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

Citation: Re GSPartners, 2024 BCSECCOM 127 Date: 20240404

GSPartners, GSB Gold Standard Bank Ltd., GSB Gold Standard Corporation AG, Swiss Valorem Bank Ltd., Haidy Nitsa Nakos, Tanya Sue Cloete and James Bruce Gardiner

Panel	Deborah Armour, KC	Commissioner
	Jason Milne	Commissioner
	Marion Shaw	Commissioner
Hearing date	November 29, 2023	
Submissions completed	November 29, 2023	
Ruling date	November 29, 2023	
Date of Reasons	April 4, 2024	

Counsel

Karin Blok	For the Executive Director
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Reasons for Ruling

I. Introduction

[1] On November 16, 2023, the Commission issued a temporary order (Temporary Order) cited as 2023 BCSECCOM 529 against GSB Gold Standard Bank Ltd doing business as GSPartners (GSPartners), GSB Gold Standard Corporation AG, Swiss Valorem Bank Ltd., Haidy Nitsa Nakos (Nakos), Tanya Sue Cloete (Cloete), and James Bruce Gardiner (Gardiner) (collectively, the Subjects) prohibiting various activities in the securities market until December 1, 2023.

[2] On November 29, 2023, the panel heard the executive director's application to extend the Temporary Order for the earlier of one year or until a hearing is held and a decision rendered by the Commission. We received submissions and entered evidence tendered by the executive director. The Subjects did not attend or make submissions. On November 29, 2023, we made an order, 2023 BCSECCOM 568, to extend the Temporary Order as requested by the executive director, with reasons to follow.

[3] These are our reasons.

II. Terms of order

[4] The terms of the Temporary Order, as extended, are as follows:

(a) under section 161(1)(b)(i) of the *Securities Act*, RSBC 1996, c. 418 (the Act), all persons cease trading in securities of GSPartners;

(b) under section 161(1)(d)(v), Nakos, Cloete and Gardiner are prohibited from engaging in promotional activities by or on behalf of GSPartners or on behalf of another person that

is reasonably expected to benefit from promotional activity relating to securities of GSPartners;

(c) under section 161(1)(d)(vi), GSPartners is prohibited from engaging in promotional activities on GSPartners' own behalf in respect of circumstances that would reasonably be expected to benefit GSPartners; and

(d) under section 161(1)(e)(i), the Subjects are prohibited from disseminating to the public, or authorizing the dissemination to the public, any information or record relating to securities of GSPartners;

until the earlier of November 29, 2024 or until a hearing is held and a decision rendered.

[5] Within the Temporary Order, the executive director had alleged four breaches of the Act:

(a) illegal distribution of securities, contrary to section 61;

(b) illegal trading of securities, contrary to section 34(1)(a);

(c) prohibited representations, contrary to section 50(3)(a); and

(d) fraud, contrary to section 57.

[6] At the extension hearing, the executive director submitted that there was *prima facie* evidence supporting each of the four allegations and that it was necessary and in the public interest for the panel to extend the Temporary Order.

III. Background

[7] Based on the evidence tendered by the executive director, which we canvass in more detail below, this proceeding addresses the activities of a number of entities in what is described as a "metaverse".

[8] GSPartners, GSB Gold Standard Corporation AG and Swiss Valorem Bank Ltd. (the Corporate Entities) are part of a larger group of companies referred to as the GSB Group. The GSB Group entities describe themselves as based in or licensed across various countries including Germany, the Autonomous Island of Moheli in the Union of the Comoros, and Kazakhstan. GSPartners is described as the marketing arm of the GSB Group.

[9] The GSB Group operates what it calls the Lydian World Metaverse, a digital blockchain-based platform where users can purportedly mine cryptocurrency, buy digital assets and conduct transactions. The GSB Group claims to profit from transactions in the Lydian World Metaverse. Members of the group are distributing a product called “MetaCertificates”.

[10] Investors purchase MetaCertificates and pay additional amounts to add different types of investment products known as “blockfolios” to the MetaCertificates. The promoters of the MetaCertificates describe them as the “golden keys” to access the blockfolios. Payments are made in units of the stable coin Tether, which is linked to the US dollar and symbolized as “USDT”.

[11] Investors are told they can expect to profit from weekly returns of 2.5% to 4.15% on MetaCertificates and quarterly returns of up to 18% or more from the investment products added to the MetaCertificates.

[12] MetaCertificates are promoted through an extensive international multi-level marketing network of promoters. GSPartners promoters receive a commission for referring others to purchase MetaCertificates.

[13] Nakos, Cloete and Gardiner are involved in activities to promote the sale of the MetaCertificates and underlying products.

IV. Applicable law

Making and extending temporary orders

[14] Section 161(2) – (4) of the Act addresses temporary orders and extensions of those orders:

> (2) If the commission or the executive director considers that the length of time required to hold a hearing under subsection (1), other than under subsection (1) (e) (ii) or (iii), could be prejudicial to the public interest, the commission or the executive director may make a temporary order, without providing an opportunity to be heard, to have effect for not longer than 15 days after the date the temporary order is made.
>
> (3) If the commission or the executive director considers it necessary and in the public interest, the commission or the executive director may, without providing an opportunity to be heard, make an order extending a temporary order until a hearing is held, and a decision is rendered.
>
> (4) The commission or the executive director, as the case may be, must send written notice of every order made under this section to any person that is directly affected by the order.

[15] There is no bright-line test for determining whether an extension sought by the executive director under section 161(3) of the Act is appropriate. As stated by the Commission in *Fairtide Capital Corp.*, 2002 BCSECCOM 993 at paragraph 29:

> In our view, there is no bright line test. The Commission considers evidence using its expertise and specialized understanding of the markets and the securities related activities it supervises, to determine what is in the public interest in any given circumstance.

[16] In *Re Minnie,* 2004 BCSECCOM 677, the Commission succinctly set out the test to be met in extending a temporary order where, as here, there are allegations that the respondents have contravened a specific provision in the Act:

> 22 Staff must produce evidence for the commission independently to assess whether there is *prima facie* evidence of the misconduct alleged and whether, in the circumstances, the extension is necessary and in the public interest. The evidence must be more than staff's opinion or belief, given under oath, that a respondent breached the legislation or acted contrary to the public interest.

[17] Black's Law Dictionary, 11th edition, has defined "*prima facie"* as follows:

> Sufficient to establish a fact or raise a presumption unless disproved or rebutted; based on what seems to be true on first examination, even though it may later be proved to be untrue…

[18] As stated in *Re Zhang*, 2023 BCSECCOM 304, the term "*prima facie*" is used to characterize something as being accepted on its face unless disproved. Generally, *prima facie* evidence means evidence sufficient to establish a fact until the contrary is proven.

[19] The panel in *Zhang* pointed to the importance of the protection of the public in the use of tools such as temporary orders. At paragraphs 7 and 8 it said:

> …the regulatory context is important when considering temporary orders. A temporary order is a regulatory tool given to the commission.
>
> The Act is a regulatory statute with a public interest mandate, and its overarching purpose is to ensure investor protection, capital market efficiency and public confidence in the system. The public interest purpose in imposing regulatory enforcement orders is neither remedial nor punitive, but protective and prospective in nature. These powers are intended to prevent likely future harm to the integrity of our capital markets.

[20] Therefore, to succeed in his application, the executive director had to establish that there is *prima facie* evidence of breaches of the Act, that extending the Temporary Order is necessary, and that extending the Temporary Order is in the public interest.

Notice to the respondents

[21] The executive director is not required to provide notice prior to issuing a temporary order or before bringing an application to extend a temporary order. He is, however, required to provide notice once orders have been issued.

[22] Section 180 of the Act allows for notice by email. Emails must be sent to the latest address known for the person to whom the executive director is giving notice:

> 180(1) Unless otherwise provided by this Act, prescribed by the regulations, or ordered by the commission or executive director, a **record** that under this Act is sent or is required to be sent must be
>
> (a) personally delivered,
>
> (b) mailed, or
>
> (c) transmitted by electronic means
>
> to the person that under this Act is the intended recipient of the record.
>
> (2) A record sent to a person by means referred to in subsection (1)(b) or (c) must be sent to that person
>
> (a) at the latest address known for that person by the sender of the record,
>
> (b) at the address for service in British Columbia filed by that person with the commission, or

(c) at the address of the person's solicitor if the person, or the solicitor, has advised that the solicitor is acting for the person.

[emphasis added]

[23] In section 29 of the *Interpretation Act*, *RSBC* 1996, c. 238, "record" is very broadly defined as including "books, documents, maps, drawings, photographs, letters, vouchers, papers and any other thing on which information is recorded or stored by any means whether graphic, electronic, mechanical or otherwise". That definition of "record" applies to the Act.

Distribution requirements

[24] The definition of "security" is found in section 1(1) of the Act. We reproduce the relevant subsection:

> **"security"** includes
>
> …
>
> (l) an investment contract,
>
> …

[25] The Supreme Court of Canada defined "investment contract" in *Pacific Coast Coin Exchange v. Ontario Securities Commission*, [1978] 2 SCR 112 (SCC) as an investment in a common enterprise from which an investor expects to profit from the efforts of others.

[26] The definition of "trade" is also found in section 1(1) of the Act. The relevant provisions are:

> **"trade"** includes
>
> (a) a disposition of a security for valuable consideration whether the terms of payment be on margin, instalment or otherwise, but does not include a purchase of a security or a transfer, pledge, mortgage or other encumbrance of a security for the purpose of giving collateral for a debt or other obligation,
>
> …
>
> (f) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the activities specified in paragraphs (a) to (e.2)

[27] In section 1(1) of the Act, "distribution" is defined as follows:

> "**distribution**" means, if used in relation to trading in securities,
>
> (a) a trade in a security of an issuer that has not been previously issued,
>
> …

[28] Section 61(1) of the Act provides:

> 61(1) Unless exempted under this Act, a person must not distribute a security unless

(a) a preliminary prospectus and a prospectus respecting the security have been filed with the executive director, and

(b) the executive director has issued receipts for the preliminary prospectus and prospectus.

Registration requirements for trading

[29] Section 34(1) of the Act requires that persons who trade in securities be registered:

> 34(1) A person must not
>
> (a) trade in a security or derivative,
>
> …
>
> unless the person is registered in accordance with the regulations and in the category prescribed for the purpose of the activity.

[30] In *Re Liu,* 2018 BCSECCOM 372 at paragraph 78, the Commission cited *Re Rezwealth Financial Services Inc.*, 2013 ONSEC 28 at paragraph 213, where the Ontario Securities Commission said that trading is a broad concept which includes:

> … any sale or disposition of a security for valuable consideration, including any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of such a sale or disposition.

[31] At paragraph 214 of *Rezwealth*, the Ontario Securities Commission outlined a number of activities that constitute acts in furtherance of a trade. Three of those relevant to this case are:

(a) distributing promotional materials concerning potential investments;

(b) preparing and disseminating materials describing investment programs; and

(c) conducting information sessions with groups of investors.

Prohibited representations

[32] Section 50(3) addresses prohibited representations:

> 50(3) A person engaged in a promotional activity must not make a statement or provide information
>
> (a) that a reasonable investor would consider important in determining whether to purchase, not purchase, trade or not trade a security if the statement or information, at the time and in light of the circumstances in which the statement is made or the information is provided,
>
> (i) is false or misleading, or
>
> (ii) omits a fact necessary to make the statement or information not false or misleading.
>
> …

[33] Section 1(1) of the Act states that “promotional activity”

> means any activity, including, for greater certainty, any oral or written communication, that by itself or together with one or more other activities encourages or reasonably could be expected to encourage a person
>
> (a) to purchase, not purchase, trade or not trade a security, or
>
> (b) to trade or not trade a derivative,
>
> ...

Fraud

[34] Section 57 addresses fraud and provides in part:

> **57**(1) A person must not, directly or indirectly, engage in or participate in conduct relating to a security, derivative or underlying interest of a derivative if the person knows, or reasonably should know, that the conduct
>
> …
>
> (b) contributes to a fraud perpetrated by another person, or contributes to another person's attempt to commit a fraud, relating to a security, derivative or underlying interest.
>
> …
>
> (2) A person must not, in relation to a security, derivative or benchmark,
>
> (a) perpetrate a fraud, or
>
> (b) attempt to perpetrate a fraud.

[35] The leading case in Canada regarding the elements of fraud is *R. v. Théroux*, 1993 CanLII 134 (SCC). Chief Justice McLachlin outlined the elements of fraud as follows:

> …the *actus reus* of the offence of fraud will be established by proof of:
>
> 1. the prohibited act, be it an act of deceit, a falsehood or some other fraudulent means; and
>
> 2. deprivation caused by the prohibited act, which may consist in actual loss or the placing of the victim's pecuniary interests at risk.
>
> Correspondingly, the *mens rea* of fraud is established by proof of:
>
> 1. subjective knowledge of the prohibited act; and
>
> 2. subjective knowledge that the prohibited act could have as a consequence the deprivation of another (which deprivation may consist in knowledge that the victim's pecuniary interests are put at risk).

[36] The Commission in *Re DFRF Enterprises and others,* 2022 BCSECCOM 405 at paragraph 125 said that the executive director when alleging that a person acted contrary to the fraud section of the Act by participating in a fraudulent scheme perpetrated by others must prove that:

(a) there was a fraud or an attempted fraud by someone relating to a security, including satisfying both the tests for the *actus reus* and *mens rea* as outlined in *Théroux* and consistently applied by this Commission and others; and

(b) the respondent must have participated in the conduct of the person engaging in the fraud, at a time when the respondent knew or reasonably should know that that person was perpetrating the fraud.

[emphasis in original]

V. The position of the executive director

The executive director asked the panel to extend the Temporary Order

[37] The executive director submitted that there is sufficient *prima facie* evidence that the Subjects have contravened the provisions of the Act identified within the Temporary Order, including evidence that:

- the Corporate Entities contravened and are continuing to contravene section 61 of the Act by distributing MetaCertificates without proper filings and without an exemption;
- GSPartners, Nakos, Cloete and Gardiner contravened and are continuing to contravene section 34(1)(a) of the Act by promoting MetaCertificates without being registered and without an exemption;
- GSPartners, Nakos, Cloete and Gardiner contravened and are continuing to contravene section 50(3)(a) of the Act by making statements about the returns on MetaCertificates that are likely false and misleading; and
- GSPartners, Nakos, Cloete and Gardiner contravened and are continuing to contravene section 57 of the Act by perpetuating or contributing to a fraud.

[38] The executive director also submitted that it is both necessary and in the public interest for this panel to extend the terms of the Temporary Order.

The executive director provided evidence in support

[39] The executive director tendered extensive evidence by way of three affidavits of a Commission intelligence analyst to show possible contraventions of the Act. Those affidavits exhibited lengthy slide decks and made reference to a number of videos and photos posted to YouTube, Facebook and Instagram pages evidencing presentations and representations made by promoters of the MetaCertificates and blockfolios to investors and prospective investors. We summarize the key evidence below.

[40] GSB Gold Standard Bank Ltd. claims to be registered in the Union of the Comoros. The affidavit of the Commission's intelligence analyst included evidence that on or about June 15, 2022, the Central Bank of the Comoros issued a warning that certain entities, including GSB Gold Standard Bank Ltd., were falsely claiming to be registered by competent authorities in the Comoros.

[41] Marketing materials distributed by the promoters of the MetaCertificates say that they are involved in many sectors including AI driven markets and trade management, non-regulated market capitalization, global real estate, blockchain driven metaverse markets, FinTech, forex, renewable energy solutions, nutraceuticals and online gaming and gamification.

[42] Marketing materials also claim that investors can increase their weekly payback by increasing investment in various blockfolio programs. Their returns depend on how much is loaded as well as the particular blockfolios loaded.

[43] In addition to returns from investing, the promoters of the MetaCertificates claim that money can be made by promoting the operation. A slide deck on a website associated with Nakos sets out seven ways that one can earn money through referrals with nine different commission structures. In order to participate, one needs to pay a monthly fee of 33 USDT to become a member of the “metaverse”. When someone buys a MetaCertificate, 65% of the certificate price is commissionable.

[44] Cloete and Gardiner run what they call the “Team Olympus Facebook Group”. Team Olympus has its own YouTube channel. In a video hosted by Cloete and Gardiner in March 2023 titled “Top 5 Most Asked Questions on GSPartners” posted to that channel, Cloete states that a 4.15% weekly return is possible through a compounding of all the investments being made. Gardiner states that an amount loaded to the certificate is being traded by SkyGround traders. He says quarterly revenue of up to 18% is earned on that loaded amount.

[45] In a YouTube video posted by Nakos in April 2023, she describes herself as one of six individuals who founded GSPartners. She says she was a member of the GSB executive council and the first to reach the rank of “Crown Ambassador”. She also describes herself as a “7 Figure Per Year Earner”. She describes how promoters earn not only commissions on the sales they make but also from the people downstream that they refer to the network. The number of people promoters have downstream determines their level within the network.

[46] Also in that video, Nakos claims “This team has never lost a penny for any clients and have never had a month in the red, but anything can happen in a market.”

[47] Cloete and Gardiner hosted an event at the Pinnacle Hotel in Vancouver on April 16, 2023. In a video posted by Cloete advertising the event in advance, she says that all someone has to do to earn passive income is to “INVITE, INVITE”.

[48] A notice posted by Cloete on Eventbrite with the GSPartners logo stated in part:

- The event was hosted by Cloete and Gardiner;
- “Earn Passive Income for Life”,
- “Earn Passively in the Metaverse. Residual Income on Blockchain”,
- “Earn passive & residual income with this opportunity from world leaders in banking, trading, & compliance”.

[49] Separate posts to Facebook show Cloete and Gardiner making presentations at the event. A subsequent video by Cloete and Gardiner said 400 people attended the session at the Pinnacle Hotel.

[50] In May 2023, a video was posted to the Team Olympus YouTube channel titled "Gold Standard Partners Tanya Cloete & James Gardiner”. The video shows Cloete and Gardiner discussing

MetaCertificates. Cloete provides a “backoffice tour” demonstrating the platform on the GSPartners’ website showing:

- where MetaCertificates can be purchased and loaded;
- how to compound the weekly returns; and
- where funds can be deposited into or withdrawn from the platform and where cryptocurrencies can be exchanged.

[51] Gardiner also posted to the Team Olympus Facebook Group saying “I just helped one of my personals purchase a new set of Elementals” (a kind of blockfolio). He goes on to say:

> Their $4,000 certificate will now EARN a combined segment TOTAL of $18,350… PLUS, they receive back 3x $1,000 Load amounts for a GRAND TOTAL of: $21,350.

[52] On May 30, 2023, the Commission placed GSPartners and related entities on its Investment Caution List. The Quebec Autorité des marchés financiers, the Alberta Securities Commission, the Financial and Consumer Affairs Authority of Saskatchewan and the Ontario Securities Commission issued warnings about GSPartners on March 9, May 19, June 1, and July 25, 2023 respectively.

[53] In July 2023, Cloete posted to the Team Olympus Facebook Group stating in part:

- “Lydian World has paid out a total of 11.5 million USDT in value to its Citizenships – Get Your NFT Passports now and begin building your wealth.”
- “As suggested on our leadership call – I encourage you all to go to your social media platforms and search 4.15% archived stories, lives, posts, and DELETE! DELETE! DELETE ALL THOSE OLD POSTS to remain compliant.”

[54] Notwithstanding urging investors to delete information to “remain compliant”, Cloete and Gardiner continued to promote MetaCertificates. In August 2023 on the Team Olympus YouTube channel, a video was posted titled “Testimonials – Meet everyday people who have changed their lives!” In the video, Cloete states that Team Olympus has close to 700 people and it is “part of an ecosystem that has well over a million users”. Gardiner states that the ecosystem is just “shy of three years old” and that in four months they are “slated to be valued as a billion dollar company”.

[55] Some investors started having difficulty withdrawing funds or obtaining weekly returns. In October 2023, Cloete posted to the Team Olympus Facebook Group stating in part that:

- the Metaportfolio accounts had recently taken some loss trades in the market;
- for those who didn’t adopt a regular compound strategy, they absorbed some of the losses and had their loads DROP below 100%, thus causing their weekly rewards to pause.

She said that an option was to top up the load to reactivate the weekly rewards.

[56] Also in October 2023, an anonymous participant of a public Facebook group called GSPartners Global stated in part, “Last week I had $1,000 in this certificate. Today I have only $450. Yesterday I was receiving 4.5% per week. Now I am receiving 0% per week.”

[57] Because of losses that were being suffered, something called the “Market Protection System” or “MPS” was implemented. It prevented investors from withdrawing all their funds. The system was described by Gardiner in a video as a strategy that helps funds stay inside the GSPartners ecosystem. He said that an investor could withdraw some of their investment but some would be “locked up” for 13 months, a portion would go into a token called the “Gas Fee Token”, which are fees charged for cryptocurrency exchange transactions, and some would go to administrative costs.

[58] Gardiner also stated in one of the videos “My elemental certificates are yielding … I am going to Cape Town and I am going to be reaping the benefits of the Cape Town promotions, as I know many of you are”.

[59] In two videos in October 2023, well after the cautions were issued by the securities regulators and after losses had been suffered, Cloete is seen promoting MetaCertificates. In one, she is promoting a new series of MetaCertificates called the “Success Series”. She states in part: “RECEIVE 7X On Original Exchange After 18th [sic] Months! 6X if you withdraw & load other certificates!” In the other video titled “THE POWER OF COMPOUNDING ON SUCCESS SERIES”, she states that it is a good idea to do a “full compound”.

[60] Cloete also talks about the MPS in one of the videos in a way that can only be seen as positively promoting it. She states in part:

- “‘MPS Lock Up’ places value in a 13 month lock up vehicle, from current month of exchange, increase value of blockchain and securing value for later use for the user”;
- “This will not only protect our community, educate us but also attract other projects with seeing the liquidity pools filled and huge volume on our blockchain”;
- “Lets set massive goals and lets start with the goal of 100 million”.

[61] In a video also posted in October 2023, Nakos explains the MPS in the context of the Success Series. She is seen saying:

> We’re getting gas at an extraordinary rate for the price allocated to that gas, it is a first movers advantage. Load up, load up, load up because everything will be subject to gas fees on the platform in the future and you will be in the position to sell gas tokens to others.

[62] On November 18, 2023, two days after the Temporary Order was issued, GSPartners hosted a conference for investors in Cape Town, South Africa. Nakos, Cloete and Gardiner were there. A Facebook post by Cloete said that 5,000 people were at the conference. It featured multiple speakers, product launches and recognition sessions. Nakos gave a speech where she said in part that many who are part of her team had “10x’d their income” and then she asked, “who can do that out in the outside world in the corporate world? Who can 10x their income?”

[63] Also in Cape Town on November 17, 2023, there was an “Ambassador” party attended by the highest earners. Cloete posted photos to her Facebook profile showing her, Nakos and

Gardiner at the party. On November 19, Cloete and Gardiner hosted a yacht party. Nakos also hosted breakout training sessions during this period.

[64] It is evident that Nakos, Cloete and Gardiner knew about the Temporary Order. On or about November 24, 2023, Gardiner was recorded in a video posted by Cloete to the Team Olympus Telegram channel called "Team Olympus Broadcast" where Gardiner and Cloete were informing viewers about an upcoming GSPartners corporate call. Gardiner is heard saying in part:

> A lot going on. There's been a coordinated effort by the commissions, by the regulators across the world to kind of slow the role of GSP. So much so that yes, Tanya and myself alongside Nitsa Nakos in BC, so we, the three of us have a cease and desist order meaning we are being investigated for selling securities.

[65] Also in that video, Cloete states in part:

> There is also an announcement that we want to share with you which pertains specifically to James and myself and Nitsa Nakos. We want to make sure that everybody is informed on protocol, communication etc. And then of course, we're going to be going through tomorrow on the corporate call the exciting offerings regarding Lydian World, Lydian Lions, the offering on the promotion that's been extended, along with the BOOST…

[66] The evidence outlined above is a sampling of that adduced by the executive director. There is much more evidence demonstrating the promotion of MetaCertificates by GSPartners, Nakos, Cloete and Gardiner.

[67] The executive director also tendered evidence to establish that:

(a) none of Nakos, Cloete and Gardiner has ever been registered under the Act or with any Canadian securities regulators;

(b) Nakos is a resident of Vancouver, British Columbia. Cloete and Gardiner are residents of Maple Ridge, British Columbia; and

(c) none of the Corporate Entities:

- has ever been registered under the Act;
- has ever filed a preliminary prospectus, offering memorandum or report of exempt distribution under the Act; or
- has ever been registered with any other securities regulator in Canada.

The executive director submitted the evidence satisfies the test for an extension

[68] The executive director submitted that we do not need to find that *prima facie* evidence exists to establish all of the alleged contraventions and that it is enough if we find that *prima facie* evidence exists with regard to one or more of them.

[69] The executive director also submitted that an extension of the Temporary Order is necessary and in the public interest as the Subjects pose an immediate risk to investors through their continued operation in the markets. The executive director pointed to evidence showing that the Subjects are continuing to promote GSPartners. For example, the Cape Town events took place

after the Temporary Order was issued, and Cloete continued to make posts after the Cape Town events.

[70] The executive director submitted that the seriousness of the alleged contraventions is a consideration, since fraud is the most serious misconduct under the Act.

[71] The executive director also submitted that statements made by GSPartners establish that there may be hundreds of investors who have invested millions of dollars. The recent withholding of returns may be an indication that the suspected fraudulent scheme is about to collapse. The executive director submitted that the integrity of the markets will be harmed and there will be a significant loss of public confidence in the system if the Subjects are allowed to continue to perpetrate their scheme.

[72] The executive director also pointed to the specific nature of the Temporary Order and the fact that he is only seeking an extension for at most one year. He submitted that the extension is necessary because of the risk of future harm to investors posed by the Subjects' continued conduct.

VI. Analysis and Conclusions

Notice to the Respondents

[73] Affidavits entered into evidence at the hearing establish that the executive director provided each of the Subjects with written notice by email to their latest known email addresses. They also establish that the executive director made extensive efforts to provide notice by personal delivery to Nakos, Cloete and Gardiner. Personal delivery was not successful so the Temporary Order and materials for the extension application were left at the latest known addresses of those individuals with adult occupants of those addresses.

[74] We find that the executive director provided notice to the Subjects of the Temporary Order and the application to extend the Temporary Order, in accordance with the Act. We note that it is evident from communications made by Nakos, Cloete and Gardiner at a conference in Cape Town, South Africa just days after the Temporary Order was issued that they were in fact aware of the Temporary Order at that time.

Requirements underpinning the extension application

[75] In order to extend the Temporary Order the executive director must show:

(a) the existence of *prima facie* evidence of one or more contraventions of the Act;

(b) that it is necessary that the Temporary Order be extended; and

(c) that it is in the public interest that the Temporary Order be extended.

Is there prima facie evidence of contravention of the Act?

[76] We will not repeat the evidence outlined above but will rather record our analysis and conclusions with respect to each allegation.

Illegal distribution

[77] There is *prima facie* evidence that the investors expected to profit weekly and quarterly from their investments in the MetaCertificates and the various investment products loaded onto the MetaCertificates. There is also *prima facie* evidence that the expected profits were said to come from the business, investment or trading activity performed by GSPartners or its associated

companies. Following *Pacific Coast Coin*, we find that the MetaCertificates are investment contracts and therefore securities as defined in section 1 of the Act.

[78] The executive director tendered evidence that the Corporate Entities have traded and are continuing to trade, and are therefore distributing, MetaCertificates. He also tendered evidence that no preliminary prospectus, prospectus or notice of exempt distribution for MetaCertificates has been filed. In the absence of any evidence to support an exemption, and we received none, there is no basis on which we could find that an exemption from the prospectus requirement is available.

[79] Accordingly, we find that there is *prima facie* evidence that the Corporate Entities have illegally distributed MetaCertificates, contrary to section 61 of the Act.

Unregistered trading

[80] The evidence shows that none of GSPartners, Nakos, Cloete or Gardiner is registered under the Act, and there was no evidence before us to suggest that an exemption from the registration requirements was available to any of them in connection with trades in MetaCertificates.

[81] The executive director tendered evidence in the form of postings to Facebook, Instagram and YouTube showing numerous examples of Nakos, Cloete and Gardiner promoting MetaCertificates. There was also evidence of postings to the website of GSPartners which promoted MetaCertificates.

[82] As noted above, the definition of trading is broad and includes “any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance” of a sale or disposition.

[83] The executive director submitted that the promotional activity conducted by the Subjects constituted acts, advertisements or solicitations in furtherance of trades of MetaCertificates. We agree. We find that there is *prima facie* evidence to establish that each of GSPartners, Nakos, Cloete and Gardiner acted in furtherance of the sale of MetaCertificates and therefore was engaged in unregistered trading, contrary to section 34(1)(a) of the Act.

Prohibited representations

[84] The executive director has alleged that GSPartners, Nakos, Cloete and Gardiner contravened section 50(3)(a) of the Act by making statements about the returns on MetaCertificates that are likely false and misleading, given that the advertised returns are likely impossible to achieve through legal means.

[85] Section 50(3)(a) of the Act applies to representations made by a person engaged in a promotional activity. Applying the definition of “promotional activity” set out in section 1(1) of the Act, we find that there is *prima facie* evidence that GSPartners, Nakos, Cloete and Gardiner were engaged in promotional activity by promoting MetaCertificates through social media posts, calls with investors, conferences and other events.

[86] In order to ground a contravention of section 50(3)(a), it must be the case that the representations relate to information that a reasonable investor would consider important in making a purchase decision, and that the statements made or information provided, at the time and in light of the circumstances, are false or misleading, or omit to state a fact necessary to make the statement or information not false or misleading.

[87] Representations about expected returns constituted information that a reasonable investor would consider important in deciding whether to invest in MetaCertificates.

[88] We find that there is *prima facie* evidence that GSPartners, Nakos, Cloete and Gardiner made statements about unrealistically, and likely impossibly, high expected returns, with little or no discussion of the risks associated with the investment except to suggest that any risks were low or non-existent.

[89] We find that there is sufficient *prima facie* evidence to establish that those statements, at the time and in the circumstances in which they were made, were false or misleading or omitted information necessary to prevent them from being false or misleading and that, accordingly, each of GSPartners, Nakos, Cloete and Gardiner has made prohibited representations, contrary to section 50(3)(a) of the Act.

Fraud

[90] There is *prima facie* evidence showing many of the typical indicia of fraud surrounding the promotion of the MetaCertificates including:

(a) the promotion of high and consistent investment returns that are unlikely or impossible to achieve through legal means;

(b) complicated jargon, language and new technology that is difficult to understand and is used to project a veneer of expertise and authority;

(c) involvement of offshore companies, at least one of which is not legitimate;

(d) investment promoted though multi-level marketing networks;

(e) indications by investors of unexpected losses and issues with receiving promised returns;

(f) promoters of GSPartners are not registered under the Act; and

(g) GSPartners, GSB Gold Standard Corporation AG and Swiss Valorem Bank Ltd. are not registered and have not filed a preliminary prospectus or a prospectus under the Act.

[91] The executive director has also submitted that there is *prima facie* evidence of fraud in the implementation of the MPS because it changed the terms under which investors had purchased MetaCertificates and the various blockfolios. We do not find that that, in and of itself, is *prima facie* evidence of the existence of fraud.

[92] We do agree with the executive director on a more fundamental point, namely, that the implementation itself of the MPS suggests GSPartners are operating a Ponzi scheme. The MPS allows GSPartners to withhold returns. At the same time, promoters are continuing to solicit new investment. This indicates that GSPartners likely requires a continued stream of new investment in order to pay existing investors their promised returns. As was noted by the executive director, the conclusion that GSPartners is operating a Ponzi scheme is also supported by the claims of unreasonably high and consistent returns of the MetaCertificates, the referral network structure, and the unreasonably high commissions paid to promoters.

[93] Applying the *Theroux* test, we find that there is *prima facie* evidence of both the *actus reus* and the *mens rea* necessary to establish that GSPartners has committed fraud, contrary to section 57(2) of the Act.

[94] Pursuant to section 57(1), it is sufficient to establish fraud if it can be shown that someone is engaging in conduct that they know, or reasonably should know, contributes to another person's attempt to commit fraud.

[95] We find that there is sufficient *prima facie* evidence that each of Nakos, Cloete and Gardiner has engaged in conduct that they know or reasonably should know is contributing to the fraud perpetrated by GSPartners, contrary to section 57(1) of the Act.

Conclusion on prima facie evidence

[96] As stated in *Zhang,* this is a preliminary stage. The affidavit evidence received might not be the same as that ultimately presented at a hearing on the merits, particularly as it relates to fraud which, by its nature, will involve extensive investigation. There may be other evidence which modifies what we have seen so far. However, we have before us clear and ample evidence of conduct which, on a *prima facie* basis, establishes illegal distribution, unregistered trading, prohibited representations and fraud.

[97] We now turn to the second branch of the test.

Is it necessary to extend the Temporary Order?

[98] In determining whether it is necessary to extend the Temporary Order, we considered whether there is an ongoing risk to the public and if so, the magnitude of that risk. We found the following factors compelling:

(a) The affidavit evidence established ongoing efforts by GSPartners, Nakos, Cloete and Gardiner to promote trading of MetaCertificates. Those efforts continued even after losses were suffered by at least some investors. The efforts also continued after various Canadian securities regulators had issued cautions about the MetaCertificates and after the Temporary Order was issued. It is particularly compelling to note that the promotional activities continued after Nakos, Cloete and Gardiner knew about the cautions and the Temporary Order.

(b) Given that the promoters have indicated an intention to continue their promotional activities even in the face of regulatory actions, it is essential to clearly signal to investors that they should stop investing in MetaCertificates. Without the regulatory intervention that a temporary order represents, the promoters might be able to continue to entice new investors.

(c) Many investors could be harmed in the time required to investigate the alleged misconduct and to hold a hearing.

(d) The allegations of misconduct include fraud, which is among the most serious contraventions of the Act.

(e) The pattern of misconduct has been repeated on several occasions over at least several months.

(f) It appears from comments made by the promoters that there may be thousands of investors who have collectively invested millions of dollars. There is *prima facie* evidence that many of the investors reside in British Columbia. The amount that investors stand to lose is very significant.

[99] We find there is an ongoing and significant risk to the public. We therefore conclude that it is necessary to extend the Temporary Order in order to prevent likely future harm.

Is it in the public interest to extend the Temporary Order?

[100] Having found that it is necessary to extend the Temporary Order, we must determine whether it is also in the public interest to do so.

[101] All of the factors we considered above also support the conclusion that it is in the public interest to extend the Temporary Order. In addition, we found the following:

(a) The integrity of the markets may be harmed and there could be significant loss in public confidence if the promoters are able to continue to perpetrate this scheme.

(b) The Temporary Order is not overly broad and is specific to the alleged circumstances.

(c) The length of time sought for this extension, being at most one year (at which point the executive director may apply for a further extension), is reasonable.

(d) The executive director made every attempt to provide notice to the Subjects of the Temporary Order and the application to extend the Temporary Order.

[102] We are not aware of any circumstances that suggest it is not in the public interest to extend the Temporary Order. We concluded that it is in the public interest to do so.

[103] For the reasons given above, we extended the Temporary Order to the earlier of November 29, 2024, or until a hearing is held and a decision rendered in the matter.

April 4, 2024

For the Commission

Deborah Armour, KC
Commissioner

Jason Milne
Commissioner

Marion Shaw
Commissioner