

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

Citation: Re Zefiro Methane Corp., 2026 BCSECCOM 334

Date: 20261005

**Zefiro Methane Corp., Talal Debs,
X Machina Sustainable Technologies Inc., X Machina Capital Strategies Fund I LP,
Catherine Flax, David McGrath and Michael McGavick**

Panel	Gordon Johnson	Vice Chair
	Marion Shaw	Commissioner
	Douglas Seppala	Commissioner

Hearing date February 25, March 3 and March 4, 2026

Date of decision March 6, 2026

Date of reasons October 5, 2026

Appearing

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Reasons for Decision

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I. Introduction

- [1] On February 2, 2026, Talal Debs (Debs), X Machina Sustainable Technologies Inc. (XMST), and X Machina Capital Strategies Fund I LP (XMC) (collectively, the Applicants) applied to the Commission seeking orders under sections 114, 142, 157, and 161 of the *Securities Act*, RSBC 1996, c 418 (Act) regarding a proxy contest between the Applicants and the management of Zefiro Methane Corp. (Zefiro).
- [2] On February 10, 2026, the application was amended (Amended Application) to clarify that the Applicants were seeking a hearing under section 114 of the Act into the conduct of Zefiro regarding the issuance of debt settlement shares (Debt Settlement Shares) to Catherine Flax (Flax), David McGrath (McGrath), and Michael McGavick (McGavick) (collectively, the Debt Settlement Investors). The Amended Application alleged that Zefiro took a series of defensive steps to entrench the board of directors including removing Debs as Chief Executive Officer, attempting to renege on an investor rights agreement with the Applicants, and issuing shares to dilute the Applicants' interest in Zefiro.
- [3] The Amended Application sought orders:
 - a) for an expedited hearing;
 - b) granting standing to bring the Amended Application;
 - c) rescinding the issuance of the Debt Settlement Shares;
 - d) temporarily restraining the Debt Settlement Investors from trading in respect of the Debt Settlement Shares and restraining the Debt Settlement Investors from exercising voting rights in respect of the Debt Settlement Shares at the upcoming annual general and special meeting of Zefiro shareholders (Meeting);
 - e) requiring Zefiro to amend its management information circular to address any determination made by the Commission;
 - f) requiring Zefiro to postpone its Meeting; and

g) requiring disclosure of material contracts required to be disclosed under part 12 of National Instrument 51-102 *Continuous Disclosure Obligations* [NI 51-102].

- [4] In the course of this proceeding the relief sought by the Applicants focused on rescinding the issuance of the Debt Settlement Shares or, alternatively, restraining the Debt Settlement Investors from voting the Debt Settlement Shares at the Meeting.
- [5] On February 18, 2026, McGrath filed a cross-application (Cross-Application) under section 114 of the Act for an order prohibiting Debs, XMST and XMC from voting shares of Zefiro at the Meeting. The Cross-Application alleged that if Debs is permitted to vote certain of his Zefiro shares or the Zefiro shares held by XMST or XMC, that will be abusive based on Debs's fiduciary duties to Zefiro, his duties under the XMC limited partnership agreement, and his obligations under a side-letter which Debs entered into with McGrath and others.
- [6] In a letter dated February 20, 2026, counsel for Flax advised that Flax objected to the Amended Application seeking to restrain Flax from trading the Debt Settlement Shares during the statutory hold period for those shares. Counsel for McGrath and McGavick advised that they were adopting Flax's position. Later, arrangements were made between the parties such that it was not necessary for us to make an interim order to temporarily restrain trading of the Debt Settlement Shares.
- [7] On February 20, 2026, counsel for the executive director provided a memorandum explaining their position on what orders a panel would have jurisdiction to issue if a respondent acted inconsistently with their representations regarding the Debt Settlement Shares.
- [8] On February 22, 2026, the Applicants filed a preliminary application to dismiss or stay the Cross-Application on the basis that the panel has no jurisdiction to grant the relief sought in it.
- [9] On February 23, 2026, in advance of the oral hearing of the Amended Application, we issued *Re Zefiro Methane Corp.*, 2026 BCSECCOM 63. We ruled that:
 - a) We do not have jurisdiction to adjudicate the scope of Debs's fiduciary duties, whether at common law or as modified by the relevant limited partnership agreement;
 - b) There is considerable doubt that we have jurisdiction to adjudicate the scope of Debs's duties under the side-letter with respect to whether Debs is permitted to vote the relevant shares. In order to make a proper decision regarding that issue, and on the question of whether we should decide that issue even if we have jurisdiction, we will benefit from further submissions from the parties after we properly absorb the evidentiary record here;
 - c) In fairness to McGrath, given the limited opportunity we had afforded him to provide submissions to that point, he was granted leave to use a portion of the time allocated to his oral submissions on the Amended Application to argue that we have broader jurisdiction than the February 23 ruling determined; and
 - d) In fairness to Debs, if we should later find McGrath's jurisdiction argument compelling, Debs would be allowed to submit evidence to address the allegations that he was restricted by the side-letter from voting his shares at the Meeting.

- [10] We ordered that the Cross-Application be stayed “until further order with respect to the voting prohibitions sought based on alleged breaches by Debs of his fiduciary duties and his duties under the relevant limited partnership agreement”.
- [11] On March 2, 2026, counsel for the executive director provided their submissions regarding the Amended Application “to assist the panel in navigating certain legal issues before it, namely whether certain actions involving the issuance of securities are defensive tactics in a proxy contest”.
- [12] On March 6, 2026, after considering the evidence provided, which included the cross-examination of some of the deponents, and the parties’ written and oral submissions, we issued *Re Zefiro Methane Corp.*, 2026 BCSECCOM 76, dismissing the Amended Application and the Cross-Application. We told the parties that our reasons would follow.
- [13] These are our reasons.

II. Overview of our Conclusions

- [14] The analysis in *Re Hecla Mining*, 2016 BCSECCOM 359 [*Hecla*], *Re Eco Oro Minerals Corp.*, 2017 ONSEC 23 [*Eco Oro*], and *Mithaq Canada Inc. (Re)*, 2024 ONCMT 9 [*Mithaq*], all of which are discussed below, was very helpful in the current context. The approaches to the exercise of the regulator’s public interest jurisdiction reflected in those cases are principles-based and sufficiently flexible to be applied in a range of contexts, including this context.
- [15] Whenever it is alleged that improper defensive tactics are being used to interfere with the rights of shareholders to have a fairly conducted vote to determine the composition of the board of directors, a panel must examine the facts carefully and consider all relevant factors. However, when an issuer faces a need for capital in the very near future and only one reasonable financing option is available, the lack of other options becomes a dominant factor.
- [16] There is a significant body of evidence that the respondents, or at least some of them, dislike Debs and consider him unfit to lead Zefiro. They are motivated to minimize his role in managing Zefiro. As a consequence, it was important that we very carefully scrutinize the respondents’ position that the timing of the issuance of the Debt Settlement Shares was necessary and that no other reasonable option was available. We have conducted that scrutiny and followed the two-stage analysis described in *Hecla*, extended to the contested shareholder meeting context in *Eco Oro* and applied in *Mithaq*, modified slightly as suggested by the executive director’s submissions to fit the current context. Our decision to dismiss this application reflects that analysis. We concluded that the option Zefiro and its management adopted, including the issuance of the Debt Settlement Shares, was the only reasonable option open to them. That being so, we chose not to exercise our public interest jurisdiction to intervene.

III. Factual Context

- [17] Debs is a resident of Florida. He has a distinguished academic background, including a Doctorate and Post Doctorate from Cambridge University and Harvard University, respectively.
- [18] Debs worked at JPMorgan Chase for 25 years. He is experienced in investment banking, commercial banking, risk management, and commodities trading. During his time at JPMorgan Chase, Debs held senior positions related to the oil and gas industry.
- [19] Relying on his experience in the energy field, Debs founded what he refers to as the X Machina private equity fund group. That group includes the Delaware limited liability partnership defined

above as XMC, and the corporation which principally invests in portfolio companies in the energy space, defined above as XMST. X Machina Capital Strategies LP (XMC Manager) manages XMC and its investments.

- [20] The X Machina private equity fund group has made significant equity investments in Zefiro and has significant shareholdings in Zefiro. Zefiro is a corporation incorporated in September of 2022 under the laws of British Columbia with its head office in Vancouver. Zefiro is listed on the Cboe Canada Exchange (Cboe). It provides environmental services related to oil and gas wells and pipelines.
- [21] Debs has a controlling interest in XMC Manager and XMST. XMC is the registered holder of 3,846,500 common shares of Zefiro and XMST is the registered holder of 16,000,000 common shares of Zefiro.
- [22] Debs is a personal shareholder of Zefiro. He arranged for Zefiro's incorporation and he was one of its initial directors. Debs became Zefiro's Chief Executive Officer in November of 2023.
- [23] During the process of Zefiro becoming a publicly listed issuer, it and XMST entered into an investor rights agreement dated June 6, 2023 (Investor Rights Agreement). The Investor Rights Agreement, among other things, provided XMST with pre-emptive rights to subscribe for its pro rata share of any securities issued by Zefiro so long as XMST owns at least 10 percent of Zefiro's issued and outstanding shares.
- [24] The majority of Zefiro's revenue-generating activities are conducted through its subsidiary, Plants and Goodwin, Inc. (Plants and Goodwin). Zefiro acquired the shares of Plants and Goodwin in two phases. First, in May of 2023, Zefiro acquired 75 percent of the outstanding shares of Plants and Goodwin for \$3,325,000 United States dollars (USD) in cash and a USD \$2,000,000 promissory note (P&G Promissory Note). The P&G Promissory Note was payable to Plants and Goodwin's founder, SP. The P&G Promissory Note required interest payments of 6 percent per annum and was secured against Zefiro's shares of Plants and Goodwin. Before he could realize on his security interest to recover the shares of Plants and Goodwin which had been purchased from him by Zefiro, SP was required to give Zefiro notice of a failure to pay the P&G Promissory Note and an opportunity to cure the default within two weeks. If SP provided a notice of default and the default was not cured, then SP was entitled to reclaim the Plants and Goodwin shares which secured Zefiro's payment obligations.
- [25] The second phase of Zefiro's acquisition of the shares of Plants and Goodwin followed in September of 2024, when Zefiro purchased the remaining 25 percent of the outstanding shares from SP's son, LP.
- [26] The P&G Promissory Note matured in May of 2025. Zefiro did not have the funds needed to pay that note. It did not pay the balance owed on the maturity date. SP issued a notice of default. Zefiro faced a significant risk that, due to its inability to pay the P&G Promissory Note, it would have to surrender its shares in Plants and Goodwin. Zefiro publicly disclosed that the notice of default had been delivered. This impacted Zefiro's share price and the price decline quickly caught the attention of Zefiro's investors.
- [27] McGavick is an investor in Zefiro. He is a resident of Naples, Florida. McGavick has a distinguished background, including terms as chief of staff to a United States Senator, CEO of major insurance companies, and Co-Chair of the board of directors of the world's largest hedge fund.

- [28] McGavick met Debs approximately 10 years before the present dispute. In 2020, Debs spoke to McGavick about Debs's plans for XMC. Those plans included building a capital pool of approximately USD \$200 million which XMC would invest in environmental technologies. McGavick invested both directly in Zefiro (at the time of this dispute he owned about 3 percent of the shares of Zefiro) and in XMC (at the time of this dispute his investment in XMC was approximately USD \$2.3 million). XMC is a significant shareholder in Zefiro.
- [29] Around the time he made his initial investment in XMC, McGavick discussed the investment opportunity with others, including his brother-in-law, McGrath.
- [30] McGrath has over four decades of experience in finance. He has led fixed income trading and he has led sales and securitization efforts at major banks and other financial services companies. He was introduced to Debs through McGavick in 2020. In February of 2022 McGrath invested approximately USD \$10 million in XMC individually and through trusts for which McGrath or his wife are trustees.
- [31] McGrath monitors the values of his investments, including his investment in Zefiro. On May 14, 2025, McGrath saw that the price of Zefiro's stock was dropping dramatically. The share price had been at a high of \$1.83 per share less than a year before, but that price had dropped to \$0.10 per share in May of 2025.
- [32] Upon seeing the dramatic decline in Zefiro's share price, McGrath emailed Debs and asked if the investors had "lost Zefiro". Debs responded that Zefiro was fine, but that SP had issued a notice of failure to pay on May 13, 2025. At that point Zefiro had a limited number of days to repay the USD \$2 million owed under the P&G Promissory Note and it was obvious to all involved that the failure to do so would deprive Zefiro of its core business and primary source of income.
- [33] In further discussions, Debs informed McGrath and others that the notice of failure to pay by SP had come as a surprise because SP had previously confirmed he was willing to extend the P&G Promissory Note. McGrath then spoke to other individuals, including LP, and was given information which directly contradicted what Debs had told McGrath. LP told McGrath that SP had consistently insisted on prompt payment of the P&G Promissory Note. Later, SP and LP both provided affidavits in another legal proceeding which directly contradict Debs's version of events regarding the default under the P&G Promissory Note.
- [34] Discussions followed between a number of the investors in XMC and Zefiro regarding whether they would provide Zefiro with the funds needed to cure the default and avoid the loss of ownership of Zefiro's core business and primary source of income. Ultimately, McGavick, McGrath, Flax and another individual with the initials BH (together, Secured Lenders) agreed to loan Zefiro USD \$2,480,000 under the terms of a new promissory note (Investors' Promissory Note).
- [35] According to McGrath, the investors under the Investors' Promissory Note would have welcomed participation by Debs in the USD \$2,480,000 loan to Zefiro in May of 2025, but Debs indicated he was himself in desperate need of cash at the time.
- [36] The Investors' Promissory Note had an 18-month term during which time Zefiro was required to make quarterly payments of interest payable at the annual rate of 18 percent. The outstanding balance of interest and principal was due on November 27, 2026.

[37] In accordance with the terms of the Investors' Promissory Note, Zefiro issued to the Secured Lenders 14,950,000 warrants to purchase common shares of Zefiro at a price of \$0.23 per share. More specifically:

- a) Flax loaned the Company USD \$800,000 in exchange for 4,820,000 warrants;
- b) McGrath loaned the Company USD \$690,000 in exchange for 4,160,000 warrants;
- c) BH loaned the Company USD \$690,000 in exchange for 4,160,000 warrants; and
- d) McGavick loaned the Company USD \$300,000 in exchange for 1,810,000 warrants.

[38] XMC, Debs, McGrath, McGavick, and BH entered into a side-letter (Side-Letter) under which:

- a) Debs agreed to irrevocably contribute to XMC 50 percent of his ownership interest in XMST, comprising 31.87 percent of the outstanding shares in the capital of XMST, and 50 percent of his founder shares in Zefiro, comprising 500,000 common shares in the capital of Zefiro, to XMC, no later than June 20, 2025;
- b) The remaining 50 percent of Debs's ownership interest in XMST and 50 percent of his founder shares in Zefiro (Suspended Shares) were subject to a number of restrictions and limitations:
 - i. Debs shall not transfer, sell, pledge, assign, or otherwise dispose of the Suspended Shares without the prior written consent of the members of the Governance Committee (composed of McGrath, BH, and McGavick);
 - ii. Debs shall not exercise or attempt to exercise any voting rights, management rights, consent rights, or other governance authority associated with the Suspended Shares;
 - iii. The Suspended Shares subject to the restrictions shall not be counted toward quorum, voting, or any other form of shareholder or member action;
- c) XMC agreed to pay Debs a one-time cash payment of USD \$200,000.

[39] Flax is a businesswoman who resides in Florida. She has a Bachelor of Science in Economics from Texas A&M University and a Master of Arts in Economics from Brown University. Flax has held a number of leadership positions at major global investment banks, with a focus on commodities, energy trading, and marketing. She was, to give just two examples, the Chief Marketing Officer for JPMorgan Chase in New York and she was the Managing Director and Head of Commodities at BNP Paribas in New York.

[40] Flax has been an investor in Zefiro, XMC and XMST for many years. She has made major investments of both equity and debt in all of those entities. Flax has been a member of the board of directors of Zefiro since 2023. As a member of the board of directors, Flax was aware of the challenges which Zefiro faced upon receipt of the notice of default delivered by SP. She chose to lend to Zefiro under the Investors' Promissory Note. As a lender with a personal interest in the transaction, Flax did not vote on the board resolution to approve the arrangement on behalf of Zefiro. She explained that all of the other directors approved the arrangement,

including Debs, who helped negotiate the arrangement and who thanked the investors for participating in the Investors' Promissory Note.

- [41] After funds were raised to pay the P&G Promissory Note, Flax and Debs had discussions about the future. The evidence of Debs and Flax is in agreement regarding some of the substance of their discussions at that time. For example, there is no dispute that they agreed that Michael Downs (Downs) should be hired as Zefiro's new acting Chief Financial Officer. However, they disagree about what was said about Debs's future role with Zefiro. According to Flax, Debs agreed to resign as CEO and director, but he later reneged on that agreement. Debs disagrees with that characterization of what happened. In any event, Debs did not resign and the board terminated Debs from his position as CEO on June 4, 2025. Debs objected that the board did not have a quorum at the meeting during which the decision was made to terminate him as CEO. The board later ratified that termination at a June 9, 2025 board meeting which Debs attended.
- [42] Flax became Zefiro's interim CEO upon Debs's termination.
- [43] According to Flax, the acting CFO, Downs, was focused on increasing free cash flow and reducing Zefiro's debt, and Flax supported those efforts. In June of 2025 Flax sent an email suggesting that she transfer some of her warrants to new investors who would immediately exercise those warrants. Days later, she suggested in writing that the current holders of the warrants could exercise them to provide Zefiro with additional liquidity.
- [44] According to Downs, Zefiro continued to consider implementing a warrant exercise program throughout the summer and fall of 2025.
- [45] Downs had previously held senior operating positions at public mineral and oil and gas companies and he had worked at an advisory firm which provided support services to energy-related firms, including Zefiro. He was familiar with Zefiro's financial situation at the time he became acting CFO.
- [46] Downs testified that he had understood that from before he became Zefiro's CFO, Zefiro was actively searching for a new financing to replace the amounts financed under the Investors' Promissory Note. He supported his evidence by reference to a number of documents, including a letter written by the solicitors for Zefiro to Cboe at the time Zefiro was explaining the Investors' Promissory Note transaction to that exchange. The letter includes the statement that upon "completion of this financing, Zefiro intends to undertake a process in an effort to obtain more comprehensive financing, including for purposes of repaying this secured loan, should such financing be available".
- [47] By the end of the autumn of 2025 the managers of Zefiro were focused on some pending debt maturity dates, including \$1,000,000 payable on March 1, 2026.
- [48] In the fall of 2025 Debs learned of and became concerned about terms of the employment contracts of Flax and Downs which would provide them with lump-sum payments that were very large in relation to their annual salaries in the event of a change of control of Zefiro. Those amounts were payable even if the change of control did not result in those employees being terminated. The evidence from others, including from Correne Loeffler, an independent board member, was that the employment contracts had been negotiated and approved by Zefiro's compensation committee months earlier but were not executed until late in 2025. Debs

questions this and suggests that the terms of the contracts were designed to support efforts to entrench the management team of Zefiro.

- [49] On October 1, 2025, McGrath and associated entities commenced litigation in New York against Debs in which they made very serious allegations about Debs's conduct managing XMC and Zefiro. Many weeks later Debs commenced litigation in Florida against McGrath and Flax alleging misconduct in their business dealings with Debs, including in regards to Zefiro.
- [50] Debs testified that by early October of 2025 he came to the conclusion that the board of Zefiro was not acting in the best interests of the company. On October 7, 2025, he announced his intention to nominate an alternative slate of directors for election at the Meeting, which should have been scheduled for a date prior to December 31, 2025.
- [51] On October 9, 2025, Zefiro announced that it had set up a special committee to investigate Debs's conduct in relation to the allegations made in the New York litigation and other alleged misconduct. This announcement had the effect of publicizing the allegations made in the New York litigation. Debs initially took the position in this proceeding that the creation of the special committee was a response to, and implicitly retaliation for, his commencement of a proxy contest. Other evidence made it clear that Debs initiated the proxy contest after he was informed that a special committee had been formed to look into allegations made against him. It may be that some of the harsh language used in Zefiro's news release announcing the creation of the special committee was influenced by the commencement of the proxy contest by Debs.
- [52] In early December of 2025, Zefiro's board, without Debs in attendance, approved an amended and restated advance notice policy. The new policy created the potential that directors who were under investigation could be excluded from eligibility to serve on the board. As Ms. Loeffler put it, as at December 9, 2025, the board did not know what findings the special committee might make about Debs, and the board "wanted to have the option to reject his nomination". The special committee subsequently suspended its investigation without announcing any conclusions.
- [53] Zefiro ultimately determined that it would not enforce the provisions of the amended and restated advance notice policy to which Debs objects.
- [54] While disputes between the parties escalated and the proxy battle commenced, Zefiro's financial difficulties continued. One of the financing options considered by Zefiro was to encourage warrant holders, including those who received their warrants in accordance with the Investors' Promissory Note, to exercise those warrants. Many other financing options were considered, including, as Downs put it, "equity and debt financing, brokered by investment banks or unbrokered."
- [55] According to Downs, Zefiro's difficult financial situation made it challenging to find conventional financing. By that time Zefiro had an accumulated deficit of over \$16 million and insufficient resources available to cover some significant pending debt maturities. Specifically, Zefiro was obligated to pay \$1 million to Flax's spouse on March 1, 2026, and USD \$2,480,000 was due under the Investors' Promissory Note on November 27, 2026. Downs said that by around November of 2025, he decided to revisit the idea of encouraging warrant holders to exercise their warrants.
- [56] In late November of 2025, Zefiro entered into a debt settlement agreement with a creditor. Under the agreement, Zefiro eliminated \$400,000 in debt by issuing 1,127,273 shares plus other

consideration. Debs opposed the agreement, noting that under its terms the shares issued equaled the value of the debt and Zefiro had not disclosed the possibly non-arm's-length relationship between the creditors and Zefiro board members. Debs also complained that he had not been offered an opportunity, as required by the Investor Rights Agreement, to participate in the November debt settlement agreement. Zefiro, at least for a period of time, denied the validity of the Investor Rights Agreement.

- [57] Zefiro continued to face a cash shortage in light of upcoming debt maturities. As Downs deposed:

I accordingly asked whether the Secured Lenders would be willing to exercise some or all of their Warrants in exchange for Zefiro's agreement (subject to Board approval) to use a portion of the exercise price of the Warrants to pay back their respective portions of the loan under the Bailout Agreement. My rationale was that Zefiro could use the money from the exercise of the Warrants to pay back the debt owing to the Secured Lenders and also a separate debt that was due in early 2026. I also proposed a set-off as a matter of convenience, to avoid unnecessary transfers of funds back and forth. Initially I considered offering the Secured Lenders additional warrants as an incentive, but that would not have given the Company any liquidity. As a result, as part of repayment of their debt, I asked the Secured Lenders to equitize some of their debt to assist with paying down another debt obligation the Company had coming due on March 1, 2026. To incentivize the Secured Lenders to agree to this, I also offered them shares in exchange for the interest they would be giving up as a result of the early repayment of their loans.

- [58] After speaking with secured lenders who were warrant holders, on January 6, 2026, Downs shared what he described as his debt restructuring memo with the members of Zefiro's board, including Debs.
- [59] The debt restructuring memo is significant, as is Debs's reply to it. Both are reproduced below in full, although with the names of individuals who were not parties or witnesses redacted. First, the cover memo and the debt restructuring memo which Downs prepared:

Subject: Zefiro Board Meeting
Start: Tue 02/17/26 12:30 PM
End: Tue 02/17/26 12:30 PM
Recurrence: (none)
Organizer: [REDACTED]

Dear Directors,
On behalf of Correne Loeffler please take notice that a meeting of the Board of Directors of Zefiro will be held as follows:

Date: Friday, January 9, 2026
Time: 11:30 a.m. EST
Location: Video conference / (Link for meeting)

The purpose of the Board Meeting is to review and discuss the capital structure and debt-related matters outlined in the attached memorandum from Mike Downs, Chief Financial Officer. This memorandum is being provided solely for discussion purposes. The meeting is intended to allow the Board to receive information, ask questions, and provide input related to the company's current debt-related issues.

Agenda (Discussion Only):

- Management overview of current capital structure and liquidity considerations
- Discussion of liquidity enhancing alternatives sought and potential debt restructuring and related benefits presented by management
- Board questions, discussion, and guidance
- Next steps and process

Please confirm your availability for this Board Meeting this Friday as soon as possible.
Thank you.

MEMORANDUM

To: Board of Directors

From: Chief Financial Officer

Date: January 6, 2026

Subject: Comprehensive Debt Restructuring Proposal

Introduction:

The purpose of this memorandum is to outline management's integrated capital structure improvement plan. Management has been deliberating on the Company's capital structure for several months and considered various options to de-leverage the Company and reduce the debt burden. Management has exhausted all paths around equity offerings or additional debt. We have received consistent feedback that parties don't want to move forward due to current debt levels, stock price, and public management dispute. Accordingly, the actions proposed in this memorandum are designed to enhance liquidity, reduce high-interest debt, strengthen the balance sheet, and support long-term strategic initiatives. The plan is being proposed for discussion by the Board. Management is willing to consider and discuss other potential options that achieve the same goals in the best interests of the Company.

The plan is structured around the following components:

1. The Company implements a warrant exercise program under which a maximum of 14,950,000 warrants will be exercised at CAD \$0.23 per share, converted at a conversion rate of 0.72 CAD/USD, resulting in maximum proceeds of USD \$2,475,720.
2. This will secure necessary liquidity to satisfy near-term maturities.
3. It will also reduce annual interest expense by a maximum of \$445,000 (assuming debt is paid off in the near term).
4. It will also eliminate a maximum of \$3.0 million of high-interest debt from the balance sheet.
5. With these benefits, the plan will undoubtedly improve the Company's ability to pursue strategic acquisitions.
6. The plan will also restore access to new debt and equity financing by improving leverage and financial profile of the Company.
7. Importantly, the plan will support the removal of the going-concern qualification from the Company's audited financial statements.

The sections below provide additional detail on each component.

1. Warrant Exercise Plan

As the first step in strengthening the Company's capital structure, subject to Board approval, management proposes proceeding with the planned exercise of outstanding warrants under the following terms:

1. The Company implements a warrant exercise program under which a maximum of 14,950,000 warrants will be exercised at CAD \$0.23 per share, converted at a conversion rate of 0.72 CAD/USD, resulting in maximum proceeds of USD \$2,475,720.
 1. The Company will apply these proceeds to retire 75% of the outstanding \$2,480,000 promissory note, with the remaining balance being equitized into approximately 2.80 million common shares (based on an assumed share price of CAD \$0.30).
 2. Following this transaction, the Company will have a maximum of \$618,000 in working capital, which will support liquidity needs.
 3. In connection with the warrant exercise, promissory note holders will receive an incentive of 18% of the total loan to execute their warrants in common equity.

If approved, this structure provides the Company with immediate liquidity while supporting broader restructuring and capital optimization objectives.

2. Near Term Liquidity

To address near term maturities

- Use remaining working capital generated from the warrant exercise for near term liquidity
- Free cash flow from ongoing business operations.

This approach provides a clear, achievable path to meeting maturity without impairing working capital.

3. Interest Expense Reduction

The restructuring is expected to reduce total interest expense by a maximum of \$445,000 over the next twelve months.

4. Removal of High-Interest Debt

The proposed actions will eliminate a maximum of \$3.0 million of high-interest debt, improving leverage ratios and materially reducing financial risk to the Company.

5. Support for Strategic Acquisitions

Strengthening the balance sheet is essential to executing the Company's acquisition strategy. Reduced leverage will enable management to pursue accretive opportunities that drive long-term growth and scale.

6. Restoring Access to New Financing

The Company's current debt levels limit its ability to secure new financing for acquisitions or expansion. The planned restructuring is a critical step toward re-establishing lender confidence and reopening access to debt and equity markets.

7. Impact on Audit Considerations

With improved liquidity, reduced leverage, and stronger operating performance, management expects these actions to support the removal of the going-concern qualification from the Company's audited financial statements, an important milestone for investor and lender credibility.

Conclusion

Management is strongly of the view that the warrant exercise plan, combined with the proposed restructuring initiatives, represents a coordinated and necessary approach to stabilizing the Company's financial position and enabling long-term strategic execution. Management recommends that the Board approve the plan, subject to questions and discussion at a Board meeting.

— Michael Downs (Chief Financial Officer)

[60] What follows is the email from Debs regarding the meeting called to discuss the debt restructuring memo:

From: Talal Debs [REDACTED]
Date: Friday, January 9, 2026 at 9:49 AM
To: [REDACTED], Correne Loeffler[REDACTED], [REDACTED], [REDACTED]
[REDACTED], Michael Downs [REDACTED], Catherine Flax [REDACTED],
[REDACTED], [REDACTED]
Subject: Re: Zefiro Board Meeting

Dear Correne,

My apologies - I will not be able to attend today's meeting after all; I apologize for any inconvenience; I suggest you go ahead without me.

I am supportive of the idea of de-leveraging in general; I would love to receive a copy of the minutes of their meeting and I look forward to learning more about Management's thoughts on deleveraging the company.

Best,
TD

[61] At the January 9, 2026, board meeting, Downs was authorized to continue negotiations towards an agreement with the group who became the Debt Settlement Investors. Negotiations continued, terms were finalized subject to board approval, and Cboe was asked to approve the terms negotiated, which it did after requesting and receiving detailed explanations of the reasons for the agreement. Later, the debt settlement agreement was brought back to the board for approval. Debs voted against, but all other board members in attendance, including the three independent board members, voted to approve.

- [62] The key elements of Zefiro's arrangement with the Debt Settlement Investors were their exercise of existing warrants to purchase 10,790,000 shares of Zefiro at a price of \$0.23 per share, with 75 percent of the proceeds being accepted by way of a set-off against debt payable under the Investors' Promissory Note, the issuance of 1,409,589 shares of Zefiro to settle the remainder of the Investors' Promissory Note owed to them, and the issuance of a further 1,014,905 shares of Zefiro to compensate them for the interest they would have received had they allowed the debt to run to maturity.
- [63] This proceeding was commenced shortly after the issuance of the Debt Settlement Shares.

IV. Legal Context

A. Public interest orders generally

- [64] The Application was brought under section 114 of the Act:

114 (1) On application by an interested person, if the commission considers that a person has not complied with or is not complying with a requirement under this Part, Part 14 or the regulations related to this Part or Part 14, or that a person is acting contrary to the public interest, the commission may make an order

- (a) restraining the distribution of any record used or issued in connection with a take over bid, issuer bid, business combination, related party transaction or proxy solicitation,
- (b) requiring an amendment to or variation of any record used or issued in connection with a take over bid, issuer bid, business combination, related party transaction or proxy solicitation, and requiring the distribution of amended, varied or corrected information,
- (c) requiring the distribution of any record relating to a take over bid, issuer bid, business combination, related party transaction or proxy solicitation that the commission considers must be distributed,
- (d) directing any person to comply with a requirement under this Part, Part 14 or the regulations related to this Part or Part 14,
- (e) restraining any person from contravening a requirement under this Part, Part 14 or the regulations related to this Part or Part 14,
- (f) directing the directors and officers of any person to cause the person to comply with or cease contravening a requirement under this Part, Part 14 or the regulations related to this Part or Part 14,
- (g) varying a period prescribed under a regulation related to this Part or Part 14,
- (h) rescinding a transaction with any interested person, including the issue of a security or an acquisition and sale of a security,
- (i) requiring any person to dispose of any securities acquired in connection with a take over bid, issuer bid, business combination, related party transaction or transaction in relation to which proxies are being or were solicited,
- (j) prohibiting any person from exercising a voting right attaching to a security,

(k) prohibiting any person from exercising a right attaching to a derivative,

(l) requiring that

(i) all persons,

(ii) the person or persons named in the order, or

(iii) one or more classes of persons

cease trading in, or are prohibited from purchasing, any securities or derivatives relating to a take over bid, issuer bid, business combination, related party transaction or proxy solicitation, or

(m) providing that any or all of the exemptions set out in this Act, the regulations or a decision do not apply to a person.

(2) On application by an interested person or on the commission's own motion, the commission may order that a person is exempt from any requirement under this Part, Part 14 or the regulations relating to this Part or Part 14 if the commission considers that it would not be prejudicial to the public interest to do so.

[65] BC Policy 15-601 *Hearings*, section 1.2, provides the general principles that the Commission applies to hearings:

The Commission holds administrative hearings, which are less formal than the courts. The Commission's goal is to conduct its proceedings fairly, flexibly and efficiently. The procedures set out in this Policy are in furtherance of this goal and the provisions of this policy are to be interpreted in light of this goal. Where the circumstances require a variation of the procedures set out in this policy in order to achieve this goal, the Commission may do so.

[66] No specific contravention of the Act is alleged. Rather, the Applicants seek orders under the Commission's public interest jurisdiction. In *Committee for Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, 2001 SCC 37 [Asbestos], the Supreme Court of Canada said that the Ontario Securities Commission (OSC) has jurisdiction and broad discretion to intervene in Ontario capital markets if it is in the public interest to do so, but that discretion is not unlimited. At paragraph 45, the Court said that "in exercising its discretion, the OSC should consider the protection of investors and the efficiency of, and public confidence in capital markets generally". Noting that public interest orders are not punitive, the Court stated at paragraph 43 that the purpose of a public interest order "is to restrain future conduct that is likely to be prejudicial to the public interest in fair and efficient capital markets".

[67] This Commission in *Re NorthWest Copper Corp.*, 2023 BCSECCOM 602, at paragraph 209, followed the British Columbia Court of Appeal's decision in *Poonian v. British Columbia*, 2017 BCCA 207, and stated that public interest orders "are preventative and prospective, not punitive or remedial, and must be proportionate to the circumstances of the case and the objective of such orders: to protect investors from unfair, improper or fraudulent practices and maintain fair and efficient capital markets".

[68] The Commission in *Re Hamilton*, 2018 BCSECCOM 290, reviewed *Asbestos* and other decisions to identify some principles regarding public interest orders:

[151] A few principles emerge from a review of those cases:

- in using and defining the scope of the public interest jurisdiction, panels must tie their analysis to the twin mandates of the Act, which are investor protection and ensuring fair and efficient capital markets;
- any analysis should focus on the totality of a respondent's conduct, rather than just specific aspects of that conduct; and
- the public interest jurisdiction must be exercised cautiously as any orders that flow from its use serve to restrain conduct that is otherwise not expressly prohibited by statute or regulation.

B. Public interest orders in contests for control

[69] National Policy 62-202 – Take-Over Bids – Defensive Tactics [NP 62-202] contains guidance respecting the use of defensive tactics undertaken to counter take-over bids. Participants in the capital markets are advised that the Canadian securities regulatory authorities will examine target company tactics in specific cases to determine whether they are abusive of shareholder rights:

1.1 Defensive Tactics

...

(4) Without limiting the foregoing, defensive tactics that may come under scrutiny if undertaken during the course of a bid, or immediately before a bid, if the board of directors has reason to believe that a bid might be imminent, include

- (a) the issuance, or the granting of an option on, or the purchase of, securities representing a significant percentage of the outstanding securities of the target company,
- (b) the sale or acquisition, or granting of an option on, or agreeing to sell or acquire, assets of a material amount, and
- (c) entering into a contract other than in the normal course of business or taking corporate action other than in the normal course of business.

...

[70] In *Hecla*, the OSC and this Commission jointly considered applications made to both regulators to cease-trade a private placement that was contemplated by an issuer that was the subject of a take-over bid on the basis that the private placement was an abusive defensive tactic. The two regulators provided common reasons for denying the applications.

[71] The Commissions noted that:

[82] When reviewing a private placement in accordance with NP 62-202, the Commissions need to balance: 1) the extent to which the private placement serves bona fide corporate objectives, for which corporate law gives significant deference to a board of directors in exercising its business judgment, with 2) the securities law principles of facilitating shareholder choice with regard to corporate control transactions and promoting open and even-handed bid environments.

...

[89] We agree with the BCSC's decision in *Re Red Eagle*, 2015 BCSECCOM 401 (*Red Eagle*) at paragraph 89, which cited with approval the approach stated by the Alberta Securities Commission in *Re ARC Equity Management (Fund 4) Ltd.*, 2009 ABACC 390 (*ARC*), as follows:

We agree with the policy perspective in *ARC*, that securities regulators should tread warily in this area and that a private placement should only be blocked by securities regulators where there is a clear abuse of the target shareholders and/or the capital markets.

...

2. The Applicable Test: Is the Private Placement a Defensive Tactic?
(a) If the Private Placement is clearly not a defensive tactic

...

[94] The starting point for the analysis of a private placement in the bid context is first whether the principles set out in NP 62-202 are engaged at all. The first question is: does the evidence clearly establish that the private placement is not, in fact, a defensive tactic designed, in whole or in part, to alter the dynamics of the bid process?

[95] If the private placement is not such a defensive tactic, then the principles in NP 62-202 are inapplicable and it would only be left to consider whether there was some other reason, under the Commissions' broader public interest mandate to interfere with the private placement.

[96] In considering whether the private placement is a defensive tactic, there is the question of evidentiary onus. Where the applicant is able to establish that the impact of a private placement on an existing bid environment is material, as was the case with a potential 43% dilution in this instance, then it would seem appropriate for the target board to have the onus of establishing that the private placement was not used as a defensive tactic.

[97] A non-exhaustive list of considerations that would be relevant to answering this first question would include:

- a. whether the target has a serious and immediate need for the financing;
- b. whether there is evidence of a bona fide, non-defensive, business strategy adopted by the target; and
- c. whether the private placement has been planned or modified in response to, or in anticipation of, a bid.

(b) If the Private Placement is or may be a defensive tactic

[98] Where a panel is unable to clearly find that the private placement was not used as a defensive tactic, either because there appear to be multiple purposes or there is insufficient evidence as to purpose, then the principles set out in NP 62-202 are engaged. In this circumstance, it will be necessary to find the appropriate balance between those principles and respecting a board's business judgment.

...

[100] If a transaction is or may be a defensive tactic, in addition to the considerations listed in paragraph [97] above, the following is a non-exhaustive list of considerations that are relevant to whether a private placement should be interfered with:

- a. would the private placement otherwise be to the benefit of shareholders by, for example, allowing the target to continue its operations through the term of the bid or in allowing the board to engage in an auction process without unduly impairing the bid?
- b. to what extent does the private placement alter the pre-existing bid dynamics, for example by depriving shareholders of the ability to tender to the bid?
- c. are the investors in the private placement related parties to the target or is there other evidence that some or all of them will act in such a way as to enable the target's board to "just say no" to the bid or a competing bid?
- d. is there any information available that indicates the views of the target shareholders with respect to the take-over bid and/or the private placement?
- e. where a bid is underway as the private placement is being implemented, did the target's board appropriately consider the interplay between the private placement and the bid, including the effect of the resulting dilution on the bid and the need for financing?

[101] As noted above, separate and apart from any evaluation of a private placement under the Policy, a panel must also consider whether there are any other capital markets policy considerations or other public interest considerations that are relevant under the circumstances.

[72] In that case, the Commissions found that the private placement was not a defensive tactic, but was set in motion in advance of the bid in pursuit of a bona fide corporate objective, and there was no evidence that it was modified in response to the bid so as to become defensive in character. The Commissions said that having reached that finding, they did not need to pursue the balancing of factors set out in paragraph 100. In addition, neither Commission saw any reason to interfere with the private placement under its broader public interest mandate.

[73] The Commissions noted, at paragraph 119, that while in that case they found the application of NP 62-202 to be straightforward given the extensive evidence supporting a non-defensive purpose for the private placement, they "recognize that other cases may involve a record where there is evidence of mixed motivations that will require the balancing of the other factors we have identified, and other factors applicable in new circumstances".

[74] Those new circumstances arose the following year in *Eco Oro*, on a hearing and review by the OSC of a decision of the Toronto Stock Exchange (TSX) to approve a significant share issuance made without shareholder approval on the eve of the record date for a contested shareholder meeting. Finding "overwhelming" evidence of the tactical motivation underlying the timing of the new share issuance, the OSC set aside the TSX's decision and ordered the issuer to either reverse or obtain shareholder approval of the share issuance. In its decision, the OSC said that the animating principles of NP 62-202 were as applicable in the context of a contested shareholder meeting as in the take-over bid context:

[246] ...the jurisdiction asserted in the present case, which involves a contest for control of a public company by way of a proxy contest, can be analogized to the jurisdiction of the Commission over change of control transactions effected by way of a takeover bid. Proxy contests and takeover bids provide alternative means of effecting a change of control that have very material consequences for shareholders. Issuances of shares as a defensive measure in the face of a contest for control of a public company to influence the outcome in management's favour are subject to review by the Commission. Private placements with this tactical motivation have more typically arisen in the context of takeover bids and may constitute defensive tactics contrary to the public interest and to [NP 62-202]... .

...

[248] If the share issuance is challenged as a defensive tactic in relation to a take-over bid, the Commission must necessarily delve into the purpose of the issuance. In *Re Hecla Mining Co.* (2016), 39 OSCB 8927, the Commission and the BC Securities Commission provided a framework for considering these matters where the first inquiry is whether the issuance is clearly not for a defensive purpose and the onus is initially on the target company in that context.

[249] When the Commission considers the public interest, whether under subsection 8(3) or section 127 of the Act, fairness to shareholders and therefore the integrity of the markets may well yield the same result in assessing a private placement designed to thwart a bid as it does in the case of an issuance designed to tip the balance in a proxy contest.

[250] Although *National Policy 62-202* addresses takeover bids, the public interest in promoting fairness to shareholders clearly extends to ensuring fair contests for control whether pursued through the proxy solicitation process for contested shareholder meetings or by way of a takeover bid. In considering whether to exercise our discretion to require shareholder approval based on our view of the public interest, control transactions, regardless of form, may involve similar public interest concerns.

[251] The policy considerations underlying the fair treatment of shareholders in the Act and as reflected in *National Policy 62-202* applicable to takeover bids are also applicable to proxy contests. The ability to craft terms and conditions to address inappropriate defensive tactics is necessary to fulfill the Commission's mandate to provide investor protection and to foster confidence in capital markets in connection with change of control transactions implemented through a bid or a vote.

[75] The *Hecla* framework was followed by the Ontario Capital Markets Tribunal in *Mithaq*, where the panel was asked by a bidder to cease-trade a private placement implemented by a target company on the basis that it was a defensive tactic designed to thwart the bid. The panel ultimately declined to do so, finding that the private placement was designed primarily to meet the issuer's serious and immediate need for financing. The panel noted that while the private placement did change the dynamics of the bid environment in a way that was unfavourable to the bidder, that was secondary to the main purpose and did not warrant interference with the private placement.

[76] The panel in *Mithaq* summarized the *Hecla* test as:

1. Is the private placement clearly not a defensive tactic?

- a. In this stage, the applicant bears the burden of showing “that it is at least unclear whether the private placement was a defensive tactic”.
 - b. If the applicant can show a material impact, then the onus shifts to the respondent to show “that the private placement is clearly not a defensive tactic” [emphasis in original]. To determine this, the panel considered the following factors from *Hecla*:
 - i. “whether the private placement was designed to respond to [the issuer’s] serious and immediate need for financing”;
 - ii. “whether the private placement was planned or modified in response to, or in anticipation of, a take-over bid”;
 - iii. “whether the private placement was part of a good faith, non-defensive, business strategy”.
2. Is the private placement clearly abusive? The panel applied the principles of NP 62-202 and considered:
- a. “whether the private placement would benefit [the issuer’s] shareholders;
 - b. the extent to which the private placement alters the pre-existing bid dynamics;
 - c. whether the private placement investors are related to [the issuer], or to each other, in such a way as to enable [the issuer’s] board to summarily reject [the applicant’s] bid or a competing bid;
 - d. whether the views of other [the issuer] shareholders should influence our decision; and
 - e. whether [the issuer’s] board appropriately considered the interplay between the private placement and [the applicant’s] bid.”

[77] In *Mithaq*, Aimia submitted that its private placement was clearly not a defensive tactic. Aimia submitted that it had a serious and immediate need for financing, that the private placement was not planned or modified in response to a take-over bid and that the private placement was a part of a good faith, non-defensive business strategy. Mithaq challenged the credibility of each of Aimia’s positions. The panel agreed with Aimia on the first of the two issues, but the panel found that the private placement had at some point taken on a defensive aspect, with the result that Aimia could not show that the private placement was clearly not a defensive tactic. That being so, the second stage of the *Hecla* analysis, to determine whether the private placement constituted a “clear abuse” of the target shareholders and/or the capital markets, was engaged.

[78] The *Mithaq* panel analyzed their role in assessing the legal framework of private placements. They stated, at paragraph 42, that they “have broad discretion to intervene, but that discretion is not unlimited”. They continued:

[43] For private placements, we must balance the legitimate corporate objectives of the private placement (and there may be more than one objective) against facilitating

shareholder choice, all while being cautious not to interfere unduly with the business judgment of the issuer's board.

- [79] In the course of its analysis, the *Mithaq* panel addressed the meaning of an immediate need for financing. It agreed with the issuer that a need for financing over the following 12 months could fairly be described as immediate, and it rejected an equivalence between the words "immediate" and "financial distress". The panel concluded that the word "immediate" implies that the need currently exists, as opposed to being speculative.
- [80] Turning to the question of whether the private placement was clearly abusive, the *Mithaq* panel set out a summary of its analysis of the principles of NP 62-202:

[129] To summarize, two of the above five factors (the relationship between Aimia and the private placement investors, and the views of the Aimia shareholders) were neutral in our analysis. On the remaining three factors, we concluded that:

- a. the private placement benefited Aimia's shareholders;
- b. the private placement altered the pre-existing bid dynamics; and
- c. there were deficiencies in the Aimia board's consideration of the interplay between the private placement and Mithaq's bid.

[130] The result of the last of these three is that we did not defer to the Special Committee's work, as we might normally have. Instead, we reached our own conclusion independently, by weighing the impact on Aimia and its shareholders against the impact on the bid environment. We concluded that, while the private placement did have an impact on the bid environment, that impact was outweighed by the benefit to Aimia shareholders. We therefore concluded that the private placement was not "clearly abusive".

V. Position of the Applicants

- [81] The Applicants characterize this as a clear case of Zefiro's management seeking to entrench themselves through improper defensive tactics.
- [82] Although the relief sought by the Applicants is focused on the Debt Settlement Shares, the Applicants assert that we should consider the larger circumstances in assessing the motives of all of the respondents. For example, the Applicants submit that the right to change of control payments which were granted to Flax and Downs were unusually generous and would be expected to have the effect of discouraging a change of control from the existing board. As a further example, the Applicants submit that we should consider the terms of Zefiro's amended and restated advance notice policy, which they say was clearly designed as a tool to exclude Debs from nomination, as an indicator of the intention of Zefiro's board members to exclude Debs from an opportunity to seek the support of Zefiro's shareholders. As a further example, the Applicants submit that we should consider Zefiro's timing and choice of language in announcing a special committee to investigate Debs's conduct immediately after Debs announced the commencement of a proxy contest as a tactic adopted to discredit Debs with non-party shareholders.
- [83] Most importantly, the Applicants submit that the terms under which the Debt Settlement Shares were issued, on the eve of the record date for voting at the Meeting, were unduly favourable to the Debt Settlement Investors, who could be counted on to oppose Debs and to support the existing management of Zefiro.

VI. Position of Zefiro

- [84] Zefiro's position is that because of the events which led to the delivery of a notice of default by SP, Zefiro was forced to take on new debt at a very high interest rate. That new debt was payable on November 27, 2026, and other obligations of Zefiro matured in the fall of 2025 and on March 1, 2026. Zefiro looked for investment from other sources, but in the end no new money was available elsewhere and only some, not all, of the Secured Lenders were willing to invest new funds. Zefiro notes that BH was offered the same terms as the Debt Settlement Investors, but declined to invest further.
- [85] Zefiro notes that the Debt Settlement Investors were in a position to continue to collect regular interest payments at the rate of 18 percent per annum, and any new equity investments made by those investors would be highly risky. As a result, Zefiro said, it was not surprising that an incentive might be required to convince them to exercise their warrants to acquire additional shares in return for payment of the debts owed to them.
- [86] Zefiro submits that it had no option except to do what it did, and that it would have been irresponsible to delay any further in entering into the debt settlement agreement.

VII. Position of McGrath and McGavick

- [87] McGrath and McGavick assert that the precedent which is most applicable here is *Mithaq*, and that under the *Mithaq* test the application should be dismissed. They submit, among other things, that the transaction was clearly not a defensive tactic, that the transaction is not material to the proxy contest, that Zefiro was following a bona fide, non-defensive business strategy which was not modified in response to the proxy contest, and that the transaction benefits Zefiro shareholders and is not abusive.
- [88] With respect to the Cross-Application, McGrath and McGavick submit that section 114 of the Act empowers the Commission to make orders restraining voting rights attaching to a security. They submit that we should find that Debs is in breach of the Side-Letter and, although they assert that they are not seeking any findings in respect of the allegations in the New York litigation, they submit that those allegations "are a part of the totality of Debs' conduct, which are entirely appropriate for the Commission to consider."
- [89] McGrath and McGavick submit that honesty, transparency, and voluntary disclosure of the true nature of ownership and control of public companies are cornerstone principles in our securities regulatory regime. They submit that Debs is using his control of the XMC Manager to use funds which McGrath and McGavick invested through the X Machina private equity fund group to make decisions which favour Debs to the detriment of McGrath, McGavick and other investors in that group. They add that many of those investors have indicated that they no longer support Debs.

VIII. Position of Flax

- [90] In her submissions, Flax emphasizes that she raised the idea of exercising her warrants as a way to inject liquidity into Zefiro four months before Debs commenced his proxy contest. She submits that Zefiro was in a difficult financial situation and she acted in the best interests of Zefiro and its shareholders, not to implement a defensive strategy in response to the proxy contest.

IX. Position of the Executive Director

- [91] The executive director's submissions emphasize the importance of the conclusion from *Eco Oro* at paragraph 250 that "the public interest in promoting fairness to shareholders clearly extends to ensuring fair contests for control whether pursued through the proxy solicitation process for contested shareholders meetings or by way of a takeover bid".
- [92] The executive director submits that the existence of or imminence of a proxy contest is an important threshold question, given that some issuers may be the target of longer term shareholder activism that does not always rise to the level of urgency of proxy contests, and issuers should not be constrained from making operational decisions around financing because of possible activist threats.
- [93] The executive director's submissions include the following language, which we quote here and reference in part again in our analysis below:

23. Once an applicant has established that an action has been taken and a proxy contest is imminent or ongoing, the Executive Director suggests that the panel should look at various factors derived from *Hecla*, but modified for the proxy context, to balance the corporate objectives of the transaction involving the share issuance against the impact on voting dynamics and shareholder choice.

24. The following non-exhaustive factors may be relevant to the panel's decision:

(a) Does the transaction involving the share issuance have a compelling and bona fide business objective, or was the transaction modified or planned in anticipation of the proxy contest? Relevant considerations include:

(i) the financial condition of the issuer, including if it has a serious need for financing and if the transaction addresses this need;

(ii) evidence of a longer term strategy underpinning the transaction that predates the proxy contest; and

(iii) whether the issuer considered alternatives to the transaction;

(b) What process did the issuer follow in deciding to undertake the transaction? Relevant considerations include the issuer's governance process and how it managed conflicts with any related parties;

(c) To what extent does the share issuance alter the pre-existing voting dynamics, for example, by tipping the balance in favour of management and impacting the ability of shareholders to determine the outcome of the proxy contest?

(d) Was the transaction involving the share issuance structured and timed in a manner that indicates a defensive motivation? Relevant considerations include:

(i) whether investors receiving shares under the transaction are related parties of the issuer or likely to cast votes aligned with management;

(ii) the proximity between the closing of the share issuance and the record date for the contested meeting; and

(iii) any other evidence the transaction is designed as a defensive tactic, such as pricing or size of the issuance and resulting dilution.

- [94] The executive director also submits that when we consider whether the exercise of warrants was an improper defensive tactic, we should assess “the circumstances surrounding both (a) the issuance of warrants, and (b) the exercise of warrants”. The executive director submits that warrant holders “have a contractual right to exercise the warrants at their option” and that we should be cautious not to restrict their rights to acquire shares or vote as a shareholder.

X. Analysis and Application

C. Resolving key factual disputes

- [95] There were a number of factual disputes between the parties. We found it appropriate and helpful to reach conclusions about some of those issues. There were other issues which we did not find necessary to address.
- [96] Regarding all of the contextual issues which, the Applicants assert, demonstrate that Zefiro’s managers were motivated to exclude Debs from a managerial position with Zefiro, we conclude that the Applicants have proven their point. In fact the Respondents do not seriously dispute that they consider Debs to be unfit to manage Zefiro and they were prepared to take steps to exclude him from management. However, we note that the above conclusion can coexist with conclusions that Zefiro was in a difficult financial position, it faced significant debt repayment deadlines in a matter of months, that existing investors who had an incentive to invest further equity in order to protect their prior investments were the most likely source of funds for Zefiro as at early 2026, and that obtaining new investment by motivating existing investors to exercise warrants was the only option reasonably available to Zefiro at the time.
- [97] Regarding whether management of Zefiro had actively searched for financing options for Zefiro which would have avoided diluting the voting influence of the Applicants, we conclude that Zefiro’s representatives looked extensively and in good faith. In reaching this conclusion we have taken into account the very effective cross-examination of Downs which was conducted by counsel for the Applicants. We have particularly considered that much of the evidence regarding Zefiro’s search for alternative financing came from Downs and primarily took the form of conclusory statements without a full detailing of the individual steps which led Downs to those conclusions. However, our own conclusions are supported by the following factors:
- a) The evidence which Downs provided regarding his early consideration of ways to induce warrant holders to exercise their warrants and his return to that option was corroborated to a large extent both by contemporaneous emails recording his then current thinking and by evidence from the respondents.
 - b) It is undisputable that from before Downs became acting CFO, Zefiro was in a difficult financial position and it was in need of further financing. Zefiro’s need for funding was in part based upon debt maturity dates which were pending, and also based upon the high interest rates (18 percent) Zefiro was compelled to offer in order to obtain funds to avoid the likely loss of ownership of Zefiro’s key subsidiary. In the circumstances, the suggestion from the Applicants that Zefiro and its representatives, including Downs, were not searching for alternative financing options is absurd.
 - c) Given the financial circumstances faced by Zefiro, it is no stretch to draw an inference that conventional financing from new investors would have been difficult to find.
 - d) During the relevant period, Debs was on the Zefiro board. Given the financial circumstances present, it would have been an obligation of every board member to bring

to the attention of Zefiro's management any alternative financing options of which he was aware. Debs did not identify alternatives during the months leading up to Zefiro's decision in January of 2026 to issue the Debt Settlement Shares.

e) We conclude that the debt restructuring memo that Downs prepared and shared with the board in advance of the board's January 9, 2026 meeting describes the debt settlement transaction in sufficient detail to convey the key features of the transaction which Zefiro ultimately adopted and to which the Applicants object in this proceeding. We do not read Debs's emailed response, quoted above, as consent, but it comes close to acquiescence, and at a minimum it confirms that at the key moment, Debs did not suggest an alternative to the course of conduct which Zefiro undertook.

f) Cboe reviewed and approved the issuance of the Debt Settlement Shares.

[98] Regarding whether any reasonable alternative to the one selected existed, our conclusion is that there was none.

[99] The best argument that was put forward on behalf of the Applicants regarding the existence of a reasonable alternative came during oral arguments. The Applicants submitted that it was speculative that, as of January of 2026, it was necessary for Zefiro to provide an incentive to the Secured Lenders to exercise their warrants. The Applicants submit that the best option open to Zefiro was to wait and see if the Secured Lenders exercised their warrants without an incentive being offered. The Applicants point to evidence from Downs that one or more of the Secured Lenders had already expressed an intention to exercise the warrants far enough in advance of the record date that they could vote the shares against the slate Debs was supporting at the Meeting. They submit that this would justify a decision by Zefiro to wait and see what the Secured Lenders would actually do.

[100] We would characterize the alternative proposed by the Applicants, which Debs did not advocate for in advance of the issuance of the Debt Settlement Shares, as cavalier and perhaps reckless, since it would have put Zefiro's future in the hands of its lenders.

[101] Had the Secured Lenders exercised their warrants without being given significant incentives to do so, that would have been a good result for Zefiro. However, the Secured Lenders had no obligation to exercise their warrants and if they chose not to, Zefiro would likely have defaulted on its obligation to pay Flax's spouse \$1 million on March 1, 2026. At that point Zefiro's financial difficulties would multiply. Zefiro had difficulty obtaining funds from any source before that default, and the default would have made matters much worse.

D. Appropriate framework for the legal analysis

[102] We agree with the submissions of the executive director quoted above. We adopt the non-exhaustive list of factors identified by the executive director.

[103] With respect to the executive director's submissions about the need for a panel to exercise caution in restricting the rights of warrant holders to exercise rights acquired under warrants which were not issued as an improper defensive tactic, in general we agree. However, we conclude that in every case it is appropriate to look at how each individual element of a transaction fits into the larger context. In this case, for example, the Applicants' objection can be characterized as having much to do with the significant inducements offered to the Debt Settlement Investors and with their motivation in reaching an agreement with Zefiro at the

relevant time and less to do with them voluntarily exercising their warrants for their own reasons.

[104] The executive director also submitted that we should consider Zefiro's governance process and how it managed conflicts with related parties. We agree that this is relevant, and in some circumstances it can be very relevant. In the present case Zefiro found itself in a challenging position as of the time it received the notice of default from SP and it was managing through challenging circumstances from then forward. We could find fault with Zefiro's management of potential conflicts, but, as our analysis below explains, other factors were more important.

[105] Our analysis below follows the form of the two-stage analysis identified in *Hecla*, extended to the contested shareholder meeting context in *Eco Oro* and applied in *Mithaq*, modified slightly as suggested in the executive director's submissions to fit the current context. The modifications in approach generally reflect the reality that we are here responding to the issuance of the Debt Settlement Shares and the related aspects of that transaction, and not a take-over bid. As is apparent below, we organized our analysis using the structure applied in *Mithaq* without organizing the factors in the sequence and groupings suggested by the executive director. We did, however, consider all of the issues suggested by the executive director in the course of our analysis.

E. Applying the framework

[106] As posed in *Hecla* and applied here, the first question is whether the evidence clearly establishes that the issuance of the Debt Settlement Shares, was not, in fact, a defensive tactic designed in whole or in part to alter the dynamics of the contested shareholder vote. If it was not such a tactic, then the principles underlying NP 62-202 are inapplicable and it would only be left to consider whether there was some other reason under the Commission's broader public interest mandate to interfere with the transaction.

[107] The Applicants bear the initial burden of showing that it is at least unclear whether the issuance of the Debt Settlement Shares was a defensive tactic. We conclude that they have established at least that required level of unclarity, mainly by reference to various steps taken by Zefiro and other respondents which were relatively contemporaneous with the issuance of the Debt Settlement Shares and which, collectively, showed an intention to prevent Debs from regaining managerial control over Zefiro.

[108] Examples of the conduct towards Debs which led us to the above conclusion include his termination as CEO, Zefiro's rather cursory consideration of Debs's rights under the Investor Rights Agreement, Zefiro's creation of the amended and restated advance notice policy which provided a discretion to Zefiro to exclude Debs from the nomination process, and Zefiro's decision to publicize the serious allegations made against Debs in the US litigation at about the same time Debs began his effort to put forward an alternate slate of directors.

[109] In *Hecla*, the Commission noted that there is a threshold question of evidentiary onus in considering whether the transaction is a defensive tactic. In that case, where it was readily apparent that the resulting massive dilution would be material to the outcome of a take-over bid, the Commissions said that it would seem appropriate for the target board to have the onus of establishing that the private placement was not a defensive tactic.

[110] In *Mithaq*, also a take-over bid case, the Ontario Capital Markets Tribunal said that if the applicant can show a material impact, then the onus shifts to the respondent to show that the private placement was clearly not a defensive tactic.

- [111] In this case, the materiality of the issuance of the Debt Settlement Shares to the outcome of the shareholder vote is a disputed factor. Given our further conclusions, we have chosen to assume materiality and to address the balance of the applicable framework on the basis that in all the circumstances, the onus appropriately rests on Zefiro to establish that the issuance of the Debt Settlement Shares was clearly not a defensive tactic.
- [112] We take in turn the factors identified as potentially relevant in *Hecla* and *Mithaq*. One factor which strongly supports a conclusion that the issuance of the shares was clearly not a defensive tactic is Zefiro's serious and immediate need for financing and the absence of other reasonable alternatives. We agree with the panel in *Mithaq* that an existing need for significant financing over the next 12 months can fairly be described as immediate.
- [113] A second factor to consider is whether the issuance of the Debt Settlement Shares and the acceptance of the related arrangements was planned or modified in response to the pending proxy battle. Zefiro was seeking new investment from warrant holders, including by attempting to convince some of them to exercise the warrants, before the proxy battle arose. However, the objection raised by the Applicants is more specific: they complain about the offer of substantial incentives to induce the exercise of warrants. The details of the inducements were not explained until early 2026, through the memo delivered by Downs to the board. This factor leans in favour of the Applicants.
- [114] Finally, we come to the factor of whether the issuance of the Debt Settlement Shares was part of a good faith, non-defensive, business strategy. Again, this factor does not clearly favour only one side of the dispute. Zefiro's need for financing to meet its obligations, including its impending debt obligations, was real and immediate and can be viewed as part of a non-defensive business strategy. However, the various steps taken by Zefiro and some of the individual respondents showing a desire to exclude Debs suggest an underlying purpose which is not in good faith in the sense that it was not consistent with the principle that decisions about who should run the company should be left to shareholders.
- [115] Considering all of those factors together, we conclude that Zefiro has not established that the issuance of the Debt Settlement Shares was clearly not a defensive tactic. That being so, the principles underlying NP 62-202 are engaged and it is necessary to find the appropriate balance between respecting those principles, which favour facilitating shareholder choice, and respecting a board's business judgement.
- [116] We turn to the second stage of the *Hecla* analysis, which requires us to determine whether the issuance of the Debt Settlement Shares constituted a clear abuse of Zefiro's shareholders and/or the capital markets. We conclude that it did not.
- [117] Many of the factors that were identified in *Hecla* as relevant to the question whether the impugned transaction is abusive of shareholders or the capital markets apply in the take-over bid context but do not apply directly here. For example, here we have no reliable information about the views of shareholders who are not parties to or witnesses in this dispute. Some other factors are relevant here but weigh only modestly on the appropriate balance to be reached. Specifically, there is a relationship between the Debt Settlement Investors and Zefiro and support from them for the existing board and, as we have assumed, the issuance of the Debt Settlement Shares will materially affect the outcome of the voting at the contemplated general meeting of Zefiro. We conclude that those factors have modest impact because the consideration of what course of action would most benefit shareholders is fundamental and

must be determinative in light of our conclusions above regarding the company's urgent need for financing and the lack of any reasonable alternative to obtaining financing by convincing certain of the warrant holders to exercise their warrants. That factor strongly supports a conclusion that the issuance of the Debt Settlement Shares was not clearly abusive. For that reason and because we see no other reason to do so, we find that it is not in the public interest for us to interfere with the transaction.

[118] We dismissed the Amended Application accordingly.

F. Cross-application

[119] We consider that the allegations that Debs breached his fiduciary duties to Zefiro are in substance issues of corporate law. The Act empowers us to order remedies which would be useful to the respondents. However, it is our conclusion that the relevant remedies are to be imposed only in relation to securities law issues. Even if we have the jurisdiction to grant the remedies sought for the purposes asserted, we do not conclude it is in the public interest to take such a step. We have only a sampling of the relevant evidence, and the issues are already before courts which have access to the necessary facts to reach proper conclusions. We defer to those courts.

[120] We did not dismiss the Cross-Application initially because we had, at that time, not given McGavick or McGrath a fair opportunity to present their positions. They subsequently did so. Having considered their positions, we find that we have not changed our view from our preliminary ruling in 2026 BCSECCOM 63. We dismissed the Cross-Application accordingly.

October 5, 2026

For the Commission

Gordon Johnson
Vice Chair

Marion Shaw
Commissioner

Douglas Seppala
Commissioner