BRITISH COLUMBIA SECURITIES COMMISSION
Securities Act, RSBC 1996, c. 418

Citation: Party A, 2024 BCSECCOM 69 Date: 20240212

Party A, Party B, Party C and Party D

Panel	Marion Shaw	Commissioner
	George G. Glover, Jr.	Commissioner
	James Kershaw	Commissioner
Hearing dates	November 8 and 9, 2023	
Submissions completed	November 9, 2023	
Ruling date	February 12, 2024	
Appearing		
Derek Chapman Deborah Flood Amir Ghorbani	For the Executive Director	
Kenneth McEwan, KC William Stransky	For Party A, Party B, Party C and Party D	

Decision

I. Introduction

[1] On November 15, 2021, Party A, Party B, Party C and Party D (Applicants) filed an application (Application) with the Commission under section 171 of the *Securities Act*, 1996, c. 418 (Act) for an order revoking various freeze orders and other charges previously issued pursuant to section 151 of the Act.

[2] The executive director filed submissions in response in March 2022. The Applicants took no further action to advance the Application until April 2023, when the Applicants advised that they intended to proceed with it.

[3] On September 27, 2023, the Applicants applied to the Commission for an order that a particular senior investigator employed by the Commission (Investigator) attend the hearing on the Application and that the Applicants be granted leave to cross-examine the Investigator on certain of the affidavits filed in this matter.

[4] On November 8, 2023, we heard the preliminary application of the Applicants for leave to cross-examine the Investigator. All parties were represented by counsel and made written submissions. We dismissed the cross-examination application, with reasons to follow. Our reasons are set out below.

[5] Following the disposition of the cross-examination application, on November 8 and 9, 2023, we heard the written and oral submissions of the Applicants and of the executive director with respect to the freeze orders and other charges. All parties were represented by counsel, and these matters proceeded *in camera*. Our decisions and the reasons for them are set out below.

II. Background

[6] Party A is a British Columbia company with its head office in Vancouver, BC. Party B, who resides in Langley, BC, is the managing partner and sole director of Party A. Party C, who resides in Surrey, BC, is Party A's Chief Financial Officer. Party B and Party C are brothers.

[7] On October 10, 2018, the Commission issued an investigation order naming the Applicants and various other respondents. The investigation order was amended on January 22, 2019. In April 2019, the Chair of the Commission issued a number of orders under then section 151 of the Act preserving bank accounts and securities investment accounts of the Applicants (Freeze Orders). The Freeze Orders also authorized the filing of charges (Charges) under the *Land Title Act*, RSBC 1996 c. 250 preserving real property in which certain of the Applicants have an interest.

[8] The Freeze Orders were imposed on three of the Applicants' bank accounts, 22 brokerage accounts of one Applicant and 28 brokerage accounts of another Applicant. Charges were imposed on five real properties in which certain of the Applicants have an interest.

[9] On November 21, 2019, after a hearing, the Commission dismissed a previous application of the Applicants for an order revoking the Freeze Orders and Charges: *Re Application to revoke certain orders No. 2*, 2019 BCSECCOM 416. The Applicants appealed that decision to the BC Court of Appeal. On October 1, 2021, the Court of Appeal dismissed the Applicants' appeal, but left open the possibility of a fresh application to the Commission at a subsequent date: *Party A v. British Columbia (Securities Commission)*, 2021 BCCA 358 (*Party A Decision*).

[10] On November 15, 2021, the Applicants brought a further Application for revocation of the Freeze Orders and Charges. On March 8, 2022, the executive director opposed that Application and applied for a variation of one of the Freeze Orders and for a new preservation order. All those additional applications were in abeyance until April 2023, when the Applicants advised that they intended to proceed with the Application.

[11] Subsequently, the executive director issued a notice of hearing (NOH) alleging that various respondents had contravened section 57(a) of the Act by carrying out a "pump and dump" scheme that created a misleading appearance of trading activity in, or an artificial price for, the securities of three reporting issuers in British Columbia. The allegations in the NOH are the subject of a pending Commission hearing.

[12] Party D is the father of Party B and Party C, both of whom were named as respondents in the NOH. Party D had been a subject of the investigation into the alleged scheme, but was not ultimately named as a respondent in the NOH.

[13] The Freeze Orders and Charges included COR #2019/110 dated April 2, 2019, an order freezing a bank account in the name of Party D, with an approximate balance of $9.7 million. Since Party D was not named as a respondent in the NOH, the executive director concedes that there is no longer a legal basis to maintain COR #2019/110.

[14] Subsequent to the issuance of the Freeze Orders and Charges, the Act was amended to give the Commission the power to issue a preservation order against the assets of a family member, including a parent, if that family member received "claimable property" from a person who is the subject of an investigation order. On that basis, the executive director now applies under section

164.04(4) of the Act for a preservation order against the bank account in the name of Party D that had previously been the subject of COR #2019/110.

III. Application for leave to cross-examine

A. Applicable Law

[15] Section 2.1 of BC Policy 15-601 *Hearings* (Hearings Policy) provides that the Commission is the master of its own procedures and can do what is required to ensure a proceeding is fair, flexible and efficient. It also provides that in deciding procedural issues, the Commission considers the rules of natural justice set by the courts, and the public interest in having matters heard fully and fairly and decided promptly.

[16] Section 4.1 of the Hearings Policy deals with the admission of evidence, including the cross-examination of witnesses on their affidavit evidence. There is no automatic right to cross-examine a witness on affidavit evidence:

> 4.1 Evidence
> (a) ***Admission of evidence*** – In enforcement hearings, the primary test for the admission of evidence is its relevance to the allegations in the notice of hearing.
> …
> When an application or a hearing is in writing, the Commission generally does not permit a party to cross-examine witnesses on their affidavit evidence. If a party applies to cross-examine another party on their affidavit, the Commission may allow it where there are contested facts at issue in the affidavit. If cross-examination is allowed, it will generally be restricted to the facts in issue in the tendered affidavits.

B. Position of the Applicants

[17] As will be explained more fully below, it is common ground that the determination of the Application will rest on the panel's decision whether the public interest is best served by the maintenance or the revocation or variation of the Freeze Orders and Charges. One of several elements to be considered by the panel in reaching that decision is whether there has been undue delay on the part of the executive director.

[18] With respect to the question of delay, the executive director's submissions dated March 8, 2022 in response to the Applicants' Application dated November 15, 2021 stated as follows:

> 107. This is a complex investigation into a potential market manipulation scheme involving multiple trading subjects and has focused on four issuer subjects. The investigation has reached the stage where the focus is on reviewing and analyzing the evidence obtained to date. There is no evidence of any delay with the investigation…

[19] The executive director's submissions dated July 25, 2023 in response to the Applicants' Application made in 2023 stated as follows:

> 163. This is a complex alleged manipulation scheme involving multiple connected parties and issuers spanning over several years. The investigation is concluded and enforcement proceedings have issued. There is no evidence of undue delay causing prejudice to the parties.

[20] The Applicants asserted that there has been undue delay. They contested the executive director's characterization of the investigation as complex and said that it has taken longer than

it should have done. They emphasized that the NOH was issued on the eve of the expiry of the limitation date for the allegations contained in it.

[21] The Applicants pointed to an affidavit of the Investigator dated December 14, 2021, in which the Investigator outlined the steps taken since April 2019. The Applicants said that the Investigator's evidence did not particularize or provide a basis to assess the statements of the executive director that there has been no "delay" or "undue delay" in the investigation and, in particular, that it disclosed no detail or timeline of the steps taken or work done or any other evidence as to the nature of the investigation or its alleged complexity. Moreover, the Applicants said the subsequent affidavits of the Investigator similarly gave no explanation of what investigatory steps, if any, were taken between December 2021 and the issuance of the NOH in July 2023.

[22] The Applicants said that they suspect that there has been delay but cannot prove that without cross-examining the Investigator.

[23] In its decision in *Cowichan Valley (Regional District) v. Cobble Hill Holdings Ltd.*, 2015 BCSC 1995 *(Cowichan Valley*), the BC Supreme Court set out, at paragraph 27, matters to be considered on an application for cross-examination on an affidavit:

> [27] Factors to be considered in the exercise of the court's discretion include whether there are material facts in issue; whether the cross-examination is relevant to an issue that may affect the outcome of the substantive application; and whether the cross-examination will serve a useful purpose in terms of eliciting evidence that would assist in determining the issue … [Citations omitted].

[24] Relying on that decision, the Applicants said that the panel should exercise its discretion to permit cross-examination of the Investigator in these circumstances. The Applicants said that the scant evidence provided by the executive director of the steps taken in the investigation puts into issue his bare statements that there has been no undue delay in the investigation. The Applicants submitted that more importantly, the cross-examination is relevant to an issue, namely whether there has been delay, that may affect the outcome of the Application and that it will elicit evidence that is not otherwise available to them or the panel that would assist in determining that issue. In those circumstances, the Applicants said, there need not be contested facts to ground the order for cross-examination of the Investigator.

C. Position of the executive director

[25] The executive director noted that in *Jury v. Rogodzinski*, 2021 BCCA 395 (*Rogodzinski*), the BC Court of Appeal recently confirmed at paragraph 2, citing *Cowichan Valley*, that on an application to cross-examine a witness on an affidavit, the following factors should be considered:

(a) whether there are material facts at issue;

(b) whether the desired cross-examination is relevant to an issue that may affect the outcome of the application in respect of which the cross-examination order is sought;

(c) whether the cross-examination will serve a useful purpose by yielding evidence that would help determine an issue on the application;

(d) whether the information sought is available through other means; and

(e) whether cross-examination will produce unreasonable delay or generate unreasonable expense, both of which are to be avoided.

[26] The executive director noted that in *Cowichan Valley*, at paragraphs 29-30, the legal framework relevant to cross-examination on affidavits was summarized this way:

> [29] Minor discrepancies in the evidence, or conflicts that may be resolved by reference to documentary evidence will not warrant the exercise of the court's discretion. However, where there is conflicting evidence on a material fact in issue which would result in the inability of the judge hearing the petition to decide the case, cross-examination will be ordered [citations omitted].
>
> [30] Normally, before the court exercises its discretion to order cross-examination, the applicant will have filed affidavit materials that put in issue a material fact by contradicting the opposing party's affidavit evidence [citations omitted].

[27] The executive director said that the application for leave to cross-examine the Investigator should be dismissed, since it seeks to cross-examine the Investigator on facts that are not in issue.

[28] The executive director said that the nature and complexity of the investigation are self-evident and, moreover, have explicitly been recognized by the Commission in two other recent decisions relating to section 171 applications made by other subjects named in the same trading investigation as that concerning the Applicants.

[29] The executive director noted that in its October 5, 2022 decision in *Re Application 20211018*, 2022 BCSECCOM 418, which related to a revocation application made by another subject of the same investigation, the Commission said as follows:

> The investigation was commenced more than three years ago but is not yet complete. An investigation like this one, which involves numerous issues and trading subjects, is complex, and necessarily takes considerable time to conclude.
>
> There is no evidence of delay on the part of the Commission's investigative staff or the executive director. Rather, it appears the executive director is proceeding diligently with the investigation.

[30] The executive director noted that another trading subject in the same investigation had brought an application to revoke or vary the freeze orders and registered charges against his property in June 2022. In its May 23, 2023 decision on that application, *Re Application 20220610*, 2023 BCSECCOM 264, the Commission said as follows:

> We agree that this investigation has been ongoing for a considerable time, but we note as well that investigations of this type are complex and time-consuming. This is especially true in cases like this one where there are a large number of subjects and events involved in the investigation. We should leave the executive director further time to complete the investigative process.

[31] The executive director has since completed the investigative process and issued the NOH. The NOH alleges that the respondents, including Party A, Party B and Party C, carried out a "pump and dump" scheme, contrary to section 57(a) of the Act, involving the securities of three

reporting issuers that netted them trading proceeds of approximately $46 million.

[32] The executive director noted that he provided to the Applicants along with the NOH a list of documents disclosing 30,760 documents. More recently, the executive director provided the Applicants with a supplemental list of documents disclosing an additional 2,760 documents.

[33] Initially, the investigation concerned 15 trading subjects and seven issuer subjects. Subsequently, the investigation focused on four issuers. In the course of the investigation culminating in the NOH, the executive director obtained evidence regarding three additional trading subjects and refined the allegations further. Three issuers and seven individual respondents were ultimately named in the NOH.

[34] The executive director said that in seeking to cross-examine the Investigator on facts that are not in issue, based on speculation that they may find gaps in the investigatory process, the Applicants are on a "fishing expedition" to find evidence to bolster their argument that the investigation has taken longer than it should. The executive director urged the panel to reject the cross-examination application.

[35] Finally, citing the *Party A Decision* at paragraph 287, the executive director submitted that even if the Commission were to find evidence of a long delay without much progress in an investigation (which he says is not the case here), that may result in the Commission changing how it weighs the other public interest factors but would not by itself lead to the revocation of the Freeze Orders and Charges.

D. Analysis and conclusion

[36] In determining whether an order for cross-examination is appropriate in these circumstances, we looked to the principles set out in the Hearings Policy and in *Cowichan Valley*, as confirmed in *Rogodzinski*.

[37] Cross-examination on affidavits will normally be permitted only where there are in issue material facts that are relevant to an issue that may affect the outcome of the application in respect of which the cross-examination order is sought, and where the cross-examination might be expected to yield evidence that would help determine the issue on the application.

[38] The Applicants said that the scant evidence provided by the executive director of the steps taken in the investigation put into issue his bare statements that there has been no undue delay in the investigation, creating a state of affairs where there is conflicting evidence on a material fact that must be resolved in order for us to decide the matter before us.

[39] Investigations of this type, involving multiple trading and issuer subjects and spanning a lengthy period, are necessarily complicated. Even after the bulk of the evidence has been gathered, it takes time for the executive director to establish a theory and to marshal, test and seek to augment the evidence as necessary before settling on allegations that are neither under- nor over-inclusive. Despite the assertion by the Applicants that there is no evidence of meaningful work having been done in 2022 or the first half of 2023, the case outlined in the executive director's July 25, 2023 submissions has been refined since the executive director's earlier submissions. Since that time, one of the issuer subjects has been dropped from the investigation and allegations involving a new set of subjects of interest have been added to the NOH.

[40] The evidence shows that the Applicants' suspicion that there has been undue delay in the investigation is unfounded. That being so, we found no basis for the Applicants' assertion that there is conflicting evidence on a material fact that must be resolved in order for us to decide the matter before us. The circumstances here are far removed from those reflected in *Cowichan Valley* and *Rogodzinski*.

[41] The Applicants argued that whether or not there are material facts in issue, they should be permitted to cross-examine the Investigator on the affidavit evidence because the cross-examination is relevant to an issue that could affect the outcome of the Application and will yield evidence not otherwise available to them or the panel that would assist in determining the facts in issue. We saw no reason in this case to depart from the precedents and the principle that cross-examination on affidavits will not be permitted in the absence of contested material facts. In any event, we saw no reasonable prospect that the proposed cross-examination would yield evidence that might affect the outcome of the Application.

[42] Accordingly, we dismissed the application to allow the Applicants to cross-examine the Investigator on the Investigator's affidavit evidence.

IV. Application for revocation or variation of Freeze Orders and Charges

A. Applicable Law

Section 171 application

[43] Under Section 171 of the Act, the Commission has the discretion to make an order revoking or varying its decision if it considers that to do so would not be prejudicial to the public interest. Section 171 reads as follows:

> **Discretion to revoke or vary decision**
> **171** If the commission, the executive director or a designated organization considers that to do so would not be prejudicial to the public interest, the commission, executive director or designated organization, as the case may be, may make an order revoking in whole or in part or varying a decision the commission, the executive director or the designated organization, as the case may be, has made under this Act, another enactment or a former enactment, whether or not the decision has been filed under section 163.

[44] Under section 1(1) of the Act, a "decision" in relation to the Commission includes an "order … made under a power or right conferred by the Act or regulations".

Party A Decision

[45] In the *Party A Decision*, the BC Court of Appeal considered the Commission's dismissal of previous section 171 applications brought by the Applicants and others in respect of freeze orders (including the Freeze Orders and Charges) issued at the investigatory stage of this matter pursuant to section 151 of the Act. Section 151 was repealed and replaced by legislative amendments that came into force in 2020. The *Party A Decision* established an analytical framework for the issuance and continuation of freeze orders and charges (and, since 2020, preservation orders) issued under the Act.

[46] As stated in the *Party A Decision*, the purpose of the asset freeze power is to preserve assets that may be needed to satisfy claims brought under the Act. Doing so requires, at a minimum:

(a) an investigation into or allegations of contraventions of the Act that could result in potential monetary claims or penalties; and

(b) the executive director establishing that the order sought would be in the public interest, on a preliminary assessment of the basis of the investigation or allegation and all relevant factors.

[47] The Commission must first assess the evidence to determine if it is sufficient to raise a serious question that the investigation could show breaches of the Act leading to financial consequences against the respondent by way of monetary claims or penalties under the Act. The evidence can be less than the evidence required to satisfy a balance of probabilities but it must be more than mere speculation or suspicion. The Commission will rely on its expertise, experience and common sense in assessing the evidence and in drawing any reasonable inferences from the evidence.

[48] The Court emphasized that the initial threshold is easily met. In *Dunn v. British Columbia (Securities Commission)*, 2022 BCCA 132, the Court of Appeal confirmed that the *Party A Decision*'s "low and flexible" evidentiary standard remains the standard after a notice of hearing has been issued.

[49] Nevertheless, even where the preliminary assessment of the evidence demonstrates a serious question that the investigation could show that the owner of the assets breached the Act in ways that could lead to monetary claims or penalties against the owner, other public interest factors may militate against issuing a freeze order. The public interest includes not only protection of the public, but also public confidence in the markets. Public confidence will often require the Commission to take into account the interests of the asset owners and to recognize that an asset freeze order is extremely intrusive.

[50] Many factors could be relevant to the public interest in a given case, depending on the circumstances. At para 209, the Court in the *Party A Decision* provided a non-exhaustive list of factors that may be relevant in a given case, including:

1) 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;

2) the stage of the investigation, and whether there is urgency or has been delay;

3) 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 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 that can be known;

4) the potential consequences of the order on the assets' owner or other parties; and

5) 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.

[51] Two other factors raised for consideration in the *Party A Decision* were whether the executive director can show a connection between the frozen assets and the alleged wrongdoing, and whether the executive director can show there is a risk of dissipation of the assets absent a freeze order. The Court held that while those may be relevant in a particular case, neither was a necessary pre-condition to the maintenance of a freeze order.

[52] The Commission is not required to run through a formal checklist of all possible relevant factors but rather to balance those factors that are relevant to the case at hand.

[53] The Court said that where an order under review in a section 171 application was made after a full hearing with participation of the affected parties, there will be an onus on the applicant seeking to revoke or vary the order to show that there is something new justifying a change, although the "something new" may be simply the passage of considerable time, in which case the onus will shift to the executive director to establish that the public interest will be best served by the continuation of the order, taking into account all relevant public interest factors. The executive director acknowledges that in this application, he bears that onus.

B. Position of the executive director

Threshold issue

[54] With respect to the threshold issue, the executive director submits that it is easily met in this instance, where not only has an investigation order been issued, but the executive director's case against the respondents has been crystallized in the NOH, which contains allegations that Party A, Party B and Party C have engaged in an extensive scheme of market manipulation involving three reporting issuers, contrary to section 57(b) of the Act. The executive director submits that the evidence outlined in his submissions in this matter is more than sufficient to raise a serious question that the investigation could show breaches of the Act leading to financial consequences against the asset owners by way of monetary claims or penalties under the Act. He submits that if he is successful in proving the allegations in the NOH, significant monetary claims and penalties will be issued against Party B and Party C.

Public interest factors

Seriousness and scope of the allegations

[55] Turning to the factors to be weighed in determining whether the maintenance of the Freeze Orders and Charges is in the public interest, beginning with the seriousness and scope of the allegations, the executive director notes that the Commission has held that market manipulation is serious misconduct, harming individual victims and the public markets as a whole. It jeopardizes the confidence in the capital markets on which legitimate investor interest and capital formation depend.

[56] The executive director noted that in *Re BridgeMark*, 2022 BCSECCOM 294, at paragraph 201, the Commission found that a notice of hearing alleging repetitive conduct involving multiple issuers weighs more heavily in favour of a freeze order. Here, the executive director alleges that Party A, Party B and Party C were involved in three separate but overlapping pump and dump schemes with three issuer subjects and multiple individuals playing a variety of roles.

Stage of the investigation, urgency or delay

[57] With respect to the stage of the investigation, the executive director notes that the NOH has been issued and the merits hearing is scheduled for early 2024. As to whether there has been delay that would affect the analysis of the relevant public interest factors, the executive director argues, as described above in the discussion of the Applicants' application for cross-

examination of the Investigator, that there has been no undue delay in the prosecution of the matter.

Proportionality

[58] With respect to the scope of the Freeze Orders and Charges in relation to the potential monetary claims and penalties that might flow from the alleged breaches of the Act, the executive director argues that the value of the frozen assets is proportionate to the amounts that would be expected to be ordered to be disgorged under section 161(g) or paid as administrative penalties under section 162 by Party B and Party C if the allegations in the NOH are proved.

[59] Under section 161(g), the Commission may order a person to pay "any amount obtained…directly or indirectly" as a result of their contraventions of the Act, which would include the disgorgement of net trading proceeds. Under section 162, the Commission may order an administrative penalty of up to $1 million for each contravention.

[60] The evidence of the executive director is that as at May 2023, the values of Party B's and Party C's frozen property compare as follows with their respective net trading proceeds from selling shares of the three issuers during the relevant periods:

Name	Estimated value of frozen property	Name of Issuer	Net trading proceeds
Party B	$4,563,930	Issuer R Issuer I Issuer B	$7,753,960 $10,083,893 $4,409,392 **$22,247,245**
Party C	$4,469,165	Issuer I Issuer B	$3,434,009 $1,053,772 **$4,487,781**

[61] The amounts that the executive director provides for Party B's and Party C's net trading proceeds, respectively, include net trading proceeds from the shares of Issuer I that the executive director alleges were earned by three individuals, described as "the Trio", and paid over to Party B and/or Party C. The executive director notes that the Applicants protest the inclusion of those amounts, but do not challenge the evidence that the executive director says shows why those proceeds should be attributed to Party B and Party C.

[62] With respect to the Applicants' claim that the executive director has changed his position on the trading proceeds realized, the executive director explains that there has been no change in his position: while in March 2022, he was not yet in a position to calculate the net trading proceeds of Party B and Party C, he was able to do so by the time of his updated submissions dated July 25, 2023. In addition, he explains that the attribution of the Trio's trading proceeds to Party B and Party C resulted from further work on the file subsequent to the preparation of his March 2022 submissions.

[63] The executive director says that if Party B were ordered to disgorge his net trading proceeds as a result of contravening section 57(a) of the Act, that amount ($22,247,245) would be roughly five times larger than the value of his frozen property ($4,563,930). In addition, because he would likely also be ordered to pay an administrative penalty, the value of his frozen property is far less than his exposure for potential claims and penalties at the end of the merits hearing.

[64] As will be seen below in connection with the executive director's application for a preservation order freezing approximately $9.7 million held in a bank account in the name of Party D, the executive director argues that those funds actually belong to Party B, who transferred them to Party D. He says that if the requested preservation order is granted and the funds in it are added to the value of Party B's frozen assets, the aggregate value of his frozen assets, at $14,270,825, will still be significantly less than his exposure for potential monetary claims and penalties under the Act.

[65] The executive director says that if Party C were ordered to disgorge his net trading proceeds as a result of contravening section 57(a) of the Act, that amount ($4,487,781) would roughly equal the value of his frozen property ($4,469,165). In addition, because he would likely also be ordered to pay an administrative penalty, the value of his frozen property is less than, and therefore proportionate to, his exposure for potential monetary claims and penalties at the end of the merits hearing.

Consequential impact

[66] With respect to the consequential effect of the Freeze Orders and Charges on the owners of the frozen assets, the executive director acknowledges that there is always some prejudice caused to parties whose assets are frozen. He notes, however, that the Applicants have not tendered any evidence that they or any third parties have been specifically prejudiced, or even inconvenienced, by having their assets frozen for over four years. They initially commenced the Application on October 4, 2021, the next business day after the *Party A Decision* was issued. After the executive director provided his materials in response to the Application in March 2022, the Applicants waited over a year before indicating in April 2023 that they still wished to pursue the Application. No explanation was given by the Applicants for that delay.

Strength of the evidence

[67] With respect to the strength of his case, the executive director argues that the evidence in support of maintaining the Freeze Orders and Charges is strong. He notes that the trading subjects named in the NOH carried out key elements of their alleged market manipulation scheme by email, and that the investigation obtained access to Party B's and Party C's email for multiple email addresses during the relevant period. He says that the trading subjects, including Party B and Party C, also shared by email spreadsheets detailing their share accumulation in some of the issuer subjects as well as the amounts spent on promotional campaigns, providing solid evidence of their alleged misconduct.

[68] The executive director notes that the investigation obtained trading summaries demonstrating very significant increases in trading prices and volumes in each of the three issuer subjects during the relevant periods. He adds that the investigation obtained Party B's and Party C's brokerage statements documenting their trading during the alleged market manipulation schemes for the issuer subjects, and that those statements show them obtaining sizable share positions in the issuer subjects and realizing significant net proceeds from trading.

[69] The executive director countered each of the Applicants' arguments seeking to undermine his evidentiary case relating to Issuer R. He notes that the Applicants have not raised specific points with respect to the evidence of the alleged market manipulation schemes for the other two subject issuers, relying instead on a general statement that similar issues apply with respect to the executive director's allegations regarding Issuer B and Issuer I.

Linkage between frozen assets and wrongdoing

[70] The executive director does not claim any link between the frozen assets and the alleged wrongdoing. He points out that in the *Party A Decision*, the Court accepted the Commission's position that no such link was required, but went on to say that if there is no such link, *and* there is direct evidence or it can be inferred that preserving that asset would cause hardship *and* there remains sufficient security for possible claims without the asset freeze order, those circumstances could lead the Commission to conclude that an asset freeze order should not be issued or should be limited or varied. The executive director says that those are not the circumstances here.

Risk of dissipation of assets

[71] Finally, with respect to the risk of dissipation of assets, the executive director says that this is a rare case where actions taken by the respondents demonstrate a real risk of dissipation of assets in the absence of freeze orders.

[72] The evidence shows that Party B has an offshore bank account with the Abu Dhabi Commercial Bank in Dubai, U.A.E., and that in the seven months following the issuance of the Freeze Orders and Charges, Party D transferred approximately USD $140,000 in two transactions from a non-frozen account to Party B's bank account in Dubai. The executive director says that if the account in the name of Party D does not remain frozen, there is a serious risk that Party D could transfer significant funds to Party B's offshore account, placing them beyond the Commission's reach.

[73] In addition, the executive director points to the risk demonstrated by the evidence that on April 2, 2019, after Commission staff delivered freeze orders over Party B's and Party C's brokerage accounts, Party D withdrew $2 million from his bank account and deposited the funds into an account he held jointly with Party B and Party C. Party D then withdrew $2 million from that joint account and deposited the funds into his wife's account. Commission staff were informed by then counsel for the Applicants that Party B and Party C were aware of the freeze orders before those transfers were made by Party D.

C. Position of the Applicants

Threshold issue

[74] The Applicants do not contest the submission of the executive director that the initial threshold is met in this case: the allegations in the NOH and the evidence adduced by the executive director are sufficient to raise a serious question that the investigation could show breaches of the Act leading to financial consequences against the asset owners by way of monetary claims or penalties under the Act.

Public interest factors

[75] The Applicants say that the issue here is that there has been unexplained and extraordinary delay which, taken together with what they describe as the very weak case of the executive

director on the merits, means that the public interest must favour the revocation of the Freeze Orders and Charges.

[76] They point to the *Party A Decision*, at paragraph 287, where the Court said as follows:

> The passage of time may result in a different weighing of the public interest factors. For example, a long delay without much progress in an investigation might cause the Commission to take a more critical look at the executive director's evidence in support of the order and to give more weight to the impact of the order on the affected party.

Stage of the investigation, urgency or delay

[77] With respect to delay, the Applicants point to the issuance of the NOH on the last day before the expiry of the limitation period (which, they argue, is *prima facie* evidence of delay), the fact that substantial assets have been frozen for over four years and their suspicion that the executive director has accomplished almost nothing to advance the matter since December 2021.

[78] The Applicants seek to import into the freeze order context the imperative for a party who obtains a *Mareva* injunction to proceed as rapidly as possible. They reference various Ontario cases in which, they say, the *Mareva* framework and factors have been recognized as relevant with respect to freeze orders under Ontario securities legislation. The Applicants cite a contracts case in the Ontario courts, *Gold Star Renovations Inc. v. Vinnik*, 2012 ONSC 6575, that itself cites what is described as the seminal case, from 1982, on *Mareva* orders, where the court required the moving party to persuade the Court that it has a strong *prima facie* case, in recognition of the risk that a *Mareva* injunction can effectively become a weapon in the hands of a plaintiff to force inequitable settlements from defendants. The Applicants say that the freeze order power has an extortive effect and that nothing in the record before us shows that the executive director has proceeded "as rapidly as possible".

Strength of the evidence

[79] With respect to the strength of the executive director's case, the Applicants say that the evidence of the misconduct alleged in the NOH is weak, particularly relative to the seriousness of the allegations and the amount of property frozen or charged.

[80] The allegations in the NOH relate to a "pump and dump" scheme of market manipulation in the shares of three reporting issuers: Issuer R, Issuer B and Issuer I. Briefly, they describe a situation where Party B and Party C and others secretly acquire enough shares of each issuer to put themselves in a position to make key decisions on its behalf, then orchestrate a promotional scheme based on misrepresentations that cause the share price to rise dramatically, at which point they sell their shares at a substantial profit. Making particular reference to the executive director's case relating to Issuer R, the Applicants say that both the allegations of control and the underlying misrepresentations said to have been directed by the respondents suffer serious deficits and are contradicted by contravening evidence.

[81] The Applicants say that similar issues apply with respect to the executive director's allegations relating to Issuer B and Issuer I. They note that as with Issuer R, the executive director's primary allegations are that the respondents in the NOH, including Party A, Party B and Party C, caused those companies to issue misleading news releases, issue misleading investor presentations, and pay for or participate in misleading promotional campaigns. The Applicants say that while impugning the underlying transactions and the press releases around them, the executive director's evidence does not address or support the position that the assets

underlying such transactions were a sham or did not otherwise support the inherent value of the shares. They say that the executive director does nothing to contest that the conduct of Party A, Party B and Party C accords with their lawful services to the subject issuers.

Proportionality

[82] With respect to the proportionality of the frozen assets to the potential exposure of Party B and Party C for monetary claims and penalties under the Act if they are found responsible for the misconduct alleged against them in the NOH, the Applicants argue that the executive director changed his position on the trading proceeds realized by Party B and Party C and then inflated them by attributing the gross trading proceeds of other individuals to them.

[83] They point to the March 2022 submissions of the executive director, which calculated Party B's and Party C's gross proceeds, said at that time to total $14,527,425 for Party B and $2,456,713 for Party C. They say that based on those gross proceeds, the net proceeds for Party B and Party C should total $11,770,144 and $2,044,703, respectively, and that the freezing of more than those amounts is unfair and contrary to the public interest.

[84] The Applicants say that the figures that the executive director now gives for Party B's and Party C's net trading proceeds, respectively, include the gross proceeds from the sale of shares of Issuer I that the executive director alleges were obtained by three individuals, described as the Trio, and paid over to Party B and/or Party C. The executive director says that in fact, his new figures attribute only the net trading proceeds of the Trio to Party B's and Party C's net trading proceeds.

Consequential impact

[85] With respect to the consequential impact of the Freeze Orders and Charges, the Applicants acknowledge that they have other assets. They say that the Freeze Orders and Charges are very invasive, and that because of that, the executive director has a responsibility to get his job done expeditiously, but has not done so here.

Linkage between frozen assets and wrongdoing

[86] With respect to any linkage between the alleged misconduct and the frozen property, the Applicants submit that in the *Party A Decision*, the Court said that the Commission may consider evidence that there is no link between the frozen assets and the alleged wrongdoing, which could result in a limitation or variation of such an order. They note that the executive director makes no such connection. In particular, they say, the executive director has filed Charges against two properties, one registered to Party C and Party D and the other registered to Party B, both of which were acquired in 2013, four years before the start of the alleged misconduct. They say that the fact that those properties "have been linked by the executive director [to the misconduct] supports the inference that the Commission's purpose is being misused."

Risk of dissipation of assets

[87] With respect to the risk of the dissipation of assets, the Applicants argue that there is no such risk. They submit that transfers among family members do not constitute the dissipation of assets.

D. Analysis and conclusion

[88] The executive director argues, and the Applicants concede, that the threshold question posed by the Court in the *Party A Decision* has been met in this case. We agree. The allegations in the

NOH and the evidence adduced by the executive director are clearly sufficient to raise a serious question that the investigation could show breaches of the Act leading to monetary claims and penalties against the asset owners under the Act.

[89] That being so, we turn now to consider whether the continuation of the Freeze Orders and Charges is in the public interest, having regard to all relevant factors.

[90] Many factors could be relevant to the public interest in a given case, depending on the circumstances. That said, we have not identified in this case any beyond those suggested in the *Party A Decision*; accordingly, we have organized our analysis with reference to the non-exhaustive list provided there.

Seriousness and scope of the allegations

[91] The enforcement proceedings against Party A, Party B and Party C allege that they participated in a market manipulation of three reporting issuers. In a pump and dump scheme of the nature alleged, it will always be the case that investors, possibly a great many of them, would be harmed by the misconduct. The Commission has held that market manipulation is serious misconduct, since it compromises the integrity of the capital markets and its impact extends beyond victims who lost money directly, to the investing public as a whole.

[92] Noting the evidence that the alleged scheme involved repetitive conduct relating to three issuers, we find that the alleged misconduct in this case is very serious, which favours maintaining the Freeze Orders and Charges.

Stage of the investigation, urgency or delay

[93] As was stated in the Commission's decision in *Re Forum National*, 2019 BCSECCOM 257 at para 99, in the context of an administrative proceeding, questions of delay are assessed with regard to the nature of the case and its complexity, the facts and issues, the purpose and nature of the proceedings, whether the respondent contributed to the delay or waived the delay and other circumstances of the case.

[94] This investigation was in progress for a long time before the NOH was issued and the assets of the Applicants have been frozen for nearly five years.

[95] This was a complex investigation into conduct alleged to have been engaged in by multiple issuers and trading subjects over a lengthy period. The passage of time does not necessarily signify delay. In light of everything put before us, we find that the investigation and the litigation process have progressed in a manner that we would expect, culminating in the issuance of the NOH within the limitation period stipulated in the Act. As outlined above in our reasons for dismissing the Applicants' application for cross-examination of the Investigator, we find no evidence of undue delay on the part of the executive director.

[96] We also find that the *Mareva* injunction cases referred to by the Applicants have no application in this very different context. The Applicants are participating voluntarily in a highly regulated market and there is a significant public interest in ensuring, where possible, that funds will be available to satisfy monetary sanctions and penalties issued for contraventions of securities legislation.

[97] At this point, the investigation has been concluded and enforcement proceedings have resulted in the issuance of the NOH. The merits of the case alleged in the NOH are scheduled to be heard this spring. Provided that the other factors support the maintenance of the Freeze Orders and Charges, we find it in the public interest to maintain the Freeze Orders and Charges until the outcome of the hearing on the merits.

Proportionality

[98] If the executive director proves his market manipulation allegations against the respondents named in the NOH, the Commission could order financial sanctions against them under sections 161(g) (disgorgement of trading proceeds) and 162 (administrative penalty) of the Act.

[99] The executive director's evidence is that Party B's net trading proceeds from selling shares of the three issuer subjects total $22,247,245 and that Party C's net trading proceeds total $4,487,781.

[100] Those figures were disputed by the Applicants, who say that the executive director changed his position on the trading proceeds realized by Party B and Party C and then inflated them by attributing the gross trading proceeds of other individuals to them, without demonstrating how the net trading proceeds generally were calculated. We are satisfied by the executive director's explanation that there has been no change in his position: while in March 2022, he was not yet in a position to calculate the net trading proceeds of Party B and Party C, he was able to do so by the time of his updated submissions dated July 25, 2023. We are also satisfied at this preliminary stage with credible evidence adduced by the executive director to support the attribution to Party B and Party C of the net trading proceeds from transactions in Issuer I realized by the three individuals described as the Trio.

[101] On the basis of the evidence before us, we accept for the purposes of the Application the figures for net trading proceeds calculated by the executive director. Although a hearing panel dealing with sanctions might reach a different conclusion, it would not be unreasonable based on the evidence before us to expect that if the executive director's case is proved and his calculations are confirmed, orders for monetary sanctions under section 161(g) of the Act could be made against Party B and Party C, respectively, in those amounts. In addition, the Commission could order an administrative penalty of up to $1 million for each contravention. The executive director did not quantify the administrative penalties he would be seeking.

[102] We conclude that continuing to freeze assets belonging to Party C with a value of $4,469,165 and to freeze assets belonging to Party B with a value of $14,270,825 (including the approximately $9.7 million held in a bank account in the name of Party D over which the executive director seeks a preservation order) is not disproportionate to the potential financial sanctions against Party C and Party B, respectively, if the allegations in the NOH are proved.

[103] Accordingly, we find that the evidence of the scope of the frozen assets in relation to the potential monetary claims and penalties flowing from the alleged breaches of the Act favours the maintenance of the Freeze Orders and Charges.

Consequential impact

[104] We recognize that by its nature, a freeze order significantly impinges on an asset owner's ability to use their property, and so some prejudice will be suffered by parties whose assets are frozen. However, the Applicants have tendered no evidence that they or others have been significantly prejudiced, or even inconvenienced, by having substantial assets frozen for over four years.

[105] The Applicants initially advised the hearing office of their intention to bring a section 171 revocation application on October 4, 2021, immediately following the release of the *Party A Decision*. The executive director opposed the intended application, brought his own application for a preservation order against Party D, and filed submissions in response to the Application on March 8, 2022. The Applicants did not take any further steps to challenge the Freeze Orders and Charges for over a year. No explanation was tendered by the Applicants for that delay. We find that the Applicants' failure to pursue this matter with diligence undermines a claim of prejudice. If the Freeze Orders and Charges were significantly harmful to the Applicants, we would have expected them to have pursued the Application expeditiously.

Strength of the evidence

[106] The executive director has alleged in the NOH that Party A, Party B and Party C and certain other respondents contravened section 57(a) of the Act by carrying out a "pump and dump" scheme that created a misleading appearance of trading activity in, or an artificial price for, the securities of three reporting issuers in British Columbia.

[107] Section 57(a) of the Act in force at the relevant time stated that a person "must not, directly or indirectly, engage in or participate in conduct relating to securities or exchange contracts if the person knows, or reasonably should know, that the conduct results in or contributes to a misleading appearance of trading activity in, or an artificial price for, a security or exchange contract."

[108] In *Re Lim*, 2017 BCSECCOM 196, at para 100, the Commission said that section 57(a) of the Act requires the executive director to establish four elements in order to prove a contravention of that section:

(a) did the conduct of the respondent relate to securities or exchange contracts?
(b) was there either (or both) a misleading appearance of trading activity in, or an artificial price for, that security or exchange contract (what we will refer to as the form of the manipulation)?
(c) was there the requisite causal connection between the respondent's conduct and the form of the manipulation (i.e. did the respondent, directly or indirectly, engage in conduct that results in or contributes to the form of the manipulation?) and
(d) did the respondent have the requisite mental state for the contravention (i.e. did the respondent know, or should they have reasonably known, that their conduct had the requisite causal connection to the form of manipulation?)

[109] As stated in the *Party A Decision*, even where the preliminary merits test is met, the relative weakness or strength of the evidence in support of the asset freeze order can be a relevant factor to weigh in combination with all other public interest factors. That said, on the hearing of the Application, the executive director is not required to prove his substantive case on a balance of probabilities. That is for the hearing on the merits.

[110] The Applicants say that the executive director's case relies heavily on innuendo. The executive director says that market manipulation cases are frequently based on circumstantial evidence and reasonable inferences drawn from proven facts.

[111] The executive director adduced evidence supporting the allegations in the NOH. Although the

Applicants pointed to some potential weaknesses in certain aspects of the executive director's case that will need to be explored at the hearing on the merits, the preliminary evidence that was adduced and the allegations that were made bear many of the hallmarks of market manipulation. None of the aspects of the evidence attacked by the Applicants is fundamental to proving a market manipulation offence on a balance of probabilities. The arguments of the Applicants in the Application have not significantly undermined the executive director's case.

[112] Accordingly, we find that the executive director's evidentiary case is sufficiently strong that it favours the maintenance of the Freeze Orders and Charges until the outcome of the hearing on the merits.

Linkage between frozen assets and wrongdoing

[113] The executive director does not claim any link between the frozen assets and the impugned conduct. He rightly notes that in the *Party A Decision*, the Court accepted the Commission's position that no such link was required but went on to say that if there is no such link, and there is direct evidence or it can be inferred that preserving that asset would cause hardship, and there remains sufficient security for possible claims without the asset freeze order, those circumstances could lead the Commission to conclude that an asset freeze order should not be issued or should be limited or varied.

[114] Those are not the circumstances here. As discussed above, we have been provided with no evidence of hardship and we consider that the Freeze Orders and Charges are necessary to provide sufficient security for the monetary claims and penalties that may result if the executive director successfully proves against Party B and Party C the case outlined in the NOH. As a result, the lack of a link between the frozen assets and the alleged wrongdoing, by itself, is a neutral factor when considering the public interest in maintaining the Freeze Orders and Charges.

Risk of dissipation of assets

[115] The executive director says that a real risk of dissipation in this case is shown by the actions taken by Party D to withdraw a substantial sum of money from his bank accounts on the day the Freeze Orders and Charges were issued, and by the evidence that one of the Applicants maintains an active offshore bank account in Dubai.

[116] The Applicants argue that the distribution of assets to family members does not constitute the dissipation of those assets. We disagree. Once assets are outside the purview of a freeze order, they are no longer available to satisfy potential monetary claims and penalties owed to the Commission. In addition, the presence of an offshore bank account gives rise to a real risk that the monetary assets, if unfrozen, may be removed from Canada. Those risks favour the maintenance of the Freeze Orders and Charges.

Conclusion

[117] For the reasons summarized above, we find that in all the circumstances existing at the time we heard the Application, and taking all relevant factors into account, the revocation or variation of the Freeze Orders and Charges (other than COR #2019/110, which is discussed further below) would be prejudicial to the public interest. Accordingly, we dismiss the Application and decline to revoke or vary the Freeze Orders and Charges.

V. Application for revocation of COR #2019/110 and imposition of new preservation order

A. Applicable law

Preservation Order under s. 164.04

[118] Section 164.04 of the Act allows the Commission to make various orders for the preservation of property. Part 18.1 of the Act (Preservation Orders and Other Collection Remedies), inclusive of Section 164.04, came into force in March 2020, subsequent to the issuance of the Freeze Orders and Charges.

[119] "Family member" is defined in s.164.01 as:

> (a) a spouse, former spouse, parent, grandparent, sibling, child or grandchild of a person …

[120] "Claimable property" is defined in s.164.01 as:

> (a) with respect to a family member of a person referred to in section 164.04 (2),
>
> > (i) property that was transferred to the family member, at any time, from the person.

[121] Pursuant to section 164.02(2), the property transfer can have occurred prior to the coming into force of Part 18.1:

> (2) This Part applies to property, whether or not
>
> > (a) the acquisition of the whole or the portion of an interest in the property,
> > …
> > as referred to in section 164.16, occurred before, on or after the coming into force of this Part.

[122] Section 164.04 provides, in relevant part:

> (1) In the circumstances set out in subsection (2) or (3), the commission may make one or more orders under subsection (4) in relation to
> …
> (d) the property in which the whole or a portion of the interest in claimable property of a family member or third-party recipient is held.
>
> (2) The commission may make an order under subsection (4) in respect of a person if any of the following apply:
> …
> (b) an investigation under section 142 or 147 has been ordered in respect of the person;
> …
> (3) The commission may make an order under subsection (4) in respect of a family member or third-party recipient that received claimable property from a person if any of the following apply:
> …
> (b) an investigation under section 142 or 147 has been ordered in respect of the person… .

B. Position of the executive director

[123] The executive director concedes that since Party D was not named as a respondent in the NOH, there is no longer a legal basis under the former section 151 of the Act to maintain COR #2019/110 against Party D's bank account. However, the executive director seeks to replace COR #2019/110 with a new preservation order that will have the same effect.

[124] The executive director applies under section 164.04(4) of the Act for a preservation order against the bank account in the name of Party D that was the subject of COR #2019/110. The evidence at the hearing indicated that as of May 2023, the balance in that account was $9,732,336.

[125] The executive director submits that the Commission has the power to issue a preservation order against a family member if that family member received "claimable property" at any time from a person who is the subject of an investigation order.

[126] Party D is Party B's father and is therefore a family member of Party B as defined in section 164.01. Party B was named as a trading subject in the investigation order relating to this matter. He is, accordingly, "a person referred to in section 164.04(2)", with the result that property transferred to Party D by Party B is "claimable property" as defined in section 164.01.

[127] The evidence at the hearing was that the approximately $9.7 million in Party D's account originated from a bank account held jointly by Party B and his wife and daughter. Prior to the receipt of funds from that joint account, the balance in Party D's account was $48,605, which mainly consisted of deposits from Party D's old age pension. On March 23, 2019, Party B transferred $12 million from the joint account into Party D's bank account.

[128] The executive director acknowledges that before issuing a preservation order, the Commission must not only ensure that the requirements of section 164.04 of the Act are met but must also conduct the analysis required by the *Party A Decision* to confirm that the threshold question is met and that, having regard to all relevant factors, the public interest is best served by the issuance of the preservation order.

[129] The executive director submits that he easily meets the threshold question to issue a preservation order against Party D's bank account, since there is sufficient evidence to raise a serious question that the hearing of the allegations in the NOH against Party B may lead to financial consequences against him by way of monetary claims or penalties under the Act. The executive director points to the evidence that the funds in that account actually belong to Party B, having been placed there by him, and says that for all the same reasons described above with respect to the maintenance of the Freeze Orders and Charges, it is in the public interest to issue the requested preservation order.

C. Position of the Applicants

[130] In their written submissions, the Applicants say that it is not appropriate to issue a preservation order against Party D's bank account for the same reasons as they gave with respect to the maintenance of the Freeze Orders and Charges.

[131] They add that freezing the whole of the funds in that account cannot be proportionate to Party B's potential financial exposure under the Act, based on what they call the "fair and appropriate calculation of [Party B's] net proceeds, with regard to the executive director's original position

regarding his gross trading proceeds", at approximately $11.7 million. They note that if the $9.7 million in its entirety is considered to be Party B's frozen property, that would increase the amount of Party B's frozen property to $14.2 million which, they say, exceeds Party B's potential exposure.

[132] In their oral submissions, the Applicants also advanced the suggestion that in seeking to replace Freeze Order COR #2019/110 with a preservation order against Party D's bank account, the executive director has acted improperly, on the theory that the executive director knew in 2019 that the investigation indicated that Party D had received only $3.6 million in trading proceeds and so the value of property frozen was excessive in relation to Party D's potential exposure but nevertheless issued COR #2019/110 and kept it in place pending the Legislature's expected adoption in 2020 of the Act amendments containing the preservation order power.

D. Analysis and conclusion

[133] The same threshold question and public interest analysis as were outlined with respect to the revocation of freeze orders in the *Party A Decision* arise in respect of the preservation order sought by the executive director under section 164.04(4) of the Act against the bank account in the name of Party D that was the subject of COR #2019/110.

[134] Applying that framework to the preservation order sought by the executive director, we find that the threshold test has been met, that the same public interest factors arise for consideration, and that we would balance them in the same way. In particular, there is evidence to suggest that the funds in the account in the name of Party D actually belong to Party B, not Party D, and there is no evidence that the imposition of the earlier Freeze Order against that account has resulted in any particular hardship to Party D or anyone else.

[135] As discussed above with respect to the proportionality of the assets frozen to the potential financial exposure of Party B and Party C for their alleged wrongdoing, we accept, for the purposes of this application, the executive director's calculations of the net proceeds realized by Party B and Party C.

[136] We do not accept the Applicants' suggestion that the Commission acted improperly in freezing the approximately $9.7 million in the bank account in the name of Party D.

[137] Accordingly, we conclude that the imposition of the requested preservation order is in the public interest.

VI. Orders issued

[138] The Application is dismissed and the Freeze Orders and Charges remain in place.

[139] The executive director's application under section 164.04(4) of the Act for the Commission to issue a preservation order against the bank account in the name of Party D that will have the same effect as COR #2019/110 (New Order) is granted.

[140] We direct the executive director to:

1. confirm with the Applicants the draft form of the New Order and then provide it to the Hearing Office for the panel to issue; and

2. confirm with the Hearing Office when he has delivered the New Order to the appropriate financial institution, whereupon we will revoke COR #2019/110.

February 12, 2024

For the Commission

Marion Shaw
Commissioner

George C. Glover, Jr.
Commissioner

James Kershaw
Commissioner