporting issuer.

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from section 4.4 of National Instrument 81-106 Investment Fund Continuous Disclosure for the purposes of the relief requested from Form 81-106F1 Contents of Annual and Interim Management Report of Fund Performance, items 3.1(7), 4.1(1), 4.1(2), 4.2(1), 4.3(1) and 4.3(2) of Part B of Form 81-106F1, and Items 3(1) and 4 of Part C of Form 81-106F1, to permit a mutual fund to include in annual and interim management reports of fund performance the financial highlights and past performance of the fund that are derived from the fund's annual financial statements that pertain to time periods when the fund was not a reporting issuer.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 15.3(2), 15.6(1)(a)(i), 15.6(1)(d), and 19.1.
National Instrument 81-101 Mutual Fund Prospectus Disclosure, s. 2.1.
Form 81-101F3 Contents of Fund Facts Document, Item 5 of Part I.
National Instrument 81-106 Investment Fund Continuous Disclosure, s. 4.4.
Form 81-0106F1 Contents of Annual and Interim Management Report of Fund Performance, Items 3.1(7), 4.1(1), 4.1(2), 4.2(1), 4.3(1), and 4.3(2) of Part B, and Items 3(1) and 4 of Part C.

March 28, 2022

[TRANSLATION]

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
QUEBEC AND
ONTARIO
(the Jurisdictions)

AND

IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS
IN MULTIPLE JURISDICTIONS

AND

IN THE MATTER OF
PEMBROKE PRIVATE WEALTH MANAGEMENT LTD.
(the Filer)

AND

IN THE MATTER OF
THE PEMBROKE CANADIAN ALL CAP FUND
(the Fund)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application (the **Application**) from the Filer on behalf of the Fund for a decision under the securities legislation of the Jurisdictions (the **Legislation**) exempting units of the Fund from:

a) Sections 15.3(2), 15.6(1)(a)(i) and 15.6(1)(d)(i) of *Regulation 81-102 respecting Investment Funds*, CQLR, c. V-1.1, r. 39 (**Regulation 81-102**) to permit the Fund to include performance data in sales communications notwithstanding that:

   i) the performance data will relate to a period prior to the Fund offering its securities under a simplified prospectus; and

   ii) the Fund has not distributed its securities under a simplified prospectus for 12 consecutive months,

b) Section 2.1 of *Regulation 81-101 respecting Mutual Fund Prospectus Disclosure*, CQLR, c. V-1.1, r.38 (**Regulation 81-101**) to meet the requirements from Form 81-101F3 *Contents of Fund Facts Document* (**Form 81-101F3**), and

c) Items 5(2), 5(3) and 5(4) and Instruction (1) of Part I of Form 81-101F3 in respect of the requirement to comply with sections 15.3(2), 15.6(1)(a)(i) and 15.6(1)(d)(i) of Regulation 81-102 to permit the Fund to include in its fund facts the past performance data of the Fund notwithstanding that:

   i) such performance data relates to a period prior to the Fund offering its securities under a simplified prospectus; and

   ii) the Fund has not distributed its securities under a simplified prospectus for 12 consecutive months,

d) Section 4.4 of Regulation 81-106 respecting Investment Fund Continuous Disclosure, CQLR, c. V-1.1, r. 42 (**Regulation 81-106**) from Form 81-106F1 Contents of Annual and Interim Management Report of Fund Performance (**Form 81-106F1**); and

e) Items 3.1(7), 4.1(1) (in respect of the requirement to comply with section 15.3(2) of Regulation 81-102), 4.1(2), 4.2(1), 4.3(1) and 4.3(2) of Part B of Form 81-106F1 and Items 3(1) and 4 of Part C of Form 81-106F1 to permit the Fund to include, in its annual and interim management reports of fund performance (**MRFPs**), past performance data notwithstanding that such performance data relates to a period prior to the Fund offering its securities under a simplified prospectus;

(collectively, the **Exemption Sought**).

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 Filer has provided notice that section 4.7(1) of *Regulation 11-102 respecting Passport System,* CQLR, c. V-1.1, r. 1 (**Regulation 11-102**) is intended to be relied upon by the Filer in the following jurisdictions: Alberta, British Columbia, Prince Edward Island, Manitoba, New Brunswick, Nova Scotia, Saskatchewan and Newfoundland and Labrador (the **Notified Passport Jurisdictions** and collectively with the Jurisdictions, the **Jurisdictions of Canada**); and

c) 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 and Regulation 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 Filer:

1. The Fund is an open-ended mutual fund trust created under the laws of Ontario on January 31, 2019.

2. The Filer is a corporation incorporated under the laws of Canada having its head office in Montreal, Quebec.

3. The Filer is registered under securities legislation in Quebec, Ontario and Newfoundland and Labrador as an investment fund manager and in Quebec, Alberta, British Columbia, Prince Edward Island, Manitoba, New Brunswick, Nova Scotia, Ontario, Saskatchewan and Newfoundland and Labrador as a dealer in the category of mutual fund dealer. The Filer is the investment fund manager, promoter and trustee of the Fund.

4. Pembroke Management Ltd., a registered portfolio manager in Quebec, Alberta, British Columbia, Manitoba and Ontario, has been appointed as the portfolio manager of the Fund. Since the Fund commenced operations, Pembroke Management Ltd. has been the portfolio manager of the Fund.

5. Units of the Fund were previously only distributed to investors in the Jurisdictions of Canada on a prospectus-exempt basis in accordance with *Regulation 45-106 respecting Prospectus Exemptions*, CQLR, V-1.1, r. 21.

6. In order to commence distributing its units pursuant to a simplified prospectus, the Fund filed on March 2, 2022 a preliminary simplified prospectus and annual information form, as well as fund facts. Upon the issuance of a receipt for the final simplified prospectus (the **Prospectus**) and annual information form of the Fund, the Fund will become a reporting issuer in each of the Jurisdictions of Canada and will become subject to the requirements of Regulation 81-102 and Regulation 81-106.

7. The Filer and the Fund are not in default of securities legislation in any of the Jurisdictions of Canada.

8. Since the Fund commenced operations as a mutual fund, it has complied with its obligation to prepare and deliver audited annual and unaudited interim financial statements to all holders of its securities in accordance with Regulation 81-106.

9. Since the Fund commenced operations, it has complied with the investment restrictions and practices contained in Regulation 81-102, including not using leverage in the management of its portfolio.

10. Since the Fund commenced operations, the Fund has not paid any management fees to the Filer and such fees have been paid directly by investors in the Fund. This will continue to be the case after the Fund becomes a reporting issuer.

11. The Fund will be managed substantially similarly after it becomes a reporting issuer as it was prior to becoming a reporting issuer. As a result of the Fund becoming a reporting issuer:

    a) the Fund's investment objectives will not change, other than to provide additional detail as required by Regulation 81-101;

    b) the day-to-day administration of the Fund in respect of its units will not change other than to comply with the additional regulatory requirements associated with being a reporting issuer (none of which impact the portfolio management of the Fund) and to provide additional features that are available to investors of mutual funds managed by the Filer, as described in the Prospectus; and

    c) the intention of the Filer is to absorb expenses of the Fund to maintain the existing management expense ratio (**MER**) of the Fund at approximately the same level of the Fund prior to becoming a reporting issuer. Any such expense absorption may be discontinued in the future, however the Filer does not expect any material increase in MER once the absorption stops.

12. The Filer proposes to present the performance data of the Fund in sales communications and fund facts for a period prior to it becoming a reporting issuer.

13. Without the Exemption Sought, the sales communications and fund facts pertaining to the Fund cannot include performance data that relates to a period prior to the Fund becoming a reporting issuer.

14. Without the Exemption Sought, sales communications pertaining to the Fund would not be permitted to include performance data until the Fund has distributed securities under a simplified prospectus in a jurisdiction for 12 consecutive months.

15. The Filer proposes to include in the fund facts for the Fund, past performance data in the chart required by items 5(2), 5(3) and 5(4) of Part I of Form 81-101F3 under the sub-headings "Year-by-year returns", "Best and worst 3-month returns" and "Average return" related to periods prior to the Fund becoming a reporting issuer in a jurisdiction.

16. Without the Exemption Sought, the MRFP of the Fund cannot include financial highlights and performance data that relates to a period prior to the Fund becoming a reporting issuer.

17. The past performance data and other financial data of the Fund for the time period before it became a reporting issuer is significant and meaningful information that can assist existing and prospective investors in making an informed decision whether to purchase units of the Fund.

18. The Filer submits that the Exemption Sought is not detrimental to the protection of investors.

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) any sales communication and any fund facts that contain performance data of the Fund relating to a period prior to when the Fund was a reporting issuer discloses:

   i) that the Fund was not a reporting issuer during such period;

   ii) that the expenses of the Fund would have been higher during such period had the Fund been subject to the additional regulatory requirements applicable to a reporting issuer; and

   iii) performance data of the Fund for 10, 5, 3 and one year periods;

b) the information contained under the heading “Fund Expenses Indirectly Borne by Investors” in Part B of the simplified prospectus of the Fund based on the MER for the Fund for the financial year ended December 31, 2021 be accompanied by disclosure that:

   i) the information is based on the MER of the Fund for its last completed financial year when its units were offered privately during part of such financial year; and

   ii) the MER of the Fund may increase as a result of the Fund offering its units under the simplified prospectus.

c) any MRFP that includes performance data of the Fund relating to a period prior to when the Fund was a reporting issuer discloses:

   i) that the Fund was not a reporting issuer during such period;

   ii) that the expenses of the Fund would have been higher during such period had the Fund been subject to the additional regulatory requirements applicable to a reporting issuer;

   iii) that the financial statements of the Fund for such period are posted on the Fund’s website and are available to investors upon request; and

   iv) performance data of the Fund for 10,5, 3 and one year periods;

d) the Filer posts the financial statements of the Fund since it has commenced its operations on the Fund’s website and makes those financial statements available to investors upon request.

“Frédéric Belleau”
Senior Director Investment Fund

B.3.2 R.E.G.A.R. Gestion Privée Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdiction – Relief granted under subsection 62(5) of the Securities Act to mutual funds for extension of the lapse date of their prospectuses – Extension of the lapse date of the simplified prospectus until completion of mergers of the funds.

Applicable Legislative Provisions

Securities Act (Ontario), R.S.O. 1990, c. S.5, as am., s. 62(5).

March 14, 2022

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
R.E.G.A.R. GESTION PRIVÉE INC.
(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 an exemption pursuant section 2.5 of Regulation 81-101 *respecting Mutual Fund Prospectus Disclosure,* CQLR c. V-1.1, r. 38 ("Regulation 81-101") and Subsection 62(5) of the *Securities Act,* R.S.O. 1990, c. S.5 ("Security Act") to extend the time limits for the filing of the pro forma prospectus to the time limit that would be applicable if the lapse date was May 15, 2022 (the Exemption Sought).

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 Filer has provided notice that section 4.7(1) of *Regulation 11-102 respecting Passport System, CQLR* c. V-1.1, r. 1 ("Regulation 11-102") is intended to be relied upon in Financial and Consumer Services Commission of New Brunswick, (collectively with the Jurisdictions, the Applicable Jurisdictions)

c) 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 and Regulation 11-102, Regulation 81-101, and *Regulation 81-106 respecting Investment Fund Continuous Disclosure*, CQLR c. V-1.1, r.42 ("Regulation 81-106") 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:

The Filer

1. The Filer is a corporation established under the laws of Québec, and the head office of the Filer is in Québec, Québec.

2. The Filer is the manager for the RGP Global Sector Fund, the Sectorwise Conservative Portfolio, the Sectorwise Balanced Portfolio, the Sectorwise Growth Portfolio, the GreenWise Conservative Portfolio, the GreenWise Balanced Portfolio, the GreenWise Growth Portfolio and the RGP Global Sector Class (the "Funds").

3. The Filer is registered as an investment fund manager and portfolio manager in the Jurisdictions.

The Funds

4. Each of the Fund is a reporting issuer in Québec, Ontario and New Brunswick.

5. Neither the Filer nor any of the Funds are in default under securities legislation in any of the Applicable Jurisdictions.

6. Each of the Fund is a mutual fund pursuant to the meaning of Regulation 81-101 and is distributing securities through a prospectus respecting the provisions of Regulation 81-101.

7. The securities for the Funds are currently distributed to the public in Québec, Ontario and New Brunswick pursuant to a simplified prospectus dated April 15, 2021 as amended by amendment no. 1 dated January 24, 2022 and related annual information form and fund facts (the Current Offering Documents).

8. Pursuant to section 2.5 of Regulation 81-101 and subsection 62(1) of the Securities Act, the lapse date for the distribution of securities under the Current Offering Documents is April 15, 2022 (the Lapse Date).

Reasons for Exemption Sought

9. On March 23, 2022, the Filer will hold a special meeting of each of RGP Global Sector Fund, the RGP Global Sector Class, the GreenWise Conservative Portfolio, the GreenWise Balanced Portfolio, and the GreenWise Growth Portfolio (collectively, the Special Meetings) regarding the approval by securityholders of changes in investment objectives ("Changes in Investment Objective"), as announced on January 14, 2022.

10. The Filer wishes to include in the pro forma prospectus and related documents, subject to securityholder approval during the Special Meetings, the Changes in Investment Objective.

11. The fiscal year-end of the Funds is December 31 and, pursuant to sections 2.2 and 4.2 of Regulation 81-106, the annual financial statements and management report of fund performance are required to be filed on or before the 90th day after the Funds' most recently completed financial year.

12. Concurrently with the filing of the pro forma prospectus, the Filer must proceed, for each Funds, with the filling of a fund fact that complies with Regulation 81-101, including the requirements to provide the management expense ratio disclosed in the most recently filed management report of fund performance for each Fund.

13. The most recently filed management report of fund performance for each Fund is the interim management report of fund performance for the period from January 1, 2021 to June 30, 2021.

14. It would be more efficient and cost effective to extend the time limits provided by subsection 2.5 of Regulation 81-101 and subsection 62(2) of the Securities Act to the Exemption Sought.

15. The Filer submits the Exemption Sought will not affect the general accuracy of the information contained in the Current Offering Documents and therefore will not be prejudicial to the public interest.

16. Given the disclosure obligations of the Funds, should any material changes occur, the Current Offering Documents will be amended as required under the applicable legislation.

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.

"Frédéric Belleau"
Senior Director Investment Fund

Application File #: 2022/0098
SEDAR #: 3343343

B.3.3 ATB Investment Management Inc. et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief from paragraphs 2.5(2)(a) and 2.5(2)(c) of NI 81-102 to allow funds to continue to hold units of underlying pooled fund that is not a reporting issuer that were acquired under previous relief that is being revoked and replaced – funds to dispose of units of underlying pooled fund if underlying pooled fund ceases to comply with Parts 2, 4 and 6 of NI 81-102 or Part 14 of NI 81-106.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 2.5(2)(a)(i), 2.5(2)(c), and 19.1.

August 19, 2022

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ALBERTA AND
ONTARIO
(the Jurisdictions)

AND

IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS
IN MULTIPLE JURISDICTIONS

AND

IN THE MATTER OF
ATB INVESTMENT MANAGEMENT INC.
(the Filer)

AND

COMPASS CONSERVATIVE BALANCED PORTFOLIO,
COMPASS BALANCED PORTFOLIO,
COMPASS BALANCED GROWTH PORTFOLIO,
COMPASS GROWTH PORTFOLIO,
COMPASS MAXIMUM GROWTH PORTFOLIO, AND
ATBIS U.S. EQUITY POOL
(the Top Funds)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application from the Filer on behalf of the Top Funds for a decision under the securities legislation of the Jurisdictions (the **Legislation**)

(a) revoking the Prior Alberta Decisions (as defined below); and

(b) replacing the Prior Alberta Decisions with a decision providing an exemption from subparagraph 2.5(2)(a)(i) and paragraph 2.5(2)(c) of National Instrument 81-102 *Investment Funds* (**NI 81-102**) to permit each Top Fund to continue to hold units of BlackRock CDN US Equity Index Fund (the **Underlying Pooled Fund**)

(collectively, the **Exemption Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a dual application),

(a) the Alberta Securities Commission is the principal regulator for the 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 each of British Columbia, Saskatchewan, Manitoba, Québec, New Brunswick, Prince Edward Island, Nova Scotia, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut (together with Alberta and Ontario, the **Proposed Jurisdictions**); and

(c) this 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 National Instrument 14-101 *Definitions* or 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 Filer:

The Filer and the Top Funds

1. The Filer is a corporation with its head office located in Edmonton, Alberta.

2. The Filer is registered as a portfolio manager in each of Alberta, British Columbia, Nova Scotia, Ontario and Saskatchewan and as an investment fund manager in each of Alberta, Newfoundland and Labrador, Nova Scotia, Ontario and Saskatchewan.

3. The Filer is the manager of each Top Fund.

4. Each Top Fund is a "mutual fund", as such term is defined under the *Securities Act* (Alberta) (the **Act**).

5. Each Top Fund has a simplified prospectus and fund facts document prepared in accordance with National Instrument 81-101 *Mutual Fund Prospectus Disclosure*, and units of each Top Fund are, or are proposed to be, qualified for distribution in the Proposed Jurisdictions (with the exception of Québec).

6. Each Top Fund is, or is proposed to be, a reporting issuer under the securities legislation of the Proposed Jurisdictions (with the exception of Québec) and is subject to NI 81-102.

7. Neither the Filer nor the Top Funds is in default of securities legislation in any of the Proposed Jurisdictions, but for the fact that units of certain Top Funds are held by a limited number of investors in Ontario without these Top Funds obtaining an exemption from NI 81-102 in Ontario to permit these Top Funds to invest in units of the Underlying Pooled Fund in such jurisdiction.

Prior Decisions

8. Pursuant to a decision dated November 30, 2004 (the **2004 Decision**), the Filer was granted exemptive relief in Alberta from (then) subsections 2.1(1), 2.2(1)(a), 2.5(2)(a) and 2.5(2)(c) of NI 81-102 to permit certain mutual funds and any future mutual funds managed by the Filer, including the Top Funds, to invest in certain pooled funds that are not subject to NI 81-102.

9. Pursuant to a decision dated December 7, 2005, the Filer was granted exemptive relief in British Columbia and Saskatchewan from (then) subsections 2.1(1), 2.2(1)(a), 2.5(2)(a) and 2.5(2)(c) of NI 81-102 to permit certain mutual funds and any future mutual funds managed by the Filer, including the Top Funds, to invest in certain pooled funds that are not subject to NI 81-102.

10. Pursuant to the provisions of subsection 4.8(1)(c) of MI 11-102, the Filer provided notice to the Alberta Securities Commission on September 19, 2016 (the **2016 Notice**, and, together with the 2004 Decision, the **Prior Alberta Decisions**), as principal regulator, that the Filer intended to rely upon the 2004 Decision in each of Manitoba, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Yukon and Nunavut.

11. The Filer is seeking to revoke and replace the Prior Alberta Decisions with this decision so that the Filer may rely on a single decision that grants relief for the Top Funds to continue to hold units of the Underlying Pooled Fund in all Proposed Jurisdictions.

Investment Objectives of the Top Funds

12. The investment objective of Compass Conservative Balanced Portfolio is to provide investors with long-term capital appreciation and some income while reducing short-term volatility by investing in a balanced portfolio of fixed income and equity securities, with a bias towards fixed income securities.

13. The investment objective of Compass Balanced Portfolio is to provide investors with long-term capital appreciation while reducing short-term volatility by investing in a balanced portfolio of fixed income and equity securities.

14. The investment objective of Compass Balanced Growth Portfolio is to provide investors with long-term capital appreciation by investing in a balanced portfolio of equity and fixed income securities, with a bias towards equity securities.

15. The investment objective of Compass Growth Portfolio is to provide investors with long-term capital appreciation by investing in a diversified portfolio of primarily equity securities, with some fixed income securities to reduce volatility.

16. The investment objective of Compass Maximum Growth Portfolio is to provide investors with long-term capital appreciation by investing in a diversified portfolio of equity securities.

17. A significant portion or even all of the assets of each of Compass Conservative Balanced Portfolio, Compass Balanced Portfolio, Compass Balanced Growth Portfolio, Compass Growth Portfolio and Compass Maximum Growth Portfolio may consist of securities of other mutual funds, including exchange traded funds, and the Underlying Pooled Fund, that provide it with exposure to investments that are consistent with its investment objectives and strategies.

18. The investment objective of ATBIS U.S. Equity Pool is to seek to achieve long-term capital growth primarily by investing in, or gaining exposure to, equity securities of issuers in the United States. Up to 100% of its assets may consist of securities of other mutual funds, including exchange traded funds, and the Underlying Pooled Fund.

The Underlying Pooled Fund

19. The Underlying Pooled Fund is a "mutual fund", as such term is defined under the Act.

20. The Underlying Pooled Fund is not a reporting issuer in any of the Proposed Jurisdictions and is therefore not subject to NI 81-102, with the exception of section 2.5.1 of NI 81-102.

21. Units of the Underlying Pooled Fund are available for purchase by investors who qualify pursuant to an exemption from the prospectus requirement, such as those that meet the definition of an "accredited investor" as set forth in National Instrument 45-106 *Prospectus Exemptions,* which includes the Top Funds.

22. BlackRock Asset Management Canada Limited (**BlackRock**) is the manager of the Underlying Pooled Fund and is not related to the Filer.

23. The investment objective of the Underlying Pooled Fund is to achieve a return equal to the total return of the S&P 500 Total Return Index on an unhedged basis. This objective is achieved by investing primarily in equity, debt and short-term money market instruments and derivative securities either directly or through investments in other funds, including funds managed by BlackRock or any affiliate.

24. The investment strategies and restrictions of the Underlying Pooled Fund are consistent with NI 81-102, and, to the knowledge of the Filer, BlackRock manages the Underlying Pooled Fund in accordance with NI 81-102, as if it were applicable.

25. The investment objectives and strategies of each Top Fund permit the Top Fund to hold units of the Underlying Pooled Fund, subject to being granted the Exemption Sought.

Investments by the Top Funds in the Underlying Pooled Fund

26. Each Top Fund currently holds less than 15% of its net asset value (**NAV**) in units of the Underlying Pooled Fund.

27. The Top Funds currently have unrealized capital gains from their investments in the Underlying Pooled Fund.

28. The Exemption Sought is being sought in order to allow the Top Funds to continue to hold units of the Underlying Pooled Fund until such time as the portfolio manager of the applicable Top Fund determines that it is in the best interests of the Top Fund to dispose of such investment.

29. Each Top Fund will not purchase additional units of the Underlying Pooled Fund, but rather, to the extent the portfolio manager desires a Top Fund to obtain investment exposure similar to that offered by the Underlying Pooled Fund, the Top Fund will purchase securities of other investment funds in compliance with the restrictions set out in section 2.5 of NI 81-102.

Impact on the Top Funds

30. An investment by a Top Fund in the Underlying Pooled Fund does not expose the Top Fund to any greater risk than, and provides similar investment exposure as, an investment in an investment fund that is subject to NI 81-102.

31. In the absence of the Exemption Sought, the Filer would not be able to qualify units of the Top Funds in Ontario without disposing of all investments held by the Top Funds in the Underlying Pooled Fund. The Top Funds will incur costs and trigger significant taxable gains that would flow through to investors related to the disposition of these investments and the resulting re-investment of the assets of the Top Funds in other investment funds or individual securities.

32. Each investment held a Top Fund in the Underlying Pooled Fund is made in accordance with the investment objectives and strategies of the Top Fund.

33. With the exception of the Exemption Sought to continue to hold units of the Underlying Pooled Fund, the Top Funds otherwise comply fully with section 2.5 of NI 81-102 in their investments in the Underlying Pooled Fund.

34. The Top Funds provide all applicable disclosure mandated for mutual funds investing in other mutual funds, including disclosure in quarterly portfolio holding reports, financial statements and fund facts documents.

Management of the Underlying Pooled Fund

35. Pursuant to the Prior Decisions, the Top Funds have invested in units of the Underlying Pooled Fund for some time and the portfolio manager of the Top Funds is comfortable with the investment style and approach used by BlackRock in managing the Underlying Pooled Fund.

36. The portfolio of the Underlying Pooled Fund consists primarily of highly liquid, publicly traded securities.

37. To the knowledge of the Manager, the Underlying Pooled Fund does not utilize leverage, does not short sell and otherwise complies with the investment restrictions in NI 81-102 as though such restrictions would apply to the Underlying Pooled Fund, including the illiquid assets restriction in section 2.4 of NI 81-102 and the investments in other investment funds restriction in section 2.5 of NI 81-102.

38. Units of the Underlying Pooled Fund are valued and redeemable on the same dates as units of the Top Funds. A redemption by a Top Fund of units of the Underlying Pooled Fund will be effected based on the Underlying Pooled Fund's NAV, less any transaction costs allocated to the Top Fund by BlackRock, which is calculated in accordance with Part 14 of National Instrument 81-106 *Investment Fund Continuous Disclosure* (**NI 81-106**).

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) each Top Fund will not purchase additional units of the Underlying Pooled Fund;

(b) the Top Funds dispose of their investment in the Underlying Pooled Fund as quickly as is commercially reasonable, if the Filer determines that the Underlying Pooled Fund no longer complies with Parts 2, 4 and 6 of NI 81-102 or Part 14 of NI 81-106; and

(c) the prospectus of the Top Funds discloses, or will disclose in the next renewal or amendment thereto following the date of this decision, and each subsequent renewal or amendment, the fact that the Top Funds may continue to hold units of the Underlying Pooled Fund.

"Denise Weeres"
Director, Corporate Finance
Alberta Securities Commission

Application File #: 2022/0321
SEDAR #: 3406622

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
i3 Interactive Inc.	September 13, 2022	
Lake Winn Resources Corp.	July 7, 2021	September 13, 2022

B.4.2 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order	Date of Lapse
THERE IS NOTHING TO REPORT THIS WEEK.		

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	
Gatos Silver, Inc.	April 12, 2022	
Sproutly Canada, Inc.	June 30, 2022	
Gatos Silver, Inc.	July 7, 2022	
PlantX Life Inc.	August 4, 2022	
Radient Technologies Inc.	August 5, 2022	
AION THERAPEUTIC INC.	August 31, 2022	

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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:
CI Global Investment Grade ETF
Principal Regulator – Ontario
Type and Date:
Preliminary Long Form Prospectus dated Sep 16, 2022
NP 11-202 Final Receipt dated Sep 19, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3400341

Issuer Name:
Purpose Structured Equity Yield Plus Portfolio
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus-10 dated Sep 9, 2022
NP 11-202 Final Receipt dated Sep 14, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3419136

Issuer Name:
CI Global Investment Grade Fund
Principal Regulator – Ontario
Type and Date:
Preliminary Simplified Prospectus dated Sep 16, 2022
NP 11-202 Final Receipt dated Sep 19, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3400867

Issuer Name:
Vanguard Global Balanced Fund
Vanguard Global Credit Bond Fund
Vanguard Global Dividend Fund
Vanguard Global Equity Fund
Vanguard International Growth Fund
Vanguard Windsor U.S. Value Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Sep 14, 2022
NP 11-202 Final Receipt dated Sep 16, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3417043

Issuer Name:
Invesco Balanced-Risk Allocation Pool
Invesco Global Equity Income Advantage Fund
Principal Regulator – Ontario
Type and Date:
Preliminary Simplified Prospectus dated Sep 16, 2022
NP 11-202 Preliminary Receipt dated Sep 19, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3438070

Issuer Name:
Evolve Slate Global Real Estate Enhanced Yield Fund
Principal Regulator – Ontario
Type and Date:
Preliminary Long Form Prospectus dated Sep 13, 2022
NP 11-202 Final Receipt dated Sep 13, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3416288

Issuer Name:
Mulvihill Premium Yield Fund
Principal Regulator – Ontario
Type and Date:
Combined Preliminary and Pro Forma Simplified Prospectus dated Sep 16, 2022
NP 11-202 Final Receipt dated Sep 19, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3423053

Issuer Name:
Desjardins Low Volatility Global Equity Fund
Desjardins Global Equity Growth Fund
Desjardins SocieTerra Diversity Fund
*Principal Regulator - Quebec
Type and Date:
Amendment #2 to Final Simplified Prospectus dated September 2, 2022
NP 11-202 Final Receipt dated Sep 13, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3302763

Issuer Name:
Desjardins Short-Term Income Fund
Desjardins Canadian Bond Fund
Desjardins SocieTerra Canadian Bond Fund
Desjardins Global Total Return Bond Fund
Desjardins SocieTerra Environmental Bond Fund
Desjardins Floating Rate Income Fund
Desjardins Global Tactical Bond Fund
Desjardins Dividend Income Fund
Desjardins SocieTerra Global Balanced Fund
Desjardins Dividend Growth Fund
Desjardins Canadian Equity Income Fund
Desjardins Canadian Equity Fund
Desjardins Canadian Equity Value Fund
Desjardins SocieTerra Canadian Equity Fund
Desjardins Canadian Small Cap Equity Fund
Desjardins American Equity Value Fund
Desjardins American Equity Growth Fund
Desjardins American Equity Growth Currency Neutral Fund
Desjardins Overseas Equity Fund
Desjardins International Equity Value Fund
Desjardins Overseas Equity Growth Fund
Desjardins SocieTerra International Equity Fund
Desjardins Global Dividend Fund
Desjardins Global Equity Fund
Desjardins SocieTerra Global Opportunities Fund
(previously Desjardins SocieTerra Environment Fund)
Desjardins SocieTerra Positive Change Fund
Desjardins Global Small Cap Equity Fund
Principal Regulator - Quebec
Type and Date:
Amendment #1 to Final Simplified Prospectus dated September 2. 2022
NP 11-202 Final Receipt dated Sep 19, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3333476

Issuer Name:
Franklin Western Asset Core Plus Bond Fund
Franklin Brandywine Global Sustainable Balanced Fund
Templeton Global Balanced Fund
Franklin Martin Currie Sustainable Emerging Markets Fund
Franklin Martin Currie Sustainable Global Equity Fund
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated August 29 ,2022
NP 11-202 Final Receipt dated Sep 13, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3368459

Issuer Name:
Franklin Western Asset Core Plus Bond Active ETF
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Long Form Prospectus dated August 29, 2022
NP 11-202 Final Receipt dated Sep 13, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3366160

Issuer Name:
Global Dividend Growth Split Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus (NI 44-102) dated September 14, 2022
NP 11-202 Preliminary Receipt dated September 15, 2022
Offering Price and Description:
Maximum Offering: $300,000,000 Preferred Shares and Class A Shares
Price: $9.92 per Preferred Shares and $10.98 per Class A Shares
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3437616

Issuer Name:
Ninepoint 2022 Short Duration Flow-Through Limited Partnership
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated September 14, 2022
NP 11-202 Receipt dated September 14, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3421131

NON-INVESTMENT FUNDS

Issuer Name:
KWESST Micro Systems Inc.
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated September 12, 2022
NP 11-202 Preliminary Receipt dated September 13, 2022
Offering Price and Description:
Units
Underwriter(s) or Distributor(s):
PI FINANCIAL CORP.
Promoter(s):
-
Project #3436599

Issuer Name:
Red Pine Exploration Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated September 13, 2022
NP 11-202 Preliminary Receipt dated September 13, 2022
Offering Price and Description:
$5,000,180.00 - 7,693,000 Common Shares 10,000,000 Flow-Through Common Shares
$0.26 per HD Share $0.30 per Flow-Through Share
Underwriter(s) or Distributor(s):
HAYWOOD SECURITIES INC.
CANACCORD GENUITY CORP.
LAURENTIAN BANK SECURITIES INC.
Promoter(s):
-
Project #3435580

Issuer Name:
Royal Helium Ltd.
Principal Regulator - Saskatchewan
Type and Date:
Preliminary Shelf Prospectus dated September 14, 2022
NP 11-202 Preliminary Receipt dated September 14, 2022
Offering Price and Description:
$200,000,000.00 - Common Shares, Debt Securities, Subscription Receipts, Warrants, Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3437328

Issuer Name:
SesameBuy Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated September 15, 2022
NP 11-202 Preliminary Receipt dated September 15, 2022
Offering Price and Description:
$1,600,457.04 - 4,445,714 Common Shares on deemed exercise of 4,445,714 Special Warrants
Per Special Warrant $0.36
Underwriter(s) or Distributor(s):
-
Promoter(s):
Fei Fei (Faith) Jiang
Project #3437667

Issuer Name:
Softchoice Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated September 13, 2022
NP 11-202 Preliminary Receipt dated September 14, 2022
Offering Price and Description:
Common Shares, Preferred Shares, Warrants, Rights, Units, Debt Securities, Subscription Receipts
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3437061

Issuer Name:
Tamarack Valley Energy Ltd.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated September 14, 2022
NP 11-202 Preliminary Receipt dated September 14, 2022
Offering Price and Description:
$125,002,500.00 - 33,334,000 Common Shares
Price: $3.75 per Common Share
Underwriter(s) or Distributor(s):
RBC DOMINION SECURITIES INC.
NATIONAL BANK FINANCIAL INC.
CIBC WORLD MARKETS INC.
PETERS & CO. LIMITED
ATB CAPITAL MARKETS INC.
BMO NESBITT BURNS INC.
DESJARDINS SECURITIES INC.
STIFEL NICOLAUS CANADA INC.
RAYMOND JAMES LTD.
Promoter(s):
-
Project #3436996

Issuer Name:
Tidewater Midstream and Infrastructure Ltd.
Principal Regulator - Alberta
Type and Date:
Preliminary Shelf Prospectus dated September 13, 2022
NP 11-202 Preliminary Receipt dated September 13, 2022
Offering Price and Description:
$350,000,000.00 - Common Shares, Preferred Shares, Debt Securities, Subscription Receipts, Warrants, Share Purchase Contracts Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3436998

Issuer Name:
Auka Capital Corp.
Principal Regulator - Alberta
Type and Date:
Final CPC Prospectus dated September 15, 2022
NP 11-202 Receipt dated September 15, 2022
Offering Price and Description:
$750,000.00 - 7,500,000 Common Shares
Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
Promoter(s):
-
Project #3400303

Issuer Name:
Brookfield Asset Management Inc.
Brookfield Capital Finance LLC
Brookfield Finance II LLC
Brookfield Finance II Inc.
Brookfield Finance (Australia) Pty Ltd
Brookfield Finance I (UK) PLC
Brookfield Finance Inc.
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus dated September 16, 2022
NP 11-202 Receipt dated September 16, 2022
Offering Price and Description:
US$3,500,000,000 - Debt Securities Class A Preference Shares Class A Limited Voting Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3434614

Issuer Name:
Brookfield Capital Finance LLC
Brookfield Finance II LLC
Brookfield Finance II Inc.
Brookfield Finance (Australia) Pty Ltd
Brookfield Finance I (UK) PLC
Brookfield Finance Inc.
Brookfield Asset Management Inc.
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus dated September 16, 2022
NP 11-202 Receipt dated September 16, 2022
Offering Price and Description:
US$3,500,000,000.00 - Debt Securities, Class A Preference Shares, Class A Limited Voting Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3434625

Issuer Name:
Brookfield Finance I (UK) PLC
Brookfield Finance Inc.
Brookfield Asset Management Inc.
Brookfield Capital Finance LLC
Brookfield Finance II LLC
Brookfield Finance II Inc.
Brookfield Finance (Australia) Pty Ltd
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus dated September 16, 2022
NP 11-202 Receipt dated September 16, 2022
Offering Price and Description:
US$3,500,000,000 - Debt Securities, Class A Preference Shares, Class A Limited Voting Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3434630

Issuer Name:
Brookfield Finance II Inc.
Brookfield Finance (Australia) Pty Ltd
Brookfield Finance I (UK) PLC
Brookfield Finance Inc.
Brookfield Asset Management Inc.
Brookfield Capital Finance LLC
Brookfield Finance II LLC
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus dated September 16, 2022
NP 11-202 Receipt dated September 16, 2022
Offering Price and Description:
US$3,500,000,000.00 -Debt Securities, Class A Preference Shares, Class A Limited Voting
Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3434622

Issuer Name:
Brookfield Finance Inc.
Brookfield Asset Management Inc.
Brookfield Capital Finance LLC
Brookfield Finance II LLC
Brookfield Finance II Inc.
Brookfield Finance (Australia) Pty Ltd
Brookfield Finance I (UK) PLC
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus dated September 16, 2022
NP 11-202 Receipt dated September 16, 2022
Offering Price and Description:
US$3,500,000,000.00 - Debt Securities, class A Preference Shares, Class A Limited Voting
Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3434620

Issuer Name:
Brookfield Finance II LLC
Brookfield Finance II Inc.
Brookfield Finance (Australia) Pty Ltd
Brookfield Finance I (UK) PLC
Brookfield Finance Inc.
Brookfield Asset Management Inc.
Brookfield Capital Finance LLC
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus dated September 16, 2022
NP 11-202 Receipt dated September 16, 2022
Offering Price and Description:
US$3,500,000,000 - Debt Securities, Class A Preference Shares, Class A Limited Voting
Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3434626

Issuer Name:
Brookfield Finance (Australia) Pty Ltd
Brookfield Finance I (UK) PLC
Brookfield Finance Inc.
Brookfield Asset Management Inc.
Brookfield Capital Finance LLC
Brookfield Finance II LLC
Brookfield Finance II Inc.
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus dated September 16, 2022
NP 11-202 Receipt dated September 16, 2022
Offering Price and Description:
US$3,500,000,000.00 - Debt Securities, Class A Preference Shares, Class A Limited Voting
Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3434627

Issuer Name:
Neo Performance Materials Inc.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated September 13, 2022
NP 11-202 Receipt dated September 13, 2022
Offering Price and Description:
C$67,500,000.00 - 4,500,000 Common Shares
Offering Price: C$15.00 per Common Share
Underwriter(s) or Distributor(s):
Paradigm Capital Inc.
CANACCORD GENUITY CORP.
CORMARK SECURITIES INC.
RAYMOND JAMES LTD.
STIFEL NICOLAUS CANADA INC.
Promoter(s):
-
Project #3428509

Issuer Name:
Softchoice Corporation
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus dated September 13, 2022
NP 11-202 Receipt dated September 14, 2022
Offering Price and Description:
Common Shares, Preferred Shares, Warrants, Rights, Units, Debt Securities, Subscription Receipts
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3437061

Issuer Name:
Volatus Aerospace Corp.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated September 16, 2022
NP 11-202 Receipt dated September 19, 2022
Offering Price and Description:
$4,000,032.00 - 11,111,200 Units
Price: $0.36 per Unit
Underwriter(s) or Distributor(s):
ECHELON WEALTH PARTNERS INC.
INTEGRAL WEALTH SECURITIES LIMITED
Promoter(s):
Glen Lynch
Ian McDougall
Project #3411639

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B.10
Registrations

B.11.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	INP INVESTMENT MANAGEMENT INC.	Investment Fund Manager, Portfolio Manager, and Exempt Market Dealer	September 16, 2022

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B.11
SROs, Marketplaces, Clearing Agencies and Trade Repositories

B.11.3 Clearing Agencies

B.11.3.1 CDS Clearing and Depository Services Inc. (CDS®) – Material Amendments to CDS External Procedures Related to the Participant Fund Administered by CDS for the New York Link Service – OSC Staff Notice of Request for Comments

OSC STAFF NOTICE OF REQUEST FOR COMMENTS

CDS CLEARING AND DEPOSITORY SERVICES INC. (CDS®)

MATERIAL AMENDMENTS TO
CDS EXTERNAL PROCEDURES RELATED TO
THE PARTICIPANT FUND ADMINISTERED BY CDS FOR THE NEW YORK LINK SERVICE

The Ontario Securities Commission is publishing for 30-day public comment material amendments to the CDS external procedures related to the CDS Participant Fund administered by CDS for the New York Link service.

The purpose of the proposed amendments is to enhance the risk methodology used to calculate the requirements to the CDS Participant Fund for the New York Link service.

The comment period ends on October 24, 2022.

A copy of the CDS Notice is published on our website at http://www.osc.ca.

B.11.3.2 Canadian Derivatives Clearing Corporation (CDCC) – Proposed Amendments to the Risk Manual of the CDCC to Introduce a New Risk Model Recalibration Process – Notice of Withdrawal

CANADIAN DERIVATIVES CLEARING CORPORATION (CDCC)

PROPOSED AMENDMENTS TO
THE RISK MANUAL OF THE CDCC TO INTRODUCE
A NEW RISK MODEL RECALIBRATION PROCESS

NOTICE OF WITHDRAWAL

On February 23, 2021, the Canadian Derivatives Clearing Corporation ("CDCC") published the Notice to Members 2021-032: Request for Comments, Amendments to the Risk Manual of the Canadian Derivatives Clearing Corporation to introduce a new risk model recalibration process.

The objective of the proposed amendments was to introduce a new risk model recalibration and governance process. After review of the matter, CDCC hereby withdraws the Notice to Members / Request for Comments 2021-032. CDCC will publish a revised proposal of amendments to its Risk Manual in the coming months.

For more information, please contact Martin Jannelle, Senior Legal Counsel, at 514-787-6578 or at martin.jannelle@tmx.com.

Martin Jannelle
Senior Legal Counsel, CDCC

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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.