

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

Citation: Re Ismail, 2025 BCSECCOM 116

Date: 20250318

**Aly Ismail, NH Transcendental Business Solutions Inc.,
Green Stream Botanicals Corp.,
(together, the Ismail Group)**

Panel	James Kershaw Marion Shaw Karen Keilty	Commissioner Commissioner Commissioner
Submissions completed	November 6, 2024	
Ruling date	March 18, 2025	
Parties		
Mila Pivnenko	For the Executive Director	
Aly Ismail	For himself	
Thuy Hanh Nguyen	For NH Transcendental Business Solutions Inc. (NHT) and Green Stream Botanicals Corp. (GSB)	

Reasons – Extension of Temporary Orders

I. Background

- [1] On October 30, 2024, we issued a Ruling and Temporary Order, *Re Mohamed*, 2024 BCSECCOM 467, making temporary orders prohibiting members of the Ismail Group from conducting various activities in the securities market until November 14, 2024 (Temporary Orders).
- [2] On November 6, 2024, the executive director applied to extend the Temporary Orders until a hearing is held and a decision is rendered.
- [3] The Ismail Group did not oppose extension of the Temporary Orders.
- [4] On November 13, 2024, with reasons to follow, we issued a Ruling, *Re Ismail*, 2024 BCSECCOM 476, extending the Temporary Orders until a hearing is held and a decision is rendered. The terms of the Temporary Orders made against Ismail, as extended until a hearing is held and a decision is rendered, are:
 - a) under section 161(1)(b)(ii), Ismail is prohibited from trading in or purchasing securities or derivatives;
 - b) under section 161(1)(c), all of the exemptions set out in the Act, regulations or any decisions as defined in the Act do not apply to Ismail;
 - c) under section 161(1)(d)(i), Ismail resign any position he holds as a director or officer of any issuer, other than an issuer all the securities of which are owned beneficially by him or members of his immediate family;

- d) under section 161(1)(d)(ii), Ismail is prohibited from becoming or acting as a director or officer of any issuer, other than an issuer all the securities of which are owned beneficially by him or members of his immediate family;
- e) under section 161(1)(d)(iii), Ismail is prohibited from becoming or acting as a registrant or promoter;
- f) under section 161(1)(d)(iv), Ismail is prohibited from advising or otherwise acting in a management or consultative capacity in connection with activities in the securities markets;
- g) under section 161(1)(d)(v), Ismail is prohibited from engaging in promotional activities by or on behalf of an issuer, security holder or party to a derivative, or another person that is reasonably expected to benefit from the promotional activity; and
- h) under section 161(1)(d)(vi), Ismail is prohibited from engaging in promotional activities on his own behalf and respect of circumstances that would reasonably be expected to benefit him.

[5] The terms of the Temporary Orders made against NHT, as extended until a hearing is held and a decision is rendered, are:

- a) under section 161(1)(b)(ii), NHT is prohibited from trading in or purchasing securities or derivatives;
- b) under section 161(1)(c), all of the exemptions set out in the Act, regulations or any decisions as defined in the Act do not apply to NHT;
- c) under section 161(1)(d)(v), NHT is prohibited from engaging in promotional activities by or on behalf of an issuer, security holder or party to a derivative, or another person that is reasonably expected to benefit from the promotional activity; and
- d) under section 161(1)(d)(vi), NHT is prohibited from engaging in promotional activities on its own behalf and respect of circumstances that would reasonably be expected to benefit it.

[6] The terms of the Temporary Orders made against GSB, as extended until a hearing is held and a decision is rendered, are:

- a) under section 161(1)(b)(ii), GSB is prohibited from trading in or purchasing securities or derivatives;
- b) under section 161(1)(c), all of the exemptions set out in the Act, regulations or any decisions as defined in the Act do not apply to GSB;
- c) under section 161(1)(d)(v), GSB is prohibited from engaging in promotional activities by or on behalf of an issuer, security holder or party to a derivative, or another person that is reasonably expected to benefit from the promotional activity; and
- d) under section 161(1)(d)(vi), GSB is prohibited from engaging in promotional activities on its own behalf and respect of circumstances that would reasonably be expected to benefit it.

[7] These are the reasons for our ruling granting the extension sought by the executive director.

II. Procedural History

[8] On October 24, 2023, the executive director issued a notice of hearing, 2023 BCSECCOM 494 (NOH), alleging that the Ismail Group and another group of respondents, referred to as the

Mohamed Group, engaged in unregistered trading of two issuers' securities where no exemption from the registration requirement was available.

- [9] At a set-date hearing conducted on December 13, 2023, the liability hearing was set to commence on October 29, 2024. At the set-date hearing, the Ismail Group, who had not yet retained counsel, appeared on their own behalf.
- [10] On April 5, 2024, Aly Ismail (Ismail) and Thuy Hanh Nguyen (Nguyen) each applied to have the Ismail Group severed from the Mohamed Group for the purposes of the hearing and to be afforded unspecified medical accommodations.
- [11] In *Re Mohamed*, 2024 BCSECCOM 369, issued August 26, 2024, we denied the application for severance because Ismail and Nguyen failed to establish that manifest prejudice would result if such order was not granted. We also denied the applications by the Ismail Group for unspecified medical accommodations because they had failed to provide credible documentary evidence from qualified medical practitioners sufficient to support their accommodation requests.
- [12] On September 18, 2024, Ismail applied for an adjournment on behalf of himself and Nguyen. He did not include any evidence to support his application. The executive director provided responding submissions on September 27, 2024. On October 1, 2024, an email was sent to Ismail from the Hearing Office advising that the panel was allowing him until October 10, 2024, to submit any reply and to submit evidence to support his application. No reply or evidence was provided by Ismail.
- [13] On October 16, 2024, the Hearing Office sent an email to the parties advising that the panel dismissed the application, with reasons to follow.
- [14] On October 17, 2024, the Hearing Office received an email advising that counsel had been retained to act on behalf of the Ismail Group. Counsel requested an adjournment and advised that they would be filing an application.
- [15] On October 21, 2024, counsel for the Ismail Group submitted an application to adjourn the hearing due to their recent engagement of counsel and certain medical issues, together with affidavit evidence of those medical issues.
- [16] On October 24, 2024, the executive director provided responding submissions to that application in which he did not oppose the adjournment, but sought the Temporary Orders against the respondents.
- [17] On October 25, 2024, the Hearing Office sent an email to the parties advising that the panel adjourned generally the hearing of this matter with reasons to follow.
- [18] On October 28, 2024, the executive director entered into a settlement agreement with Tajkarim Mohamed and discontinued the allegations against the Mohamed Group.
- [19] On October 30, 2024, in *Re Mohamed*, 2024 BCSECCOM 467, we issued reasons for the ruling made October 16, 2024, dismissing the September 18, 2024 application for adjournment, and made the Temporary Orders. The adjournment application had been dismissed because Ismail failed to provide evidence to support his application despite being given opportunities to do so. As such, it was not in the public interest to delay the hearing for unspecified and unsupported medical conditions. However, because the Ismail Group's counsel had subsequently submitted

a new adjournment application with compelling supporting evidence, we adjourned the hearing generally and ordered the Temporary Orders proposed by the executive director.

- [20] On November 6, 2024, the executive director applied to extend the Temporary Orders until a hearing is held and a decision is rendered.
- [21] On November 13, 2024, in *Re Ismail*, 2024 BCSECCOM 476, we extended the Temporary Orders until a hearing is held and a decision is rendered, with reasons to follow.
- [22] On December 6, 2024, counsel for the executive director sent a letter to the Hearing Office and counsel for the Ismail Group that proposed that the hearing of the within matter be conducted in writing with evidence by affidavits. Counsel for the executive director suggested a timetable for the executive director's case, cross-examination of affiants, the respondents' case, and the executive director's reply.
- [23] On December 6, 2024, counsel for the Ismail Group sent an email advising that they had been "unable to obtain meaningful instructions" and requested until December 20, 2024, to provide the respondents' position on the executive director's proposal.
- [24] On December 10, 2024, the panel chair granted counsel for the Ismail Group the extension of time requested.
- [25] On December 20, 2024, counsel for the Ismail Group sent an email advising that they had withdrawn as counsel for the respondents, effective immediately. Counsel requested an extension of time for the respondents to respond to the executive director's proposal to hold the hearing in writing.
- [26] On January 9, 2025, the panel chair advised the respondents that they had until January 17, 2025 to respond to the executive director's proposal for a hearing in writing.
- [27] On January 16, 2025, Nguyen sent an email advising that she was not able to engage in the legal hearing process. Nguyen attached a doctor's note that supported her position.
- [28] On January 23, 2025, the hearing office sent an email to the parties advising that the hearing of the allegations in the NOH would proceed in writing with the following deadlines:
 - a) The written submissions and evidence in affidavit form of the executive director will be due by the end of the day on Friday, May 30, 2025;
 - b) The respondents may bring an application to cross-examine the executive director's witnesses on their affidavits by the end of the day on July 25, 2025;
 - c) The written response and evidence in affidavit form (if there is any) from the respondents will be due by the end of the day on Friday, August 29, 2025;
 - d) The executive director may bring an application to cross-examine the respondents' witnesses on their affidavit(s) by the end of the day on Friday, September 12, 2025; and
 - e) The executive director's written reply submissions will be due by the end of the day on Friday, September 12, 2025, if there is no application for cross-examination, or by the end of the day on Friday, October 3, 2025, if there will be cross-examination of the respondents' evidence.

III. Applicable Law

Making and extending temporary orders

[29] Sections 161(2) to (4) of the Act provide as follows:

(2) If the commission or the executive director considers that the length of time required to hold a hearing under subsection (1), other than under subsection (1) (e) (ii) or (iii), could be prejudicial to the public interest, the commission or the executive director may make a temporary order, without providing an opportunity to be heard, to have effect for not longer than 15 days after the date the temporary order is made.

(3) If the commission or the executive director considers it necessary and in the public interest, the commission or the executive director may, without providing an opportunity to be heard, make an order extending a temporary order until a hearing is held, and a decision is rendered.

(4) The commission or the executive director, as the case may be, must send written notice of every order made under this section to any person that is directly affected by the order.

[30] The decision of this Commission in *Re Fairtide Capital Corp.*, 2002 BCSECCOM 993 considered those provisions and discussed them as follows:

25. An extension order made under section 161(3) is not limited to a specific period as in section 161(2), but can be made until the hearing under section 161(1) is held and a decision is rendered. Again, this discretion is not open ended. The Commission may make an extension order only if it meets the two-pronged test of being 'necessary and in the public interest'. The evidentiary threshold to conclude that an extension order is 'necessary and in the public interest' is obviously greater than that necessary to conclude (when first issuing the temporary order) that the length of time to hold a hearing 'could be prejudicial to the public interest'.

...

27. Furthermore, we recognize that the power to intrude upon, and disrupt, persons' lives and businesses by issuing section 161(1) enforcement orders before a hearing is held, is a significant one and must be justified. Affidavits that suggest 'little more than unsubstantiated suspicion' or 'guilt by association' fall far short of providing the kind of evidence necessary to support these kinds of orders. [citations omitted]

28. What then is required for the Commission to conclude that extending temporary orders without a hearing is 'necessary and in the public interest'?

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

30. The three Commission decisions referred to us by Commission staff are examples of applications where we determined that it was necessary and in the public interest to extend the temporary orders. [citations omitted]

31. In each of those cases, Commission staff produced evidence for the Commission to conclude that there was *prima facie* evidence of the misconduct alleged and that the extension order was necessary and in the public interest. The evidence produced was not simply staff's opinion or belief, given under oath, that a respondent breached the legislation or acted contrary to the public interest. Instead, staff appropriately produced the evidentiary foundation upon which we could independently assess whether there was *prima facie* evidence of a respondent's alleged misconduct and whether, in the circumstances, the extension order was necessary and in the public interest.

- [31] As noted, the executive director is required to produce *prima facie* evidence of the misconduct he alleges. As stated in *Re Zhang*, 2023 BCSECCOM 304:

The term “*prima facie*” is used to characterize something as being accepted on its face unless disproved. Generally, *prima facie* evidence means evidence sufficient to establish a fact until the contrary is proven.

Notice to the Respondents

- [32] The executive director is not required to provide notice prior to issuing a temporary order or bringing an application to extend a temporary order. He is, however, required to provide notice once an order has been issued.
- [33] In this matter, the respondents were provided notice of the temporary orders sought by the executive director in his response submissions of October 24, 2024.

Registration requirements

Definition of “security”

- [34] Section 1(1) of the Act defines “security” to include:

- (a) a document, instrument or writing commonly known as a security,
- (b) a document evidencing title to, or an interest in, the capital, assets, property, profits, earnings or royalties of a person,
- (c) a document evidencing an option, subscription or other interest in a security,
- (d) a bond, debenture, note or other evidence of indebtedness, share, stock... and
- ...
- (l) an investment contract.

Definition of “trade”

- [35] Section 1(1) of the Act defines “trade” to include:

- (a) a disposition of a security for valuable consideration..., and
- ...
- (f) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the activities specified in paragraphs (a) to (e.2).

Requirement to be registered

- [36] Section 34(1)(a) of the Act states that “A person must not... trade in a security... unless the person is registered in accordance with the regulations...”.
- [37] National Instrument 31-103, *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103), includes further detail on the circumstances under which persons are required to be registered to trade in securities. This National Instrument sets out the registration requirements and the Companion Policy to NI 31-103 (CP 31-103) contains interpretations of the National Instrument by the Canadian Securities Administrators (CSA). The CSA comprise the securities regulators of all of the provinces and territories of Canada.
- [38] Section 8.4(1) of NI 31-103 sets out an exemption from the requirement in section 34(1)(a) of the Act that a person must be registered to trade in securities:

8.4(1) In British Columbia..., a person or company...is exempt from the dealer registration requirement if the person or company

- (a) is not engaged in the business of trading in securities...as a principal or agent, and

(b) does not hold himself, herself or itself out as engaging in the business of trading in securities...as a principal or agent.

[39] As was stated in *Re Bezzaz Holdings*, 2019 BCSECCOM 415, at paragraph 164:

This means that although the requirement is often thought of as “persons are required to be registered under the Act when they are in the business of trading in securities”, the technical structure of the regulatory provisions is that a person is always required to be registered if they are trading in securities *unless* they are *not* in the business of trading in securities.

[40] The following from CP 31-103 are factors that regulators consider relevant to the determination that a person is trading for a business purpose:

- a) Engaging in activities similar to a registrant, including promoting securities;
- b) Acting as an intermediary between a buyer and a seller of securities;
- c) Directly or indirectly carrying on the activity with repetition, regularity or continuity – including the frequency of transactions (although the activity does not have to be the sole or even the primary endeavour of the person) and whether the activity is carried out with a view to making a profit, the person’s various sources of income and amount of time allocated to the activity;
- d) Being or expecting to be compensated for the activity;
- e) Having the capacity or the ability to carry on the activity to produce profit; and receiving or expecting to be compensated for carrying on the activity indicates a business purpose; and
- f) Directly or indirectly soliciting, for which solicitation includes contacting someone by any means to solicit securities transactions.

[41] With reference to an earlier but substantially similar list of factors in a prior version of CP 31-103, the panel in *Bezzaz* noted, at para 166, that “[c]ompanion policies do not have the force of law. Their function is to inform market participants of the regulators’ interpretation of certain aspects of securities law.”

[42] Like the panel in *Bezzaz*, we find the statements of policy in CP 31-103 outlined above to be helpful in the interpretation of some of the factors to be considered in determining whether a person is required to be registered under the Act.

IV. Position of the Executive Director

[43] In support of his application to extend the Temporary Orders, the executive director alleged that Ismail, NHT and GSB contravened section 34(1)(a) of the Act by engaging in unregistered trading of two issuers’ securities without any available exemptions. The executive director’s submission included an affidavit of an investigator with the Enforcement Division of the Commission, made November 5, 2024 (Investigator’s Affidavit). The Investigator’s Affidavit is 101 pages in length and includes 25 exhibits. All evidence referred to below in paragraphs 44 through 55 is drawn from the Investigator’s Affidavit.

Evidence adduced by the executive director in its submission on the application to extend the Temporary Orders Issuer A and Issuer B

[44] Issuer A is a federal corporation extra provincially registered in British Columbia. Issuer B is a British Columbia corporation incorporated on June 10, 2002.

The investments distributed by the Ismail Group on behalf of Issuer A and Issuer B were securities for the purposes of the Act

- [45] The exempt distribution reports on Schedule 1-2 form 45-601F1 filed by both Issuer A and Issuer B indicate that the securities they distributed were common shares and units of bundled securities. Therefore, the investments in Issuer A and Issuer B distributed by the Ismail Group were securities for the purposes of the Act.

The Ismail Group was never registered in British Columbia

- [46] The Investigator's Affidavit includes Section 168 certificates in respect of Ismail, NHT and GSB, respectively. Those certificates confirm that none of Ismail, NHT and GSB has ever been registered in any capacity under the Act, and that none of them has ever filed with the Commission a Form B information report under BC Instrument 32-513 *Registration Exemption for Trades in Connection with Certain Prospectus Exempt Distributions*.

Ismail's connection to NHT and GSB

- [47] During the relevant period, Ismail described himself as co-founder and Director of Business Development of NHT, founder and Vice-President, Development of GSB, and business advisor to Issuer B. In such capacity, during the relevant period, he communicated extensively and otherwise acted on behalf of NHT, GSB and Issuer B.

Finder's fee agreement and arrangement between Ismail and Tajkarim Mohamed (Mohamed) with respect to Issuer A

- [48] Mohamed entered into a finder's fee agreement dated January 8, 2018, with Issuer A. In that agreement, Issuer A engaged Mohamed as a finder for the purpose of introducing and sourcing potential investors in Issuer A. This agreement is signed by Mohamed and a director (the Director) of Issuer A.
- [49] In an e-mail from Mohamed to the Director sent on May 16, 2018, Mohamed confirmed that he introduced Ismail to Issuer A and stated that Ismail and he had an agreement that Mohamed would share his 10% commission from Issuer A on a 50:50 basis with Ismail.
- [50] On May 25, 2018, Ismail emailed the Director providing signed subscription forms on behalf of certain investors in Issuer A and requested that funds be wired by Issuer A into an account in the name of NHT. That email included an acknowledgement from Ismail on behalf of himself and NHT of the amounts of finder's fees owed by Issuer A in respect of private placements conducted by Ismail and NHT from January through March 2018, the payments Issuer A had made to date, and the fees that remained to be paid.

Finder's fee agreement between NHT and Issuer B

- [51] NHT entered into a finder's fee agreement with Issuer B dated October 16, 2018. In that agreement, Issuer B engaged NHT as a finder for the purpose of introducing and sourcing potential investors in Issuer B. The agreement is signed by Nguyen and an officer of Issuer B.

Acts in furtherance of trades conducted by the Ismail Group

- [52] Various emails exchanged between Ismail and Issuer A and Issuer B indicate that the Ismail Group:
- a) referred prospective investors to Issuer A and Issuer B;
 - b) facilitated investments by investors in Issuer A and Issuer B and acted as the point of contact between Issuer A and Issuer B and the investors;

- c) organized phone calls with investors to discuss Issuer B investment opportunities;
- d) facilitated execution of subscription agreements by certain investors in Issuer A; and
- e) delivered such investors' subscription agreements along with their subscription payments to Issuer A.

Finder's Fees paid to the Ismail Group

- [53] NHT was listed as a finder on 48 distributions of Issuer A securities that raised approximately \$3.1 million. NHT received \$105,259 in cash and \$162,767 in Issuer B shares for those distributions.
- [54] NHT and GSB were listed as finders on three distributions of Issuer B securities that raised \$190,000. NHT received finder's fees in respect of these distributions in the amount of \$15,200 cash, and each of NHT and GSB received 19,000 Issuer B share purchase warrants.
- [55] In aggregate, the Ismail Group received finder's fees in the amount of \$283,226 cash and shares, and 38,000 share purchase warrants.

The executive director's position on the evidence

- [56] The executive director submits the affidavit evidence establishes that:
 - a) the investments distributed by the Ismail Group on behalf of Issuer A and Issuer B were securities as such term is defined under the Act;
 - b) none of the Ismail Group has ever been registered under the Act, or had applicable exemptions from the registration requirements of the Act;
 - c) the Ismail Group acted under an exclusive finder's fee agreement with Issuer B and a finder's fee sharing arrangement with Mohamed in respect of Issuer A;
 - d) the Ismail Group was "in the business of trading" when it engaged in acts in furtherance of trades that led to the investors investing in securities of Issuer A and Issuer B because it:
 - i) engaged in activities similar to a registrant;
 - ii) referred prospects to Issuer A and Issuer B;
 - iii) facilitated investments and acted as an intermediary between the investors and Issuer A and Issuer B;
 - iv) organized phone calls with investors to discuss the Issuer A and/or Issuer B investment opportunities;
 - v) assisted in completion of subscription agreements;
 - vi) submitted subscription agreements and payments to Issuer A and Issuer B;
 - vii) carried on the finder's activities with repetition, regularity and continuity; and
 - viii) received finder's fee compensation for the services provided;
 - e) the Ismail Group contravened section 34(1)(a) of the Act each time they acted in furtherance of a trade; and
 - f) Ismail is liable for NHT's and GSB's breaches of section 34(1)(a) of the Act by virtue of section 168.2 of the Act.

V. Analysis

Conclusion on whether the prima facie evidence test has been met

- [57] We recognize that this is a preliminary stage and that as the hearing on the merits proceeds in writing, there may be other evidence that contradicts or modifies what we have been shown so far.

[58] That said, we find that the executive director has adduced clear and sufficient evidence of conduct by the Ismail Group which establishes, on a *prima facie* basis, that the Ismail Group conducted unregistered trading in securities of Issuer A and Issuer B for which no exemption from the registration requirement was available.

Is it necessary and in the public interest to extend the Temporary Orders?

[59] We turn next to the other essential elements of the test.

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

...the regulatory context is important when considering temporary orders. A temporary order is a regulatory tool given to the commission.

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

[61] In determining whether it is necessary and in the public interest to extend the Temporary Orders, we considered it to be of prime importance whether there is a significant risk to the public should the Temporary Orders not be extended. We find that there is such a risk. The allegations contained in the NOH, if proved, constitute serious breaches of the Act by the Ismail Group. The executive director asserts, and we agree, that past conduct can demonstrate a risk of future harm to the integrity of the capital markets, and that the seriousness of the alleged misconduct must be a consideration.

[62] We also concur with the arguments of the executive director that:

- a) the risk to the markets may be further increased if Ismail and Nguyen's health significantly improves and they engage in additional unregistered activities; and
- b) it would not be in the public interest if the Ismail Group were allowed to remain in the markets with unresolved allegations of unregistered trading simply because they were granted an adjournment which delayed the possibility of allegations being proven, and orders being made against them.

[63] Necessity in these circumstances arises from uncertainty about when this matter will be resolved. This panel acknowledges that the challenges posed by the respective medical conditions of Ismail and Nguyen have now been validated by qualified medical practitioners and, until recently, created further uncertainty about the path forward. The decision to proceed with the hearing on the merits in writing will allow the matter to move forward under a process that accommodates the personal medical needs of Ismail and Nguyen, but it remains unclear when the matter will ultimately be resolved.

[64] We are not aware of any circumstances that suggest that it is not in the public interest to extend the Temporary Orders. The Temporary Orders are not broader in scope than necessary, the respondents have consented to the extension of the Temporary Orders, and this panel finds it to be in the public interest that the investing public and our capital markets be protected by the Temporary Orders while the written hearing on the merits proceeds.

[65] For the reasons given above, we are satisfied that it was both necessary and in the public interest that the Temporary Orders be extended pursuant to section 161(3) until the hearing is held and a decision is rendered.

March 18, 2025

For the Commission

James Kershaw
Commissioner

Marion Shaw
Commissioner

Karen Keilty
Commissioner