

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

Citation: Re Morabito, 2023 BCSECCOM 83

Date: 20230217

**Global Crossing Airlines Group Inc. (formerly known as Canada Jetlines Ltd.)
and Mark Morabito**

Panel	Judith Downes	Commissioner
	James Kershaw	Commissioner
	Marion Shaw	Commissioner

Submissions completed January 18, 2023

Ruling date February 17, 2023

Counsel

Deborah Flood For the Executive Director

Sean K. Boyle For Global Crossing Airlines Group Inc.
Jenna Green

Robert J.C. Deane For Mark Morabito
Paige Burnham

Supplemental Ruling on Disclosure

I. Introduction

- [1] By notices of application dated March 24, 2022 and April 19, 2022 respectively (Disclosure Applications), Mark Morabito (Morabito) and Global Crossings Airlines Group Inc. (Global) sought orders requiring the executive director to disclose a broad range of materials in his possession on the basis that the executive director had failed to disclose to the respondents all relevant documents in his possession or control.
- [2] The executive director disputed the respondents' submissions and argued that he had complied with all of his disclosure obligations.
- [3] After considering written and oral submissions from the parties in connection with the Disclosure Applications, on October 18, 2022, the Commission issued *Re Morabito*, 2022 BCSECCOM 433, attached as Appendix A (Order), which ordered the executive director to file with the Hearing Office and provide to the respondents certain further disclosure and information, all by October 31, 2022. The Commission subsequently issued *Re Morabito*, 2022 BCSECCOM 440 extending this deadline to November 7, 2022.
- [4] The Order required, among other things, the executive director to provide lists of certain documents and categories of documents not disclosed by the executive director,

describing those documents and categories of documents in sufficient detail so that the grounds upon which the executive director had not disclosed them could be assessed.

- [5] On November 7 and 16, 2022, in response to the Order, the executive director provided additional disclosure to the respondents as well as reasons for non-disclosure of certain documents and categories of documents. The information with respect to the grounds for non-disclosure was contained in an appendix to a letter from counsel for the executive director (Information Appendix).
- [6] The Information Appendix included descriptions of 12 documents relating to communications with an individual which had not been disclosed by the executive director. The basis for non-disclosure with respect to four of those documents (Settlement Documents) was a claim of settlement privilege and, for the balance of the documents (Irrelevant Documents), an assertion that they were not relevant.
- [7] By letter dated January 3, 2023, Morabito advised that, after reviewing the Information Appendix, he was limiting the scope of the further disclosure sought in his Disclosure Application to ten schedules, Schedules A to J, identified in the letter (Morabito Schedules).
- [8] Schedule I of the Morabito Schedules includes the Settlement Documents and the Irrelevant Documents, which we refer to collectively as the “Schedule I Documents”.
- [9] In his January 3 letter, Morabito also disputed that the executive director had established settlement privilege with respect to the Settlement Documents and argued that all of the Schedule I Documents were relevant and ought to be disclosed.
- [10] On January 6, 2023, the panel advised the parties that it would consider submissions on the issue of settlement privilege, which the parties subsequently provided.
- [11] On January 17, 2023, as part of his reply submissions on the issue of settlement privilege, the executive director provided to the respondents the Schedule I Documents, in redacted form.
- [12] By letter dated January 18, 2023, Morabito advised that he sought unredacted copies of all documents identified in his January 3, 2023 letter. He disputed, in particular, the redactions made by the executive director to the Schedule I Documents.
- [13] On February 1, 2023, the executive director provided to the respondents further disclosure which consisted of the documents listed in Morabito Schedules A to H in redacted form.

II. Ruling

- [14] After considering the submissions of the parties, the Commission orders that by 4:00pm, Tuesday, February 28, 2023:

- (a) the executive director file with the Hearing Office and provide to the respondents further information with respect to the grounds upon which the executive director has not disclosed the redacted portions of documents that are listed in the Morabito Schedules in the categories below:
 - (i) documents concerning the financial institution identified in Morabito Schedule C, except those identified in the second row of page 10 of the Information Appendix,
 - (ii) documents concerning the financial institution identified in Morabito Schedule D,
 - (iii) documents concerning the financial institution identified in Morabito Schedule H,
 - (iv) documents concerning the financial institution identified in Morabito Schedule B,
 - (v) documents concerning the financial institution identified in Morabito Schedule E, except those identified in the fourth row of page 6 of the Information Appendix,
 - (vi) documents concerning the financial institution identified in Morabito Schedule F,
 - (vii) documents concerning the financial institution identified in Morabito Schedule A, and
- (b) the executive director file with the Hearing Office the redacted Schedule I documents so that the panel may decide whether these documents should be disclosed to the respondents in an unredacted form, and

- (c) the executive director file with the Hearing Office the undisclosed documents in Schedule J of the Morabito Schedules so that the panel may decide whether these documents should be disclosed to the respondents.

February 17, 2023

For the Commission

Judith Downes
Commissioner

James Kershaw
Commissioner

Marion Shaw
Commissioner

APPENDIX A

BRITISH COLUMBIA SECURITIES COMMISSION

Securities Act, RSBC 1996, c. 418

Citation: Re Morabito, 2022 BCSECCOM 433

Date: 20221018

Global Crossing Airlines Group Inc. (formerly known as Canada Jetlines Ltd.) and Mark Morabito

Panel	Judith Downes	Commissioner
	James Kershaw	Commissioner
	Marion Shaw	Commissioner

Submissions Completed September 6, 2022

Ruling Date October 18, 2022

Counsel

Deborah Flood For the Executive Director

Sean K. Boyle For Global Crossing Airlines Group Inc.
Jenna Green

Robert J.C. Deane For Mark Morabito
Paige Burnham

Ruling

I. Introduction

- [1] On October 7, 2021 the executive director issued a notice of hearing containing allegations against Global Crossing Airlines Inc. (formerly known as Canada Jetlines Ltd.) (Global) and Mark Morabito (Morabito) (together, the respondents).
- [2] Counsel for Global advised the panel that Global has changed its name to “Global Crossings Airlines Group Inc.” The executive director agreed that the style of cause should be amended to reflect the change of name. The style of cause has been amended accordingly.
- [3] By notices of application dated March 24, 2022 and April 19, 2022 respectively, Morabito and Global sought orders requiring the executive director to disclose all materials in his possession including, but not limited to, materials relating to John Sutherland, Stanley Gadek or any other then-existing or former employees of Canada Jetlines Ltd. obtained or created by the executive director or his staff in the course of his investigation or in respect of the matters set out in the notice of hearing within five days of the order being made.

- [4] The respondents also sought an order requiring the executive director to provide the respondents with a document specifying each document in his possession or control relating to the investigation that the executive director had not disclosed, or after the date of the order does not disclose, and describing each document in sufficient detail so that the grounds upon which the executive director had not disclosed it could be assessed, within 14 days of the order being made.
- [5] On April 29, 2022, Morabito filed a reply in which he sought an additional order that the executive director produce the referral from The Investment Industry Regulatory Organization of Canada (IIROC) referenced in a disclosure list previously provided by the executive director together with related documents.
- [6] On June 22, 2022, the executive director provided the respondents with a supplemental disclosure list which contained the requested IIROC documents.
- [7] On September 6, 2022, the panel heard oral submissions from the parties.

II. Ruling

- [8] After considering the evidence and the written and oral submissions of the parties, the Commission orders that by October 31, 2022, the executive director file with the Hearing Office and provide to the respondents:
 - (a) a list of each document over which the executive director claims settlement privilege and describing each document in sufficient detail so that the grounds upon which the executive director has claimed settlement privilege may be assessed;
 - (b) a list of the categories of documents over which the executive director claims litigation privilege and describing each category in sufficient detail so that the grounds upon which the executive director has claimed litigation privilege may be assessed;
 - (c) unredacted copies of the documents described in paragraph 11(a) of Affidavit #2 of a Commission investigator sworn June 30, 2022 (Second Affidavit);
 - (d) an unredacted copy of the document described in paragraph 11(b) of the Second Affidavit; and
 - (e) a list of the categories of documents described in paragraph 12 of the Second Affidavit which the executive director asserts are irrelevant and describing each

category in sufficient detail so that the grounds upon which the executive director has determined relevancy may be assessed.

[9] Our reasons will follow.

October 18, 2022

For the Commission

Judith Downes
Commissioner

James Kershaw
Commissioner

Marion Shaw
Commissioner