CITATION: Ontario Securities Commission v. Traders Global Group Inc., 2025 ONSC 4510
COURT FILE NO.: CV-23-00709536-00CL
DATE: 20250805

SUPERIOR COURT OF JUSTICE – ONTARIO (COMMERCIAL LIST)

RE: ONTARIO SECURITIES COMMISSION

Applicant

AND:

TRADERS GLOBAL GROUP INC., 15003865 CANADA INC., KAZMI 2795 SAPPHIRE HOLDINGS INC., MUHAMMAD MURTUZA KAZMI, 1000545477 ONTARIO INC., AND TGG INTERNATIONAL LTD.

Respondents

BEFORE: KIMMEL J.

COUNSEL: *Mark Bailey, Hansen Wong & Harvey Chaiton,* for the Applicant

Alexander Rose, Eliot Kolers & Hannah Kellett, for the Respondents

Ian Aversa, Miranda Spence & Matilda Lici, for the Receiver

Michael Osborne, for GoDaddy LLC

HEARD: June 6, 2025

ENDORSEMENT
(RECEIVER'S DISCLOSURE MOTION AND RESPONDENTS' DISCHARGE MOTION)

[1] This endorsement deals with two motions within this receivership, one by the Receiver for advice and directions concerning disclosure it has been asked to provide to the Ontario Securities Commission (the "Commission"), and a motion by the respondents for the discharge of the Receiver, or for a variation to the terms of its appointment. For the reasons that follow, some of the relief is granted on each of these motions.

Procedural History and Prior Decisions

The Receivership Decision and Appointment Order

[2] Grant Thornton Limited was appointed at the request of the Commission pursuant to s. 126 and s. 129 of the *Securities Act*, R.S.O. 1990, c. S.5, as receiver ("Receiver") over all of the

assets, undertakings and properties (collectively, the "Property") of each of Traders Global Group Inc. ("TGG"), 15003865 Canada Inc., Kazmi 2795 Sapphire Holdings Inc. and Muhammad Murtuza Kazmi ("Mr. Kazmi") pursuant to an appointment order dated January 22, 2024 and later amended and restated on November 21, 2024 to, among other things, add 1000545477 Ontario Inc. and TGG International Ltd. as respondents (the "Appointment Order").

[3] The decision to appoint the Receiver was made following a contested hearing held on November 30, 2023, set out in reasons released on December 12, 2023 (see *Ontario Securities Commission v. Traders Global Group Inc*., 2023 ONSC 7165, the "Receivership Decision").

[4] Capitalized terms not otherwise defined herein have the meaning ascribed to them in the Second Report.

[5] The Commission first began investigating the respondents TGG and Kazmi for possible fraud contrary to s. 126.1(1)(b) of the *Securities Act* after receiving a Request for Assistance made by the United States Commodities Futures Trading Commission ("CFTC") on November 21, 2022. Although the Commission sought and obtained orders under s. 11 of the Act in both January and April 2023 in furtherance of its investigation, it waited to request and obtain any freeze directions or a cease trade order until the day after the CFTC filed a Complaint for Injunctive Relief, Civil Monetary Penalties and Other Equitable Relief against TGG, Kazmi and a related TGG entity located in New Jersey (the "CFTC Proceeding"), in the United States District Court for the District of New Jersey (the "U.S. Court"). A temporary receiver was appointed by the U.S. Court ("U.S. Temporary Receiver").

[6] Due to the confidential nature of the Commission's investigation and concerns about interfering with the CFTC investigation, the Commission was not in a position to commence its own enforcement proceedings at the same time as the CFTC Proceeding. Since the U.S. Temporary Receiver had already been appointed, and with the temporary freeze directions and cease trade order in place, the Commission decided to allow the CFTC Proceeding to play out before taking steps to seek the appointment of a receiver in Ontario. However, when it became evident that the U.S. Temporary Receiver would not be replaced by the U.S. Court, the Commission brought this application to appoint the Receiver.

[7] When it sought the Appointment Order, the Commission had the burden of demonstrating that there was a "serious issue to be tried" with respect to its allegations that the respondents had breached the Act. While no Application for Enforcement Proceeding ("AEP") before the Ontario Capital Markets Tribunal (the "Tribunal") had been initiated by the Commission, it asserted that the respondents TGG and Kazmi (who was at the material times the sole shareholder and directing mind of TGG):

a. Breached s. 126.1(1)(b) of the Act, which provides that no person or company shall engage in any act, practice or course of conduct relating to a security or derivative that the person or company knows or reasonably ought to know may perpetrate a fraud on any person or company; and

b. Engaged in the business of selling securities without registration, contrary to s. 25(1) of the Act.

[8] The Commission's position at the time the Receiver was appointed was that it had established a *prima facie* case that a fraud was committed by TGG and Kazmi just as the U.S. Court had already found in a decision dated November 14, 2023 (the "U.S. Court Decision"). The U.S. Court found that the CFTC had made a *prima facie* showing of fraud through false and misleading statements and deceptive omissions by TGG by conveying "the overall message that customers with so-called 'live accounts' were trading Traders Global's capital against third parties, i.e., 'liquidity providers,' in the 'market,'" and in failing to "disclose that customer trading in the 'live accounts' occurred in a 'simulated' environment": at pp. 13, 18.

[9] After referencing various findings made in the U.S. Court Decision, this court concluded in the Receivership Decision, at para. 20, that "The evidence that was before the U.S. Court and that is now before this court establishes a *prima facie* case of fraud and misrepresentation by the respondents".

[10] Even with the *prima facie* case of fraud, the Commission still had to establish that this alleged fraud related to a security or derivative or involved the business of selling securities. At paragraph 34 of the Receivership Decision it was noted that:

> The Commission acknowledges that the circumstances of this case are novel and will have to be tested. There is no example of a case where the customer was not putting their own money at risk in the trading. However, the Commission urges a purposive and flexible interpretation of the definition of "security" under the Act, suggesting that it "is flexible and capable of adaptation to address the breadth and variability of investment schemes devised in the capital markets". See *VRK Forex & Investments Inc (Re)*, 2022 ONSEC 1, at para. 22, aff'd 2023 ONSC 3895 (Div. Ct.); *Mek Global Limited (Re)*, 2022 ONCMT 15, at para. 36.

[11] The anticipated claim for disgorgement that supported the appointment of the Receiver over all, rather than just a portion, of the respondents' Property (which distinguished the scope of this receivership over that of the U.S. Temporary Receiver) was also recognized to be a novel claim: Receivership Decision, at paras. 49-51.

[12] At paragraph 72 of the Receivership Decision, the court observed:

> Unlike some receivership applications under other statutes, the appointment of the Receiver in this case is a collateral safeguard. A receiver can be appointed under s. 129 of the Act before the Commission's investigation has been completed and before a Notice of Allegations has been issued. However, the court will require that the Commission complete its investigation and make its decision and, if determined appropriate, initiate any enforcement proceedings

> it intends to take within a reasonable time. No specific submissions were made about the anticipated timing for this to be completed. It seems reasonable to ask that the Commission either do so prior to the January 16, 2024 court date (that will be repurposed to deal with issues arising out of the appointment of the Receiver), or come to that hearing seeking a later deadline with an explanation for why the additional time is required.

[13] One of the other considerations that animated the Receivership Decision was that the Commission, as a capital markets regulator, did not consider itself to be in the best position to be monitoring approximately CAD $90 million in funds and assets (as estimated at the time) and making ongoing decisions about asset preservation. It was considered to be in the interests of the capital markets and appropriate for the due administration of securities laws for the Receiver to manage these funds and to have an expanded role of managing and overseeing the permitted living and legal expenses of the Respondents.

Events After the Appointment Order

[14] There have been several appearances since the Receivership Decision, including to settle the form of order and terms upon which the respondents would have access to funds for living and legal expenses from the Property over which the Receiver was appointed. The Receiver continues to hold many tens of millions of dollars in funds and assets of the respondents under its administration.[1]

[15] It has been more than nineteen months since the Receiver was appointed. It was anticipated when the Receivership Decision was made that the Commission's investigation would continue and that a decision would be made about whether or not to take action against the respondents. The Receivership Decision initially anticipated that might occur within a matter of weeks, although that was quickly corrected by the Commission. The court noted in the February 22, 2024 endorsement that:

> a. At para. 5: The OSC advised the court on January 24, 2024 (the hearing having been adjourned from January 16, 2024) that its investigation was ongoing, that it was complex and that it could not provide a definitive date by which it would be completed. The court indicated on January 24, 2024 that it was not going to fetter or control the OSC's conduct of its investigation or the timing of OSC Staff's decision about the issuance of a statement of allegations. The court confirmed that paragraph 72 of the December 21, 2023 Endorsement was not intended, and should not be read, to have done that. No order or directions as to the conduct of

[1] The precise amount of the assets under administration is not material to the determination of the issues presently before the court. The record is voluminous and the court has not attempted to reconcile the current estimate of funds under administration with the original estimate and amounts expended to date.

the investigation, including the timing of the OSC investigation or the issuance of a statement of allegations, were made or given.

b. At para. 6: Given the novel nature of the OSC's claim, the court observed at the January 24, 2024 case conference that, without a statement of allegations [AEP] framing the nature and extent of the alleged wrongdoing, the court was not prepared to accept the OSC's characterization of the funds that were the subject of the freeze orders over which the receiver would be assuming responsibility as "investor funds". This was factored into the balancing of interests on January 24, 2024 and the directions provided that day concerning the terms of the receivership order.

[16] The respondents advised the court during an appearance in February 2024 that, if they were still under receivership in six months or a year, they would ask the court to reconsider the appropriate balancing of interests that animated the Receivership Decision and terms of the Appointment Order. That is what they are asking the court to do now.

[17] As part of its mandate, the Receiver has secured and preserved the data imaged from Mr. Kazmi's laptop and cellphone, as well as all data contained in the Office 365 subscriptions of TGG enumerated in Schedules A and B of a subsequent court order dated October 28, 2024 (collectively, the "Data"). To date, the Receiver has not accessed and reviewed the Data, which may contain solicitor-client privileged materials. Over a number of months, the Receiver and the respondents negotiated a privilege protocol that provides a mechanism to permit the respondents to identify solicitor-client privileged material within the Data and safeguard that Data from access by the Receiver. It was formalized in early February 2025. As contemplated by the privilege protocol, the Receiver has engaged Epiq Systems Canada, Inc. to assist with the processing and review of the Data.

[18] One of the hold-ups to formalizing this privilege protocol was a difference of opinion as between the Receiver and the respondents about whether the Receiver can share with the Commission non-privileged Data in its possession. The Receiver now seeks advice and directions from the court about that point of disagreement by its Disclosure Motion.

[19] The Commission asserts in its submissions that it is waiting to gain access to the Data in order to make its decision about whether to commence enforcement proceedings against the respondents in Canada.

The Dismissal of the U.S. Proceeding Due to Misconduct of CFTC Staff

[20] In or about December 2024, CFTC staff agreed to settle the U.S. Proceeding. The settlement included three key terms: (i) the dismissal of the U.S. Complaint, with prejudice, including the dismissal of all claims against Mr. Kazmi personally; (ii) no admission of any factual allegations made, nor reference to any allegations of fraud; and (iii) a nominal payment of USD $200,000 from TGG and TGG U.S. to the CFTC. However, CFTC Staff's proposed settlement of this case was not approved by the CFTC Commission.

[21] At the time of the settlement, the U.S. Court's decision was still pending on a motion to sanction CFTC staff in relation to its conduct in the case that had been heard on September 19-20, 2024. The basis for the sanctions motion was that the CFTC's primary investigator (who was also one of the key affiants for the Commission in support of the November 2023 Receivership Application), and other members of CFTC Staff had engaged in unethical and potentially unlawful conduct in the U.S. Proceeding.

[22] The settlement and eventual dismissal of the CFTC Proceeding can be traced back to a corrective disclosure made on December 1, 2023, in a footnote to a filing relating to the apportionment of the U.S. Receiver's fees. These revelations prompted the public comment by Commissioner Caroline D. Pham (now Acting Chair of the CFTC), who expressed that she was "gravely concerned". She also claimed that CFTC Staff had not been candid with the CFTC Commission itself - trying to "hide the ball" from the CFTC Commission "in order to get a rubber stamp approval to railroad the public into settlements that deprive Americans of their Constitutional rights and property".

[23] A Special Master was appointed to investigate, and on April 30, 2025 the Special Master released his report and recommendation. The Special Master held that the conduct of CFTC Staff was willful and in bad faith and deserving of sanction. He recommended to the U.S. District Court that it dismiss the U.S. Proceeding in its entirety, with prejudice. This recommendation was adopted by the U.S. District Court on May 13, 2025.

[24] Moreover, the Special Master held that CFTC Staff's conduct had likely had an impact on the conduct of the case and the outcome of the hearing before Judge Quraishi that resulted in the original U.S. Court Decision. The Special Master held: "[B]ased on the record developed at the evidentiary hearing, the Special Master finds that the CFTC in fact acted willfully and in bad faith on several occasions and, therefore, holds and recommends that sanctions are warranted under both Rule 11 and the Court's inherent authority". The Special Master went on:

> The CFTC's conduct, which was undertaken over the course of a year and involved numerous instances of sanctionable behavior, was willful and undertaken in bad faith. It likely affected the Court's decision to order the SRO or, at the very least, maintain it, and it likely affected the Court's decision on the PI Motion, because the Court did not have the full, complete and truthful information before it. The CFTC's conduct was undertaken for the purpose of gaining a tactical advantage, that is, restraining all or substantially all of Defendants' assets, and has caused significant expense and diversion of Court and party resources. Without the imposition of sanctions, this conduct appears likely to repeat itself.

The Current Motions

[25] Each of the Receiver and the respondents have brought motions that were heard on June 6, 2025:

a. The motion by the Receiver, for practical purposes and having regard to the remaining issues, was broken down into two motions for:

   i. the interpretation and scope of paragraph 5(q) of the Appointment Order concerning the ability of the Receiver to share the Data it acquires in the course of its mandate with the Commission (the “Disclosure Motion”); and

   ii. the approval of the Receiver's Fourth Supplement to the First Report dated October 22, 2024 (the "Fourth Supplemental Report") and the Second Report of the Receiver dated February 19, 2025 (the "Second Report") and the actions, conduct and activities of the Receiver as described therein, approving the Receiver's Recommendations (as defined and described in the Second Report) with regard to the payment of the Respondents' ongoing maintenance and preservation costs, approving the fees and disbursements of the Receiver, as set out in the Fee Affidavit of Jason Kanji sworn February 19, 2025 (the "GT Fee Affidavit"), and its independent legal counsel, Aird & Berlis LLP ("A&B"), as set out in the Fee Affidavit of Ian Aversa sworn February 19, 2025 (the "A&B Fee Affidavit"), and approving the Receiver's Interim Statement of Receipts and Disbursements dated January 31, 2025 (the “Approval Motion”).

b. The motion by the respondents was for an order discharging the Receivership Order and the Receiver and ordering that all other assets frozen under the Receivership, including Mr. Kazmi's personal assets, be released and returned to the Respondents (the “Discharge Motion”, or, in the alternative, ordering $10 million (USD) of TGG's assets to remain frozen, with Mr. Kazmi being obligated to file an affidavit within five (5) business days of the issuance of the Order outlining the steps taken to ensure the assets remain frozen pending further Order of this court (the “Alternative Request to Vary”).

[26] The unopposed order granting the Receiver’s Approval Motion was signed on June 9, 2025 and accompanied by a brief endorsement of that date. This endorsement deals with the remaining issues raised by the Receiver’s Disclosure Motion and the respondents’ Discharge Motion that were taken under reserve.

Overview of Motions

[27] The Receiver’s Disclosure Motion turns entirely upon the interpretation of paragraph 5(q) of the Appointment Order.

[28] The Discharge Motion is largely predicated upon developments that have occurred in related CFTC Proceedings in the United States since the Receivership Decision was made.

[29] I will first consider the Discharge Motion since it is, in part, the respondents' answer to the Receiver's Disclosure Motion. I will then consider the Disclosure Motion.

Discharge Motion

[30] The question to be decided on this motion is whether the court should discharge, set aside or vary the Appointment Order.

The Test

[31] The Receiver was appointed under s. 129(2)(b) of the Act, on the basis that it was found to be appropriate for the "due administration of Ontario securities law", having regard to the purposes set out in section 1.1 of the Act, namely: (i) to provide protection to investors from unfair, improper or fraudulent practices; and (ii) to foster fair and efficient capital markets and confidence in capital markets. Consistent with s. 129(8) of the Act, the Appointment Order contains a comeback clause which provides that any interested party may apply to the court to vary or amend the Appointment Order on notice.

[32] The parties have not found any case decided under the comeback provisions of s. 129(8) of the Act. Recourse to comeback rights that are available through other statutory provisions or contained in court orders made in other contexts (for example, the comeback provision under s. 187(5) of the *Bankruptcy and Insolvency Act* (BIA) and corresponding provisions of an order appointing a receiver under s. 243 of the BIA, or a comeback provision contained in an initial order made under the *Companies' Creditors Arrangement Act*, has been held to be available: "when circumstances change" and as a "means of sorting out issues as they arise": see e.g. *2615333 Ontario Inc. v. Central Park Ajax Developments Phase 1 Inc. et al*, 2024 ONSC 1484, at para. 38; citing *Canada v. Canada North Group Inc*., 2017 ABQB 550, at paras. 50-52, aff'd 2019 ABCA 314, aff'd 2021 SCC 30.

[33] A comeback clause is not only used by parties that had no or inadequate notice of the hearing giving rise to the appointment order and seek to set it aside upon becoming aware of it (as was the situation in certain of the cases cited by and relied upon by the Commission[2]). It has been recognized that "depending on the circumstances, an interested party given notice may also access the comeback clause" but reliance upon a comeback clause should occur without delay (see *2615333 Ontario Inc. v. Central Park Ajax Developments Phase 1 Inc. et al*, 2024 ONSC 1484, at para. 38; see also *York (Municipality) v. Thornhill Green Co-Operative Homes Inc.*, 55 C.B.R. (5th) 181 (Ont. S.C.), at paras. 22-26, aff'd in York *(Regional Municipality) v. Thornhill Green Co-operative Homes Inc.*, 2010 ONCA 393, 262 O.A.C. 232). Unquestionably, the jurisdiction of the court to vary or discharge an appointment order must be used sparingly.

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[2] See *Textron Financial Canada Limited v. Beta Brands Limited*, 2007 CanLII 30473 (Ont. S.C.); and *C & K Mortgage Services Inc v. Camilla Court Homes Inc.*, 2020 ONSC 5071.

[34] There was no material delay in this case. As soon as the full extent of the conduct of the CFTC was publicly exposed and its implications for the CFTC Proceeding became known, this motion was brought forward for timetabling and scheduling.

[35] The Commission takes the position that because freeze directions, temporary cease trade orders and Mareva injunctions are time limited and require the party who the order favors to return to court and justify its continuation, the jurisprudence considering whether to continue those orders is not analogous to the situation at hand where an order was made that one party seeks to now discharge, vary or amend. The respondents recognize that the circumstances in these other cases are different, however their effect is equivalent so they can provide guidance.

[36] The Commission itself argued in its factum on the November 2023 Receivership Application that freeze directions and receiverships serve the same purpose - they are "designed to be interim measures to be used by the Commission to act in the public interest while an investigation or proceeding [is] ongoing". They provide the same "collateral safeguards" that they were intended to serve, as was noted in the Receivership Decision. The alleged wrongdoing relied upon in support of these available collateral safeguards under the Act (e.g., for the appointment of a receiver or a freeze order) must lead to a proceeding or financial sanctions since these interim measures are not intended to be remedies in and of themselves: see *Ontario (Securities Commission) v. Sextant Capital Management Inc*., 2010 ONCA 228, 100 O.R. (3d) 706, at para. 40; *Dunn v. British Columbia (Securities Commission)*, 2022 BCCA 132.

[37] The court recognized in the Receivership Decision that the Receivership was intended to act as a collateral safeguard while the Commission's investigation was continuing. A common theme that runs across all these procedural safeguards is that, because these remedies have the effect of stripping a person of control over their assets, they should not be left in place if the intended proceeding is not being pursued expeditiously. The Commission acknowledges in its factum that the Receivership cannot continue in perpetuity.

[38] I agree with the respondents that the factors that have been considered when determining whether to continue freeze directions, temporary cease trade orders and Mareva injunctions can provided guidance to the court in considering whether to discharge, vary or amend the procedural safeguards afforded by the Appointment Order.

[39] The purpose of an order made under securities legislation is to further the public interest; if the presumed public interest is not being served by the order, it should be revoked or varied: *Party A v. British Columbia (Securities Commission)*, 2021 BCCA 358, at para. 214. The onus is on the moving party "seeking to revoke or vary it to show that there is something new justifying a change, although the 'something new' may be the passage of considerable time": at para. 235. In making the overarching assessment about whether there is something new that justifies a change, the court identified, at para. 196, other relevant public interest factors to be considered, such as:

a. The seriousness and scope of the allegations. For example, evidence of a relatively minor breach of the Act might not weigh heavily in favour of an asset

freeze order, whereas evidence of a serious breach of the Act could weigh more heavily.

b. The stage of the investigation and whether there is urgency or has been delay.

c. The scope of the asset freeze order in relation to the potential penalties that might flow from the alleged breaches of the Act. This raises the question of whether there is proportionality between the scope of the asset freeze order and the magnitude of the prospective monetary claims or penalties arising from the investigation, to the extent it can be known.

d. The potential consequences of the order on the asset's owner or other parties. Here, it is not an answer to the intrusive nature of an asset freeze order to observe that it preserves the *status quo*. The order interferes with asset owners' ability to use their property.

e. The strength of the evidence in support of the asset freeze order. Even where the preliminary merits test is met, the relative weakness or strength of the evidence can be a relevant factor to weigh in combination with all other public interest factors.

[40] While it is not a closed list, what this indicates is that the court should consider factors such as the receivership's impact on the respondents; evidence of the stage of the investigation; the extent to which there has been substantial unjustifiable delay; the potential for dissipation of assets; and any change in circumstances such that the test for appointing a receiver under s. 129(2) of the *Securities Act* would no longer be met: *Party A*, at para. 196; *OSC v. Future Solar Developments Inc.*, 2015 ONSC 2334, at paras. 21, 24, and 30. It is also important that the public have confidence in both the markets and the system that regulates the markets: see *Ontario Securities Commission v. Saini*, 2022 ONSC 3924, at para. 25.

[41] Where the moving party demonstrates a change of circumstances or identifies new issues that have arisen that call into question the premise for these safeguards intended to provide temporary protection while an investigation into breaches of the Act is carried out, the court may then reconsider the threshold preliminary assessment of whether the evidence reveals that the investigation could show that the owner of the [frozen] assets breached the Act in ways that could lead to a monetary order or penalty against that party: see *Party A*, at para. 235.

[42] Comeback hearings occur as a matter of course in time-limited freeze orders and cease trade directions. Each time, the Commission has to justify the continuation of the order. A comeback hearing that originates from an appointment order allowing for it may shift the initial onus on to the requesting party to demonstrate that there has been some change in circumstances, but once that has been demonstrated the factors to consider in the exercise of the court's discretion would appear to be equally relevant.

[43] In this case, the respondents are asking the court to discharge the Receiver using the comeback provision contained in the Appointment Order and available under s. 129(8), or to

grant their Alternative Request to Vary. The situation here is more akin to a motion to set aside a Mareva order because the order has been made, the Commission is not seeking to change or extend it but the respondents say that the corollary of granting the order was the expectation that the investigation would proceed in a timely manner and that the Commission would make full, true and plain disclosure when the Appointment Order was sought. The analysis follows the same framework in each of these scenarios, but the starting point may differ.

[44] There were no cited examples of cases where a receiver has been discharged for reasons other than their own misconduct which is not being relied upon to support the requested order here. The Commission maintains that the bar is higher to set aside an order appointing a Receiver, which should only occur when they have engaged in "blatant intentional action contrary to the interest of one or more parties": see *Zanardo v. Di Battista*, 2021 ONSC 7835, at para. 14, aff'd *Gambin Estate v. Di Battista Gambin Developments Limited*, 2022 ONSC 3379; *Canada Trustco Mortgage Co v. York-Trillium Development Group Ltd*, 12 C.B.R. (3d) 220, at para. 5; *Kraner v. Kraner*, 2012 ONSC 4900, at para. 25. Here, it is not the Receiver's conduct that is impugned as the Receiver was not responsible for the evidence that was put before the court on the Receivership Application. These receiver fraud cases do not provide guidance by way of analogy for this decision.

[45] The respondents are not seeking to replace Grant Thornton and are not asking the court to take a position on the Receiver's conduct (although they have challenged the timeliness of some of the Receiver's actions). They maintain that the continuation of the receivership in the circumstances of this case is no longer justified, given what has, or has not, transpired since the Appointment Order was made, including: the significant time that has elapsed with no AEP having been issued and, in the meantime, the U.S. Court Dismissal of the CFTC Proceeding due to the discreditation of the lead CFTC investigator whose evidence also supported the Receivership Decision, as well as the discovery of a case from Nova Scotia that decided certain issues characterized as novel in the Receivership Decision without the benefit of the Nova Scotia decision.

What Has Changed?

[46] Here, the onus is on the respondents to demonstrate that there are changing circumstances or arising issues. They rely on the following changed circumstances and issues arising since the Appointment Order was made:

a. The Receiver was appointed based on allegations of misrepresentation and fraud committed by the respondents supported by evidence from someone who has since been discredited in the CFTC Proceeding, resulting in the U.S. Court's Dismissal of that proceeding in its entirety and an investigation of the conduct of CFTC staff involved in that prosecution. Some examples of the way in which that subsequently impugned evidence and the original findings in the U.S. Court Decision were integrated into the Receivership Decision are:

i. At para. 28: The U.S. Court found that the CFTC had made out a *prima facie* case that the respondents had engaged in unlawful (fraudulent) conduct in violation of the *U.S. Commodities Exchange Act* and Regulations based on the identified misrepresentations.

ii. At para. 20: The evidence that was before the U.S. Court and that is now before this court establishes a *prima facie* case of fraud and misrepresentation by the respondents. This finding was independently reached based on the evidence before this court that included the same evidence from the CFTC lead investigator that was contained in his declaration filed in the CFTC Proceeding, but with the "error" about the $31 million payment that was actually made to the CRA and not to the respondents having been excised from his affidavit in this proceeding.

b. This was presented as a novel case by the Commission, both in terms of the alleged breaches of the Act (see paragraph 34 of the Receivership Decision in which it was observed that this situation of customers not putting their own money at risk had not been considered in the context of breaches of the Act) and in terms of the remedy of disgorgement being sought (see paragraphs 49-51 of the Decision), whereas the respondents have since discovered a decision by the Nova Scotia Securities Commission had concluded that a similar business model by a forex prop firm did not involve the trading of securities or derivatives under the *Nova Scotia Securities Act*, nor did the disclosure that was made amount to fraud: see *ForexTips101 Ltd., Jessica Lynn Ghaney and Anthony Carlo Sartor (Re)*, 2021 NSSEC 2.

c. Nothing has happened in the Commission's investigation since the Appointment Order was made, or at least there is no direct evidence of anything happening. The court is asked to infer that this is because the Commission has not received the Data from the Receiver.

[47] The Commission attempts to diminish or neutralize these changed circumstances and new issues that have arisen since the Receivership Decision.

The Impugned Evidence of the CFTC Lead Investigator

[48] At the time of the hearing of this receivership application in November 2023, it was disclosed that the lead CFTC investigator had erroneously stated in a declaration he filed in the CFTC Proceeding that CAD $31.55 million was transferred from a BMO bank account held in the name of TGG to an "unidentified Kazmi Account", whereas the Commission had confirmed that those funds were used to pay an outstanding tax liability to Canada Revenue Agency ("CRA"). The Commission was careful to explain to this court that the erroneous statement about these funds had been removed from the version of the affidavit that the Commission filed from this same lead investigator in support of this Receivership Application.

[49] What was not disclosed was that the Commission had advised CFTC Staff of this error before the declaration containing the false statement was filed in the U.S. Proceeding. Rather than disclosing the potential frailty of this witnesses' evidence, the Commission tendered other evidence from him on the basis that he was reliable and truthful and his evidence should be accepted without question in support of the *prima facie* finding of fraud in this receivership proceeding, which it was.

[50] The respondents challenge the Commission's suggestion that the court should compartmentalize the evidence of the CFTC lead investigator and allow its Receivership Decision that relied upon any of his evidence to stand. The Commission's attempt to dissociate itself from this false evidence is undermined by its characterization of this as an error, which implied that he was not aware of the true facts when he affirmed his declaration. The Commission knew what was stated in the lead investigator's declaration filed in the CFTC Proceeding to be wrong because it had pointed the error out to the CFTC before his declaration was tendered, but it was not corrected until long afterwards (and only in a footnote to another motion initially).

[51] The respondents urge this court to adopt a wholesale rejection of any evidence from this lead CFTC investigator in these proceedings, consistent with the Special Master's report and recommendations that lead to the U.S. Court Dismissal. They contend that the lead investigator's affidavit filed in support of this receivership application was the foundation of the finding in the Receivership Decision that there was a *prima facie* fraud.

[52] Without that evidence and the findings of the judge in the CFTC Proceeding (that was later dismissed as a result of the conduct of the lead investigator and other staff at the CFTC) the respondents contend that the Commission has no evidence to demonstrate the operation of TGG's "live accounts", the number of customers that signed up for TGG's "live accounts", the commissions TGG earned, how TGG's customers were treated and Mr. Kazmi's alleged "knowledge of the MFF fraud". Moreover, there is still no evidence from any customer before the Court, no evidence that either the Commission or the CFTC has ever spoken with anyone from TGG, and no evidence that any customer relied on TGG's website disclosure or necessarily wanted to leave the simulated trading environment and trade with third parties.

[53] The Commission counters with two primary arguments. First, that the lead investigator's evidence filed in this proceeding (that already recognized the mistake and excised the statements about the tax monies having been paid to "Kazmi accounts") can and should be trusted because "it is in harmony with other evidence." It is not clear what evidence it is said to be in harmony with, given that there are many topics covered in this lead investigator's affidavit that are not addressed elsewhere in the Commission's evidence.

[54] Second, the Commission counters that the evidence of this lead investigator was not essential to the findings in the U.S. Proceeding, nor to the findings in this proceeding. With respect to the U.S. Proceeding, the Special Master found the exact opposite: that this evidence and the later impugned conduct "likely affected the court's decision to order the SRO or, at the very least, maintain it, and it likely affected the court's decision on the PI Motion, because the court did not have the full, complete and truthful information before it."

[55] In *Wilder v. Ontario (Securities Commission)*, 53 O.R. (3d) 519, at para. 22, the Ontario Court of Appeal stated that "[i]t is difficult to imagine anything that could be more important to protecting the integrity of capital markets than ensuring that those involved in those markets, whether as direct participants or as advisers, provide full and accurate information to the OSC". Moreover, "providing misleading or false information under oath demonstrates a serious disregard for the investigation process": *Mughal Asset Management Corporation (Re)*, 2023 ONCMT 39, at para. 89. It cannot be reasonably asserted by the Commission that the importance of submitting truthful evidence in the course of an investigation does not also apply to the Commission itself and its affiants.

[56] The Commission's decision not to provide any additional evidence to that of the CFTC lead investigator and its insistence that the court still rely on his affidavit despite its wholesale rejection in the CFTC Proceeding leaves the court with very little to work with if the affidavit is not to be considered.

[57] The Commission's position fails to address concerns about the reliability and probative value of this affidavit, despite the credibility of this witness having been seriously called into question on other topics.[3] However, I do not need to go so far as to reject the affidavit in its entirety. In my view, the probative value of this evidence from the CFTC lead investigator is significantly diminished. That is a change in circumstances and a new issue that has arisen that undermines the original premise of the Appointment Order and justifies its reconsideration. This bears upon the court's re-balancing of competing interests that I will come back to at the end of this part of the endorsement dealing with the Discharge Motion.

[58] The Commission asks, if there is going to be a reconsideration, that its evidentiary issues be balanced with some new evidence from the respondents that it says contradicts the respondents' earlier explanation of the virtual trading vs. actual trading environments.

[59] The Commission points out that Mr. Kazmi now acknowledges that despite the representation that certain clients would be making actual trades in the market, none of them actually were. All trading on the platform was virtual. In his affidavit sworn March 28, 2025, Mr. Kazmi admits that "no customers actually traded MFF's capital directly. All of MFF's customers engaged in simulated trading." The additional evidence from Mr. Kazmi and the original evidence that was before the court from the Commission staff investigator and accountant at the time of the first order is still available.

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[3] The Commission cites the following cases for the proposition that a witness may be found credible on some topics but not others: *R. v. B.F.*, 2018 ONSC 2240, at para. 91; *R. v. Cox*, 2023 ONSC 5856, at para. 9; *R. v. U.K.*, 2023. ONCA 587, 168 O.R. (3d) 321, at paras. 123, 126; *First Global Data Ltd (Re)*, 2022 ONCMT 25, at para. 238. These cases note the broad principle that judges and juries may accept some parts of a witness's evidence, but not other parts. They do not suggest that the court should disregard adverse credibility findings because they related to a different issue in the case.

[60] The new evidence from Mr. Kamzi is a new fact that the Commission argues reinforces the continuation of the Appointment Order as it is evidence of misrepresentation or fraud. Importantly, it is entirely untarnished by the affidavit of the lead CFTC investigator (whose evidence the Commission argues was not material to the court's Receivership Decision in any event).

The Novelty of the Case

[61] In order to advance a successful argument on the merits against the respondents, the Commission will need to first prove that TGG's products are "securities" as defined by the Act. The "security" analysis has been described as a "threshold issue" when determining whether there have been breaches under the Act.

[62] In other words, the Commission will first need to establish that when TGG's customers pay a registration fee for access to software, doing so constitutes the purchase of a security or derivative. Only if the answer to that question is "yes", does the analysis then turn to the question of whether TGG has engaged in fraud or other breaches under the *Securities Act*: see *Manticore Labs OÜ (Re)*, 2024 ONCMT 19, at paras. 4, 7; *Mughal*, at para. 36. In *Mughal*, unlike here, the respondents solicited funds from investors and admitted that the investments in question were securities and admitted that they had been operating a Ponzi scheme.

[63] In addition to these threshold issues, the Commission would ordinarily also need to prove, among other things, that TGG's customers actually suffered a loss and that the Respondents' alleged fraudulent acts "caused" that loss: see *Mughal*, at paras. 35, 46-50.

[64] There was no AEP when the Receiver was appointed, so the asserted breaches and losses were assessed for purposes of the preliminary merits analysis on the basis of the Commission's allegations as described in its motion materials. The situation remains unchanged: there still is no AEP.

[65] The Receivership Decision largely adopted the Commission's characterization of this as a novel case in terms of the alleged breaches of the Act and a novel claim for disgorgement rather than for losses or damages to individual investors.

[66] The Receivership Decision recognized, at para. 29, that the main challenge to the Commission's allegation of a breach of s. 126.1(1)(b) of the Act is that the fraudulent acts, practices and/or course of conduct of the respondents at issue did not relate to "securities, derivatives or the underlying interest of a derivative" within the meaning of the Act. The Commission asserted that "the circumstances of this case are novel and will have to be tested", as there was "no example of a case where the customer was not putting their own money at risk in the trading": Receivership Decision at para. 34. The Receivership Decision, at para. 35, was predicated on the court's acceptance that it was "not required to make a final determination of the issue". It was " ... enough that the Commission has raised a serious issue to be tried, or a serious concern, that this is what TGG and Kazmi were doing, and that misrepresentations were made about the true nature of the opportunity, in breach of s. 126.1(1)(b) of the Act".

[67] The respondents have, since the Receivership Decision, discovered that there actually was an example of a case dealing with this issue and it was not an entirely novel point. As described earlier in this endorsement, *ForexTips* was an application to revoke freeze directions and temporary orders in which the Nova Scotia Securities Commission concluded (at para. 17) that a similar business model by a forex prop firm did not involve the trading of securities or derivatives under the *Nova Scotia Securities Act*: and that the disclosure about these activities did not amount to fraud "relating to securities, derivatives or the underlying interest of a derivative under r. 132A(1) of that Act.

[68] While the *ForexTips* case is not identical to this one, the facts are similar. The Director of the Nova Scotia Commission took the same position the Commission took at the November 2023 Receivership Application: in offering the accounts, ForexTips101 was engaged in unregistered activity in Nova Scotia by trading in and distributing securities and derivatives and that ForexTips101's activities raise a *prima facie* case of misrepresentation and fraud contrary to Nova Scotia securities legislation.

[69] The Nova Scotia Securities Commission rejected the Director's argument. As described at paragraphs 17-21 of its decision, the freeze directions that had been put in place were revoked and the Nova Scotia Commission refused to extend the cease trade order on the basis that there was no *prima facie* evidence of a security or a derivative (and therefore no fraud in relation to a security or derivative). The respondents contend that in *ForexTips* the Commission's legal theory was rejected by another provincial securities regulator and that this weakens the Commission’s assertion that its legal theory in its intended case here is a "novel" one.

[70] The respondents have attested that they were not aware of this decision when this receivership application was heard. The Commission has refused to indicate whether it knew about it at that time or not. It maintains that the *ForexTips* case unquestionably existed at the time and both sides had equal ability to find and put that case before the court. Neither did so and the Commission insists that the failure of both parties to identify this case is not grounds for reconsideration.

[71] All else being equal, that is a reasonable position. Invariably, there are situations in which, for one reason or another, a relevant case is not located and provided to the court. That would not be grounds for reconsideration in the normal course, even if the issue was decided without regard to that case. This was a situation in which the legal issue was not determined but rather just identified as a point requiring determination. The determination will still have to be made.

[72] The Commission makes the further submission on this point that the court cannot revisit its finding that the issue (whether the type of activities that the respondents were engaged in constitute trading in and distributing securities and derivatives) was novel. That response is not persuasive given that, if there was a finding that this was a novel issue, it was based on an incomplete record.

[73] The Commission further argues that the *ForexTips* case itself does not go into a sufficiently deep analysis of the comparable relevant sections of the Nova Scotia Securities Act to stand as an authority for how the transactions at issue should be characterized under Ontario law. Lastly, the Commission seeks to distinguish this case because it was a decision made on an application to extend a freeze order that was denied rather than a comeback motion in a receivership. The fact that the ForexTips case might be distinguishable would also go into the mix in terms of the balancing of interests in the ultimate determination of whether or not to appoint a Receiver, but this does not change my assessment that the existence of the *ForexTips* case is a new issue that needs to be sorted out and considered in the balance of relevant factors.

[74] The fact that this was presented a novel point probably did influence the level of scrutiny that the court applied to the strength of the Commission's case in the balancing of interests that led to the appointment of the Receiver. The availability of this novel claim did not need to be decided for purposes of appointing the Receiver, as long as there was a possibility that the contractual relations between TGG and its customers could be characterized as an investment contract within the meaning of s. 129 of the *Securities Act*. The existence of that case would probably have changed the court's approach to the novelty of the liability issue. At a minimum, the court could and probably would have imposed a time limit for the Commission to properly lay out its alleged breaches and losses if the proposed claims were more tenuous.

[75] Instead, the Appointment Order has been in place more than nineteen months, with no AEP in sight. There is no operating business to generate revenues because the business has been shut down and the respondents' assets now under the management and control of the Receiver are being used to fund the significant professional fees of the Receiver and its counsel and the respondents. The estimate of these fees incurred to date is in the millions of dollars.

The Passage of Time

[76] Section 2.1(3) of the *Securities Act* requires the Commission to conduct "timely, open and efficient administration and enforcement of [the] Act" in order to administer "effective and responsive securities regulation".

[77] Interim protective measures under securities legislation cannot remain in place indefinitely absent the commencement of a proceeding: see *Re Nova Tech,* 2023 ONCMT 15, at para. 37; *Re Kotton,* 2016 ONSEC 36, at para. 42. *Nova Tech* and *Kotton* each dealt with a temporary cease trade order, which is "an extraordinary" remedy. The Receivership Order in this case is similarly drastic: *Nova Tech,* at para. 13.

[78] The "public interest" includes both the interests of the investing public who may be harmed by the alleged wrongful conduct as well as the interests of the persons affected by the Commission's decisions, whether market participants or not: see *Party A,* at para. 186. In *Party A,* the court found there was no inordinate delay. However, the facts in *Party A* stand in stark contrast to this case. Among other things, the BCSC found that the applicants' "suspicion" that there had been undue delay in the investigation was unfounded because the evidence showed that the investigation was actively being pursued.

[79] Unlike in this case where there are no updating affidavits that contain evidence about the Commission's ongoing investigation, in *Party A*, the BCSC Director submitted affidavits from an investigator detailing the steps that had been taken. The BCSC also had completed the investigative process, issued a notice of hearing to the applicants, along with a list of over 30,000 documents supporting the notice of hearing, and the merits hearing had been scheduled. The BCSC also found that the applicants waited over a year after commencing their application to revoke freeze directions before taking steps to pursue the application. In this case, there is no evidence that the Commission has advanced its investigation since the Receiver was appointed (in fact, the Commission shields itself behind confidentiality constraints to justify its decision to not even provide a basic affidavit updating on the matters that staff of the Commission had attested to for the motion to appoint the Receiver).

[80] The Commission maintains that investigatory confidentiality is still crucial to protect the integrity of the investigation. An investigation is not conducted in public. The Capital Markets Tribunal (the Tribunal) has observed that the Commission "is the principal steward of the confidentiality of an ongoing investigation": see *Sharpe (Re*), 2022 ONSEC 3 at para. 34. "The Commission's mandate includes fostering confidence in the integrity of the investigation procedures" by maintaining confidentiality: see *Black Re, 2007*, 31 O.S.C.B. 10397 at paras. 130, 133; See also *Deloitte & Touche LLP v. Ontario (Securities Commission*), 2003 SCC 61, 2 S.C.R. 713, at para. 29). For these reasons, the Commission investigators are not at liberty to provide detailed evidence regarding the status of the investigation and a road map for its completion.

[81] The respondents counter that the court should not be forced into position of having to make inferences on the critical question of the investigation timeline that the Commission had presented some evidence about on the original receivership application. The Commission has not even put in any direct evidence to support its primary argument which is that it is waiting to receive the Data it has requested from the Receiver (which is the subject of the Disclosure Motion). Even that basic point the court is being asked to infer. Notably, the original projections of the timeline for the Commission's investigation (at the time of and after the Appointment Order) were not tied to the receipt of this Data.

[82] The Commission asks the court to connect the dots between the evidence about the time it took for the privilege protocol to be drafted and the delays that the Receiver experienced in obtaining certain records from Go Daddy. It asks the court to infer that those are the reasons why the Commission's original time estimates of weeks, and then months, were too low. The Commission says there will be enough in the record to demonstrate how the Commission will move forward.

[83] In this case, there were Freeze Directions and a temporary cease trade order that were predicated on the same allegations, that the Respondents "may have engaged in conduct that perpetrates fraud. The Freeze Directions were superseded by the appointment of the Receiver. After the Receiver had been appointed, in support of a request to extend the temporary cease trade order, staff of the Commission represented to the Capital Markets Tribunal that: The investigation team expects that an additional six months will be necessary in order to complete

the investigation. That six months ended over a year ago. On January 25, 2024, the temporary cease trade order was extended on consent for six months.

[84] Six months later, the Commission sought another order extending the temporary cease trade order for a further six months. The respondents consented to an extension, but for only three months, given the substantial amount of time that the Commission had already taken in advancing its investigation. At about the same time, on July 25, 2024, the Commission requested email and other data of the respondents recovered by the Receiver (defined below as part of the Disclosure Motion) from the Receiver in reliance upon paragraph 5(q) of the January 24, 2023 Receivership Appointment Order (Appointment Order)).

[85] On July 29, 2024, the Receiver provided a proposed draft privilege protocol pursuant to paragraph 9 of the Appointment Order to the respondents. The respondents objected to the Receiver providing the Data to the Commission, taking the position that the Receiver was not authorized to do so under the Appointment Order. The respondents eventually agreed to the privilege protocol but only signed it on February 27, 2025, seven months later, while continuing to maintain their objection to providing the Data to the Commission. The respondents' objections necessitated the Receiver's motion for an order confirming that it can deliver the Data to the Commission. The Commission asserts that the delay is largely attributable to the respondents' meritless objections to the routine provision of Data recovered by the Receiver.

[86] Despite all of this, in October 2024, rather than appear before the Tribunal to explain the passage of time and justify another extension, the Commission advised the respondents and the Tribunal that it was not seeking another renewal of the temporary cease trade order, and it expired. The Commission disputes that it has an obligation to explain why it did not seek to extend its decision not to renew the temporary cease trade order, and noted that the Tribunal observed in *Lance Kotton et al.*, 2016 ONSEC 36, at para. 23, that a temporary order does not provide a "meaningful contribution" to the protection of investors when a receiver has been appointed. This is another inference that the court is invited to draw.

[87] The passage of time or delay and the impact the temporary order is having on the respondents have been recognized as relevant considerations in circumstances where the Commission is seeking to extend interim protective measures: see *Re Nova Tech*, at para. 37; *Re Kotton*, at para. 42.While these cases do arise in a different context (temporary cease trading order), and specifically in circumstances where there has not necessarily been an initial showing of a serious issue to be tried as there was at the November 2023 Receivership Application, that does not render the passage of time irrelevant to the question of whether the Appointment Order should be set aside or varied in this case.

[88] The weight placed on the delay may be less in a situation where the foundation for the *prima facie* case remains intact more than nineteen months later, but here the foundation has been cracked by:

a. The developments in the U.S. Proceeding and the demonstrated unreliability of the evidence of the Commission's primary witness, who provided the essential evidence to support the Appointment Order in this case; and

b. The revelation that the liability case may not be entirely novel and may be more challenging in the face of an existing decision by another securities regulation tribunal in Canada that undercuts the argument that the respondents were involved in fraudulent conduct in relation to a "security or derivative" within the meaning of the Act, even if in another context.

[89] This matter has not proceeded on the anticipated timeline. The court initially anticipated a matter of weeks and the Commission itself estimated at the time of the first extension of the CTO that it would be a matter of months. It has now been a year and a half. The Commission has now tied its timing for completing its investigation to the disclosure of the Data that it seeks from the Receiver. That Data has been held up over the privilege protocol and review and the Receiver having to bring the Disclosure Motion due to the respondents' objections to disclosure being made by the Receiver to the Commission.

[90] Even if the Commission had not originally anticipated relying on that disclosure, it now wishes to do so, since it no longer has a direct means to obtain all documents and records from the respondents. The court recognizes that even if this was an evolving explanation and even if it is one that must be inferred, the timeline for the delay is complicated by the issues raised on the Disclosure Motion. However, the delay is a changed circumstance and evolving issue that is exacerbated by the other changes and evolving circumstances already noted.

Alternative Request to Vary

[91] In the circumstances, the respondents urge the court to discharge the Receiver, and revoke the Receivership Order. However, if the court is not prepared to do that, they ask the court to find a less intrusive means to preserve certain assets. In the alternative, the respondents seek an order varying the Appointment or, in the further alternative, for advice and directions regarding the scope of the Receivership and the mandate of the Receiver. Their proposal, in the alternative, is for the court to order USD $10 million of TGG's assets to remain frozen, with Mr. Kazmi being obligated to file an affidavit within five (5) business days of the issuance of the Order outlining the steps taken to ensure the assets remain frozen pending a further order of this court.

[92] The Commission's Factum on this motion recognizes that the receivership cannot continue in perpetuity. The efficient completion of the investigation is in the public interest. It acknowledges that issues in the receivership have caused complications and delays for the investigation. The Commission welcomes increased court oversight of the receivership to assist with completing the investigation. The Commission is also prepared to provide some estimates as to the time to complete the investigation. However, the Commission asserts that the Data is important to its investigation and that the Commission would be in a better position to provide reliable estimates once the Data has been provided, and an initial analysis conducted. To facilitate this process, the Commission suggests scheduling a date to report to the court within three

months of receipt of the Data. As noted earlier in this endorsement, the court is being asked to infer that the Commission is now waiting for the Data to complete its investigation even though that is not directed stated anywhere in evidence.

[93] The Commission argues that even if there is a change in circumstances (as has now been found to be the case), this court's comments in the Receivership Decision regarding the balancing of interests suggest that the appropriate response to emerging issues is a re-evaluation of the receivership terms - not a termination of the receivership. The court is reminded that this re-evaluation has already happened once when the terms for payment of living and legal expenses were negotiated.

[94] At this point in time, the Commission maintains that even without the evidence of the lead CFTC investigator, the evidence does reveal that the ongoing investigation could show that the respondents breached the Act (with arguments to distinguish the *ForexTips* case and based on the respondents' own evidence now), which could lead to a monetary order or penalty against them and that is a sufficient reason to keep the Receiver in place. I find this to be tenuous but potentially arguable. What I am not satisfied about is that, over the past more than nineteen months, the Commission has not further developed its theory of damages and particularly the novel disgorgement point that was the foundation for putting all of the respondents and their assets under the management and control of the Receiver.

[95] I do not consider it to be in the interests of the due administration of securities law or in the interests of the capital markets for the respondents' assets and funds valued in the tens of millions to be under an indefinite freeze order given what has transpired in this case and the weakened position that the Commission is now in with the issues that have arisen concerning a lack of disclosure about frailties in the evidence of one of their key witnesses and about the existence of a case that raises questions about the strength of their novel argument on liability. The balancing that the court engaged in back in late 2023 and early 2024 when the Appointment Order was made has shifted. This shift is not counter-balanced by the new evidence that the Commission relies upon from Mr. Kazmi.

[96] The court recognizes that terminating the receivership would be a severe outcome with significant consequences. The Commission argues that it should be avoided unless there are no other alternatives. In this case, the Commission postulates that there are alternatives, including, for example, enhanced court oversight of the receivership to minimize further delays to the investigation, and commonsense arrangements with the Receiver to streamline administration of the respondents' financial affairs. That is a step in the right direction, but it has a ring of too little too late. Given all the specific evidentiary and legal developments that have come to light since the Appointment Order was made, combined with the passage of time without any apparent progress in the investigation, I do not consider it to be in the interests of the capital markets and due administration of securities law for the full receivership order to remain in place.

[97] I am going to grant the respondents' Alternative Request to Vary, which will leave $10 million in escrow. This reduced escrow amount potentially represents direct funding for losses of Canadian customers if the Commission's novel arguments on the liability side succeed, but

not the disgorgement claim. If it eventually succeeds in a disgorgement claim, then that will have to be pursued in the normal course in the way any penalty or monetary award is collected upon. That is what I consider the appropriate balance to be in the circumstances of this case as they stand today.

[98] While this remedy was not considered at the time the Appointment Order was made to adequately foster fair and efficient capital markets or confidence in capital markets in Canada, the events that have transpired since then lead me to conclude that it now does, when considered in light of the delay, the Commission's recent emphasis on the need for the Data, and the evidentiary and legal complications that have come to light in the meantime. The respondents will have to account for whatever liability they are found to have and any steps taken by them between now and the rendering of any judgment will no doubt be under careful scrutiny by all involved.

[99] The full receivership was predicated on novel claims and novel remedies and an assumption that the Commission intended to prepare its AEP within a matter of weeks. The appointment of a receiver is an extraordinary remedy. Without fettering the Commission's progress by whatever means are available, I am not prepared to continue to have all the respondents' assets tied up on an interim basis. The Receiver will remain in place to administer the $10 million of escrow funds and act as intermediary for the ongoing disclosure of the Data. This will require an Amended Appointment Order. If the parties cannot agree on its terms, a case conference may be scheduled before me to settle the terms of that amended order.

Disclosure Motion

[100] In the face of objections from the respondents about the Receiver sharing any of the information and documents it obtains from the respondents with the Commission, the Receiver seeks advice and directions regarding the interpretation of paragraph 5(q) of the Appointment Order.

> 5. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
>
> …
>
> (q) without limiting the generality of clause 5(o) above, to share information (including personal information of identifiable individuals), meet with and discuss with any regulatory bodies and their advisors, including without limitation the OSC and any other regulatory authorities as the Receiver deems appropriate, on all matters relating to the Property, the affairs of the Respondents, and the receivership of the Respondents….

[101] Paragraph 5(q) is not a standard term in the model receivership order. I agree with the Commission that the word “information” used in this context must include documents. However, the intention is not to have the Receiver reviewing and interpreting the documents – the intention would not be to have the Receiver interpreting the documents and sharing that “information” but rather to share directly what they have taken possession and control of.

[102] In light of the respondents' opposition to the Receiver sharing the Data with the Commission, the Receiver has brought the Disclosure Motion for the narrow purpose of confirming whether it is authorized to do so pursuant to the provisions of the Appointment Order, which both the Receiver and the Commission contend the Appointment Order already authorizes it to do.

[103] The Commission does not request that the Receiver process or analyze the Data. The only processing of the Data by the Receiver would be in furtherance of the privilege protocol as agreed to by the respondents and the Receiver. The Commission only requests that a copy of the Data be provided to it.

[104] The respondents say they did not oppose the inclusion of these paragraphs based on the assurances from the Receiver's counsel that these provisions would simply allow the Receiver to share with the Commission material that it may come across in the course of its modified "possess and preserve" mandate. The Receiver would not be acting at the direction or request of the Commission to gather and produce documents - although the Receiver could meet with affected persons (including the Commission) and share information that it happened to uncover during the course of its mandate. This appears to be exactly what the Receiver is proposing to do.

[105] This is not an investigative receivership, and the Receiver is intended to be an independent neutral third party - a role that the Receiver has acknowledged. The Receiver's assistance is not required for the Commission to conduct its investigation or locate assets. There is no proposal to expand the Receiver's mandate to allow it to assist the Commission with its investigation.

[106] The respondents have raised concerns that the requested relief on this motion would effectively allow the Commission to use the Receiver to sidestep the need to issue a summons to the respondents and provide them with the ensuing statutory protections under the Act. These provisions address confidentiality, privilege and disclosure to other enforcement bodies, among other things. A summons under s. 13 of the Act only requires the recipient "to produce such documents or other things as are in his, her or its custody or possession.”

[107] .A summons to Mr. Kazmi would be ineffective to obtain possession of the Data that has been collected and forensically preserved by the Receiver. The Data is in the possession of the Receiver and, therefore, it was suggested that any summons would arguably have to be issued to the Receiver, not the respondents. However, it is recognized that the Data belongs to the respondents and that issuing a summons to the Receiver will be problematic. No one is suggesting that the Receiver be issued a summons.

[108] As a practical matter, reliance on paragraph 5(q) of the Appointment Order avoids the need for a summons to the Receiver. I agree with the Receiver and the Commission that paragraph 5(q) of the Appointment Order permits the sharing of non-privileged documents by the Receiver with the Commission. That makes good sense as long as the respondents still have the opportunity to see what is being sent before it is sent and to invoke any protections they think apply to the documents that are produced. Any production under paragraph 5(q) to the Commission would be subject to the review under the Privilege Protocol that is already in place and underway. As an aside, the court was advised during the hearing that the privilege review would continue while this decision was under reserve.

[109] The Commission has stated unequivocally on this motion that it does not seek to deprive the respondents of any rights which may flow from the use of a summons to obtain the Data. If specific rights or protections can be identified by the respondents, the Commission is prepared to consider the inclusion of specific language in any order authorizing the disclosure of the Data to mirror such protections. To date, the respondents have not specified the rights or protections which underlie their concerns. They are invited to do so now.

[110] The court would prefer that the parties work out a protocol for allowing those protections to be invoked and pursued in the normal course, including to permit the respondents to escalate their concerns within the Commission, as contemplated by OSC Staff Notice 15-707. A protocol will be imposed if the parties cannot agree, based on the parties' proposals and submissions. The court directs the Receiver to provide a brief report to the court in writing by September 2, 2025 about their progress on any outstanding issues and to submit a request to schedule a case conference of appropriate length once the issues to be determined have been identified.

[111] The respondents have raised a concern about the cost of the production flowing through the Receiver (and effectively being paid by them). However, anyone managing this volume of documents will inevitably need to engage a document manager (the Receiver already has done so, and the respondents would likely have to do so as well). If the Receiver utilizes the document manager effectively, its incremental costs should be for it to "mediate" issues between the respondents and the Commission about production issues, and I see some utility in that role continuing, at least for the time being given where the parties are at with the organization of the Data and the implementation of the Privilege Protocol.

[112] While the Receiver's role is being curtailed, given the work that has already been done and the level of distrust, I see utility in the Receiver continuing in its role as the custodian of the Data and intermediary for production. There will be a cost associated with the Receiver's use of an e-Discovery vendor and liaising with both the respondents and the Commission and responding to requests and objections. The court hopes that their role can be streamlined but, in addition to the CAD $10 million escrow fund, an additional fund of $500,000 should be retained to cover the Receiver's future and ongoing expenses, although the Receiver will still be required to pass its accounts and those of its counsel.

[113] The court also adopts the Commission's proposal of more oversight over this process. At the next case conference, a regular reporting timetable will be put in place to keep the court and

the parties apprised of the Commission's timeline. The court expects that more periodic reporting will be required going forward.

Costs

[114] The court asked the parties to exchange their costs outlines in advance of this decision being released and expects they have done so. If the parties are unable to agree upon the appropriate disposition of costs for these two motions, they may arrange a case conference before me to seek directions regarding the timetable for submissions on costs.

[115] If there was any relief sought on the motions that were returnable on June 6, 2025 that has not been addressed in this endorsement or the court's endorsement of June 9, 2025, the parties are asked to alert the court to any such outstanding matters at the next case conference.

KIMMEL J.

Date: August 5, 2025