

BRITISH COLUMBIA SECURITIES COMMISSION

Section 171 of the *Securities Act*, RSBC 1996, c. 418

Citation: Re BridgeMark, 2020 BCSECCOM 254

20200710

BridgeMark Financial Corp., Jackson & Company Professional Corp., Anthony Kevin Jackson, Lukor Capital Corp., Justin Edgar Liu, Rockshore Advisors Ltd. (formerly known as Cam Paddock Enterprises Inc.), Cameron Robert Paddock, Simran Singh Gill, JCN Capital Corp., John Rosarino Bevilacqua, Essos Corporate Services Inc., Sway Capital Corp., Von Rowell Torres, David Matthew Schmidt, Detona Capital Corp., Danilen Villanueva, Natasha Jon Emami, Altitude Marketing Corp., Ryan Peter Venier, Platinum Capital Corp., 658111 B.C. Ltd., Jason Christopher Shull, Tryton Financial Corp., Abeir Haddad, Tavistock Capital Corp., Robert John Lawrence, Jarman Capital Inc., Scott Jason Jarman, Northwest Marketing and Management Inc., Aly Babu Husein Mawji, Rufiza Babu Husein Mawji-Esmail, Denise Marie Trainor, Randy White, Escher Invest SA, Hunton Advisory Ltd., Kendl Capital Limited, 1153307 B.C. Ltd., Russell Grant Van Skiver, Bertho Holdings Ltd., Robert William Boswell, Haight-Ashbury Media Consultants Ltd., Ashkan Shahrokhi, Saiya Capital Corporation, Tara Kerry Haddad, Keir Paul MacPherson, Tollstam & Company Chartered Accountants, Albert Kenneth Tollstam, 727 Capital, David Raymond Duggan, Viral Stocks Inc., 10X Capital, Cryptobloc Technologies Corp., New Point Exploration Corp., Green 2 Blue Energy Corp., BLOK Technologies Inc., Kootenay Zinc Corp., Affinor Growers Inc., Liht Cannabis Corp. (formerly known as Marapharm Ventures Inc.), PreveCeutical Medical Inc., and Abattis Bioceuticals Corp.¹

Panel	Audrey T. Ho	Commissioner
	Judith Downes	Commissioner

Submissions completed	May 27, 2020
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Decision date	July 10, 2020
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Counsel

[REDACTED]

For [REDACTED]

Graham R. MacLennan
James K. Torrance

For the Executive Director

[REDACTED]

For [REDACTED]

¹ The original style of cause in this matter included Beleave Inc. and Speakeasy Cannabis Club Ltd. On June 11, 2019 and on May 4, 2020, considering it would not be prejudicial to the public interest, the executive director discontinued the proceedings against Beleave and Speakeasy, respectively. Therefore, the style of cause has been amended to refer only to the remaining respondents.

(with respect to the
Common Issue)

Rulings and Reasons

I. Introduction

- [1] In an application to the Commission on March 9, 2020 (the [REDACTED] Application), [REDACTED] (collectively the [REDACTED] Applicants) applied, under sections 151(6) and 171 of the *Securities Act*, RSBC 1996, c. 418 for orders to revoke (or alternatively, to vary) certain Commission orders freezing their assets (collectively the [REDACTED] Freeze Orders), as follows:
- (a) to revoke in whole or in part, Commission freeze orders [REDACTED] issued with respect to the Applicants' bank accounts and brokerage accounts,
 - (b) to revoke in whole or in part, the written notice previously given by the Commission to the Land Title Office (LTO) for the registration of charges [REDACTED] on certain properties owned by [REDACTED],
 - (c) further or in the alternative, to vary freeze order [REDACTED] with respect to certain brokerage accounts to allow [REDACTED] to either withdraw [REDACTED] of the cash held in those accounts or use [REDACTED] of the cash in those accounts to purchase securities that would remain in the accounts,
 - (d) further or in the alternative, to vary freeze order [REDACTED] insofar as it freezes an account held jointly by [REDACTED] with a third party, and
 - (e) such further and other relief the panel considers proper or not to be prejudicial to the public interest.
- [2] In three separate applications to the Commission made on April 16, 2020 and April 24, 2020 respectively (collectively the [REDACTED] Applications), [REDACTED] (collectively the [REDACTED] Applicants) applied, under sections 151(6) and 171 of the *Securities Act*, RSBC 1996, c. 418 for orders to revoke (or alternatively, to vary) eight Commission orders freezing assets in certain bank accounts, brokerage accounts and a piece of real property (collectively the [REDACTED] Freeze Orders).
- [3] The executive director opposed all the applications and asked that they be dismissed in their entirety.
- [4] The [REDACTED] Application was heard entirely in writing. The [REDACTED] Applicants made written submissions and filed one affidavit. The executive director made written submissions and relied on two affidavits of a staff investigator and a settlement agreement entered into

between the executive director and Beleave Inc. [2019] BCSECCOM 208.

- [5] The [REDACTED] Applicants relied entirely on the submissions of the [REDACTED] Applicants with respect to a common legal issue (see below). The remainder of the [REDACTED] Applications (i.e. on grounds other than the common legal issue) will be dealt with in separate proceedings and are not addressed in these rulings and reasons.

II. Preliminary matters

Joint hearing on the Common Issue

- [6] One of the legal arguments advanced by the [REDACTED] Applicants for revoking the freeze orders in their entirety (referred to below as the “Common Issue”) was also advanced by the [REDACTED] Applicants. The [REDACTED] Applicants relied entirely on the submissions of the [REDACTED] Applicants with respect to the Common Issue. Accordingly, the panel ordered a joint hearing (in writing) on the Common Issue in both the [REDACTED] Application and the [REDACTED] Applications.

- [7] These are our rulings and reasons on the Common Issue with respect to the [REDACTED] Application and the [REDACTED] Applications, and on the remainder of the [REDACTED] Application.

In camera application

- [8] The [REDACTED] Applicants and the executive director applied to have the [REDACTED] Application (including the portion relating to the Common Issue) be dealt with *in camera*. The executive director also applied to limit distribution of the materials filed in the [REDACTED] Application to the [REDACTED] Applicants, the executive director and the Commission Hearing Office.
- [9] The submissions and materials filed by the [REDACTED] Applicants and the executive director for the purpose of this s. 171 application (collectively, the application materials) mostly consisted of personal or sensitive financial information relating to the [REDACTED] Applicants or other persons, and focused on the factual issues specific to the [REDACTED] Applicants raised in this application and the [REDACTED] Freeze Orders. Any distribution of that material beyond the [REDACTED] Applicants, the executive director and the hearing panel, would have necessitated redaction of much of the documents.
- [10] With that in mind, and given that any orders we may grant to revoke or vary the [REDACTED] Freeze Orders are specific to the [REDACTED] Applicants and that freeze order proceedings are not typically public in the same way that temporary order proceedings are typically public processes, we ordered that the entire [REDACTED] Application (including the portion relating to the Common Issue) proceed *in camera*.
- [11] The result of our order is that the [REDACTED] Applicants and the executive director were not required to circulate their application materials beyond themselves and the Commission Hearing Office, for the purpose of this section 171 application. To be clear, our order does not preclude the same materials eventually being disclosed to all parties in these proceedings where appropriate.

[12] We further ordered, at the request of the [REDACTED] Applicants and with the consent of the [REDACTED] Applicants and the executive director, that they deliver to the [REDACTED] Applicants their respective application materials in the [REDACTED] Application (redacted as they deem necessary), for the purpose of enabling the [REDACTED] Applicants to participate jointly in the proceeding on the Common Issue.

[13] The other respondents were given notice of our *in camera* order and advised that they may make a request to the panel if they seek access to the application materials. No application has been made to date.

III. Background

[14] On September 14, 2018, Commission staff obtained an investigation order, under section 142 of the Act, against 42 subjects named in the order including [REDACTED]. That investigation order was amended on January 4, 2019 to add 40 new subjects to the investigation (including [REDACTED]) and to broaden the time period of the investigation.

[15] On November 26, 2018, the executive director issued temporary orders and a notice of hearing (2018 BCSECCOM 369) against 62 respondents including the [REDACTED] Applicants and the [REDACTED] Applicants (collectively, the Joint Applicants).

[16] In the notice of hearing (NOH), the executive director alleged that the non-issuer respondents named in the NOH (including the Joint Applicants) had engaged in conduct that is abusive to the capital markets, and that the issuer respondents named in the NOH illegally distributed securities in violation of section 61 of the Act. There is no allegation that the Joint Applicants or any other non-issuer respondent breached any specific provision of the Act.

[17] The temporary orders have since been varied and extended by the Commission on multiple occasions. [REDACTED]

Freeze orders and LTO charges

[18] Between September 2018 and February 2019, the executive director applied for and the Commission issued a large number of freeze orders with respect to bank accounts and brokerage accounts of various respondents including the Joint Applicants. The Commission also registered charges in the LTO against properties of various respondents including some of the Joint Applicants.

[19] As at December 11, 2019, the Commission had released more than 50% of these frozen assets. None of the frozen assets of the Joint Applicants were released.

- [20] With respect to the [REDACTED] Applicants, on February 15, 2019, the Commission issued the freeze orders listed in paragraphs 1 above with respect to multiple brokerage accounts and bank accounts of the [REDACTED] Applicants, and registered the LTO charges listed in paragraph 1 above against properties owned by [REDACTED]. One of the frozen bank accounts is a joint account held by [REDACTED] together with another individual who is neither named as a subject of the investigation nor as a respondent in the NOH.
- [21] On January 23, 2019, [REDACTED] applied to the executive director for a variation to the [REDACTED] Freeze Orders to allow [REDACTED] to either withdraw [REDACTED] of the cash held in certain brokerage accounts or use [REDACTED] of the cash held in those accounts to purchase securities that would remain in the accounts. [REDACTED] also asked the executive director to specify an alternative amount if the executive director viewed the withdrawal or investment of [REDACTED] to be prejudicial to the public interest.
- [22] The executive director declined [REDACTED] request, and stated that the [REDACTED] Freeze Orders are in place to maintain the status quo, and it would not be in the public interest to vary them to permit any amount of the funds to be withdrawn or used to purchase securities that would remain in the frozen accounts.
- [23] Similarly, [REDACTED] applied to the executive director for certain variations to the [REDACTED] Freeze Orders. The executive director also declined their requests.

IV. The law

Section 151 of the Act

- [24] All of the freeze orders in question were issued under section 151 of the Act, which was recently repealed.
- [25] At the time the [REDACTED] Freeze Orders and the [REDACTED] Freeze Orders were issued, section 151 of the Act stated, in part,
- (1) The commission may make a direction under subsection (2) if
- (a) it proposes to order an investigation in respect of a person under section 142 or during or after an investigation in respect of a person under section 142 or 147,
 - (b) it or the executive director proposes to make or has made an order under section 161 in respect of a person,
 - (c) criminal proceedings or proceedings in respect of a contravention of this Act or the regulations are about to be or have been instituted against a person and the commission considers the proceedings to be connected with or to arise out of a security or exchange contract or a matter relating to trading in securities or exchange contracts, or out of any business conducted by the person,

- (d) a person fails or neglects to comply with financial conditions applicable to the person under this Act, or
 - (e) it proposes to apply or has applied to the Supreme Court for an order under section 157, or the Supreme Court has made an order under section 157.
- (2) In the circumstances described in subsection (1), the commission may direct, in writing,
- (a) a person having on deposit, under control or for safekeeping any funds, securities, exchange contracts or other property of the person referred to in subsection (1), to hold those funds, securities, exchange contracts or other property, and
 - (b) a person referred to in subsection (1)
 - (i) to refrain from withdrawing any funds, securities, exchange contracts or other property from any person having them on deposit, under control or for safekeeping, or
 - (ii) to hold all funds, securities, exchange contracts or other property of clients or others in the person's possession or control in trust for an interim receiver, custodian, trustee, receiver manager, receiver or liquidator appointed under the *Bankruptcy Act* (Canada), the *Company Act*, the *Business Corporations Act*, the *Law and Equity Act*, the *Personal Property Security Act*, the *Winding-up Act* (Canada), the *Supreme Court Act* or this Act.
- (5) In any of the circumstances referred to in subsection (1), the commission may, in writing, notify a land title office ... that proceedings are being or are about to be taken that may affect land ... belonging to the affected person.
- (6) The commission may, in writing, revoke or modify a notice given under subsection (5) and, if a notice is revoked or modified, the commission must send a copy of the written revocation or modification to the land title office ...
- (7) A notice sent under subsection (5) or a copy of a written revocation or modification under subsection (6) must be registered or recorded against the lands ... mentioned in it and has the same effect as the registration or recording of a certificate of pending litigation or a caveat.

[26] Significant amendments to the Act came into force on March 27, 2020. Section 151 of the Act was repealed on that date and the Commission's freeze order powers under that section were replaced by new and broader preservation order powers under sections 164.04 to 164.08 of the Act.

[27] The executive director made his submissions and the [REDACTED] Applicants made their reply submissions after the 2020 Act amendments came into force. None of the parties referenced these amendments in those submissions. As explained below, we do not find these amendments relevant to our analysis.

Section 171 of the Act

- [28] Section 171 of the Act sets out that the Commission may revoke or vary, in whole or in part, a decision that the Commission has made when it considers that to do so would not be prejudicial to the public interest.
- [29] Commission Policy 15-601 Hearings and Commission decisions on section 171 applications make clear that an applicant under section 171 must establish that they have new and compelling evidence, or that there has been a significant change in circumstances since the decision, or that for some other reason it would not be prejudicial to the public interest for the Commission to revoke or vary a previous decision. See: *Re Oei*, 2019 BCSECCOM 255.

Case law

- [30] The purpose and application of the Commission’s freeze order power under the Act was considered extensively by the Commission in *Amswiss Scientific Inc.* [1992], COR #92/026. After finding that the purpose of the Act is to “regulate trading in securities and protect the public interest”, the Commission went on to review the purpose of the freeze order provision in the Act then in place (section 135), which was in all material respects the same as section 151 under which the [REDACTED] Freeze Orders and the [REDACTED] Freeze Orders were issued, and concluded as follows (at pp. 21-22):

In our view, the purpose of section 135(1) is to preserve property for persons who may have common law or statutory claims to or interest in it, for example by way of rescission or damages under Part 14 of the Act.

The discretion accorded to the Commission to invoke this power to freeze is limited by the purpose of the Act, and specifically by the conditions outlined in section 135(1)(a) to (e). Although there is no specific reference to the public interest in section 135, in our view, the Commission may only exercise the powers under this section where it considers that there is some connection to trading in securities and that an order is in the public interest.

...

The immediate effect of a freeze order is to maintain the status quo, ensuring that the frozen property is not dissipated or destroyed before the Commission is in a position to determine what, if any, further steps or orders in the public interest should be made under the Act.

...

Like a section 144(2) temporary cease trade order or a section 73 halt order, a freeze order enables the Commission to respond immediately to information that, in its opinion, warrants regulatory intervention to prevent or minimize prejudice to the public interest. Often, it is necessary to take these steps before any investigation is commenced or concluded. The ability of the Commission to act in this fashion is necessary to instil and maintain public confidence in the integrity of the capital markets.

[31] The Commission went on to say, at pp. 34-35:

Considering the paramountcy of the public interest in securities regulation, we conclude on balance that the legitimate expectations of the public [i.e. for the Commission to have and use its discretionary powers to protect the public interest] are more compelling than any expectation of undisturbed possession of property which the Respondents may have had.

[32] The Commission's view of the purpose of the freeze order provision as stated in *Amswiss* was quoted with approval by the British Columbia Court of Appeal in *Exchange Bank & Trust*, 2000 BCCA 389.

[33] The courts recognize that freeze orders are often made at a very early stage of an investigation. They are not determinative of the facts in issue; they are made to preserve property until the facts can be established, either through investigation or through a hearing before the Commission. See: *Exchange Bank and Trust*, 2000 BCCA 389 (para 12).

[34] Where a freeze order is imposed to preserve property at an early stage of an investigation, the Commission expects staff to review the status of the order on the basis of the emerging evidence as the investigation unfolds and, if appropriate, to apply to have the order varied or revoked. See: *H & R Enterprises Inc. (Re)*, [1997] 41 BCSCWS 18 (at p. 5).

The Common Issue and position of the Joint Applicants

[35] The Joint Applicants submitted that it is not prejudicial to the public interest to revoke freeze orders issued in relation to allegations that do not involve a contravention of the Act (the Common Issue).

[36] The legal basis for this argument is as follows.

- 1) The Joint Applicants are under investigation for conduct abusive to the capital markets. If the allegations in the NOH are proven to be true, the Commission has no authority to issue any monetary orders against the Joint Applicants, other than an order to pay for the cost of the investigation pursuant to section 150 of the Act.
- 2) There is no allegation or evidence that the Joint Applicants had breached any specific provision of the Act entitling the Commission to issue monetary orders against the Joint Applicants, and the executive director has not asserted that he is pursuing any such allegations against the Joint Applicants.
- 3) There is no evidence of breaches of any specific provision of the Act that may give rise to civil liability against the Joint Applicants.
- 4) Finally, the executive director has not asserted that he is preserving assets due to a

criminal proceeding or other proceedings where the Joint Applicants are alleged to have engaged in a contravention of the Act.

- 5) The purpose of a freeze order is to preserve property for persons who may have common law or statutory claims to or interests in it under the Act, but no such claims or interests are possible where there is no allegation or evidence of a breach of any specific provision of the Act.
- 6) Therefore, there is no purpose to freeze orders issued in such circumstances and it is not prejudicial to the public interest to revoke them.

Position of the [REDACTED] Applicants on other grounds

[37] First, the [REDACTED] Applicants submitted that there have been significant changes in circumstances since the issuance of the [REDACTED] Freeze Orders:

- 1) The investigation is no longer in its early stages. After more than 17 months since the issuance of the investigation order, it is reasonable to conclude from the fact that the executive director has not amended the NOH to include allegations of specific breaches of the Act by the [REDACTED] Applicants, that the executive director continues to investigate the [REDACTED] Applicants in relation to “conduct that is abusive to the capital markets.”
- 2) The Commission has released more than half of the assets initially frozen. It is difficult to reconcile that during an ongoing investigation except and unless the nature of the allegations no longer requires the preservation of property for the purposes of issuing monetary sanctions against the respondents, or other recovery under common law or statutory claims.

[38] Second, the [REDACTED] Applicants said that the executive director’s position with regard to their variation request was arbitrary and unreasonable. The executive director did not give any reason as to why their assets need to be preserved. There is no reasonable basis for the executive director’s determination that the status quo must be maintained with respect to their assets but not any of the other respondents’ assets that were released.

[39] Third, with respect to the joint account, the [REDACTED] Applicants argued that there is no basis on which the Commission could freeze the assets of a person not subject to (or contemplated to be subject to) an investigation order made in this proceeding.

Position of the executive director on the Common Issue

[40] On the Common Issue, the executive director argued that it is irrelevant that the NOH does not allege any specific breach of the Act by the Joint Applicants. He pointed to the fact that freeze orders can be issued in the absence of any allegations against the investigation subjects (i.e. when a freeze order is issued in the absence of a notice of hearing). The executive director argued that an investigation that proceeded with a notice of hearing should not be in a worse position than an investigation without a notice of

hearing. (Prior to the 2020 Act amendments, the executive director must issue a notice of hearing if he wished to issue temporary orders against investigation subjects).

- [41] He also argued that as the investigation is ongoing, the NOH could be amended later to include allegations of specific breaches of the Act against the Joint Applicants.

Position of the executive director on the remainder of the [REDACTED] Application

- [42] With respect to the fact that the Commission had released some of the frozen assets of other respondents, the executive director argued that is irrelevant as we have to consider if it would be prejudicial to the public interest to revoke or vary the [REDACTED] Freeze Orders with respect to the [REDACTED] Applicants.

- [43] The executive director submitted extensive evidence to show that [REDACTED] was a major actor in the “cash swap” transactions that we had found to *prima facie* raise significant public concerns. He asserted that it would be prejudicial to the public interest to revoke or vary the [REDACTED] Freeze Orders in any way. That prejudice would flow from the fact that [REDACTED] is demonstrably dangerous to our capital markets.

- [44] Lastly, the executive director argued that the fact that a property is jointly held with a third party does not invalidate an otherwise valid freeze order.

V. Analysis

- [45] The applicable test in a section 171 application is whether it would be prejudicial to the public interest to revoke or vary the freeze orders in question.

- [46] The applicants bear the burden of proof.

The Common Issue

- [47] Regarding the principles of statutory interpretation, the Commission, in *Re Wong*, 2016 BCSECCOM 208 (para 219), cited the following passage from *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54 (para 10):

It has been long established as a matter of statutory interpretation that “the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament”: see 65302 British Columbia Ltd. v. Canada, 1999 CanLII 639 (SCC), [1999] 3 S.C.R. 804, at para. 50. The interpretation of a statutory provision must be made according to a textual, contextual and purposive analysis to find a meaning that is harmonious with the Act as a whole. When the words of a provision are precise and unequivocal, the ordinary meaning of the words play a dominant role in the interpretive process. On the other hand, where the words can support more than one reasonable meaning, the ordinary meaning of the words plays a lesser role. The relative effects of ordinary meaning, context and purpose on the interpretive process may vary, but in all cases the court must seek to read the provisions of an Act as a harmonious whole.

- [48] Section 151, in subsections (a) to (e), clearly set out distinct circumstances under which a freeze order could be granted. The words in the section are precise and unequivocal such that their ordinary meaning should play a dominant role in the interpretive process. The provision specifically states that an order under section 151 may be made under subsection (1)(a) “during...an investigation,” or under subsection (1)(c) where “proceedings in respect of a contravention of this Act or the regulations are about to be or have been instituted against a person”. Section 151 does not stipulate that a freeze order may be issued or maintained only in circumstances where a breach of a specific provision of the Act was being investigated, alleged or contemplated to be investigated or alleged. That is not surprising given that freeze orders are often issued before or at the start of an investigation when the nature of the suspected misconduct (and the allegations that may arise from the investigation) is unclear.
- [49] What the Joint Applicants seek to do in their submissions is to import the necessary requirement of a “contravention of the Act” to support an order made under subsection 151(1)(c) into a similarly necessary requirement to sustain an order made under subsection 151(1)(a). Based on the principles of statutory interpretation, it is clear that the legislature did not deem this necessary. Instead, the legislature has identified different criteria for issuing orders under the various subsections of section 151(1). We find that a plain reading of section 151 does not support the submissions of the Joint Applicants.
- [50] However, while the discretion in section 151 is necessarily broad and flexible, we are of the view that the power should only be exercised in keeping with its purpose, consistent with a contextual and purposive approach to find meaning that is harmonious with the objectives of the Act.
- [51] As stated in *Amswiss*, the purpose of a freeze order under section 151 is to preserve property for persons who may have common law or statutory claims to or interests in it under the Act. We agree with the Joint Applicants that in assessing whether it would be prejudicial to the public interest to revoke or vary a freeze order issued under that section, we need to keep that purpose in mind.
- [52] That means that, if and when we can be certain that there are no persons who may have common law or statutory claims to or interests in the assets preserved under the Act, a freeze order under section 151 would no longer serve its intended purpose. At that point in time, we expect that generally, subject always to the particular circumstances of each case, it would not be prejudicial to the public interest to revoke a freeze order. The determination that a Commission panel must make is when that point in time has been reached, and one of the key considerations would be the status of the underlying investigation. Given that the facts may not be established until the conclusion of the investigation, and given that the investigation may continue even after a notice of hearing is issued, in some cases that point in time may not be reached until after the notice of hearing is issued.

- [53] In this analysis, we have considered the purpose of section 151 (even though it has been repealed) because the █████ Freeze Orders and █████ Freeze Orders were issued under that section.
- [54] Specifically dealing with the applications before us, it is clear from the proceedings that we are far from the point in time when the facts are established. The investigation remains ongoing. The evidence gathered by the executive director since the initial investigation order in September 2018 has been extensive and shows significant progress in the investigation, as demonstrated by the materials filed in these applications. Although it has been more than 17 months since the issuance of that investigation order, that is not surprising given that the matters under investigation are complex, undoubtedly made more so by the number of subjects involved. There is no indication that the executive director is not pursuing the investigation diligently.
- [55] The fact that other freeze orders in these proceedings have been varied or revoked to release a substantial portion of frozen assets belonging to other respondents (albeit not the Joint Applicants) demonstrates that the executive director is complying with our expectation that he reviews the status of freeze orders as the investigation unfolds, and to apply to revoke or vary them when it is appropriate to do so.
- [56] The courts recognize that freeze orders are necessary to preserve property until the facts can be established, either through investigation or through a hearing before the Commission. This investigation has not concluded and the facts have not been established. As the executive director stated, as the investigation progresses, he could amend the NOH to include allegations of specific breaches of the Act by some or all of the Joint Applicants.
- [57] At this stage of the investigation, the executive director is not required to disclose to the Joint Applicants potential amendments to the NOH, nor the executive director's considerations regarding possible further allegations he may make under the Act based on the evidence he has gathered to date. Accordingly, it is not reasonable to conclude, as the Joint Applicants suggested, that the absence of such allegations must mean that the executive director is continuing to investigate the Joint Applicants only in relation to conduct contrary to the public interest.
- [58] In the context of an active and ongoing investigation, it is premature to make a determination that this investigation will not give rise to claims on the Joint Applicants' frozen assets that are not apparent at this time. In summary, we find that these proceedings are not at a point when we can be certain that there are no persons who may have common law or statutory claims to or interests in the Joint Applicants' frozen assets under the Act.
- [59] It is well recognized that the ability to preserve assets subject to a freeze order can be lost in an instant if the order is lifted. See: *Zhu v. British Columbia (Securities Commission)*,

2013 BCCA 248, para. 61. It is also well recognized that assets subject to a freeze order are not confiscated or seized but rather are preserved in the public interest pending the outcome of the executive director's investigation or subsequent revocation or variance. See: *Re application to revoke certain orders*, 2019 BCSECCOM 454 (para 29).

[60] Considering the paramountcy of the public interest in securities regulation, the continued preservation of assets in the public interest is more compelling than the continued impact of the freeze orders in question on the Joint Applicants.

[61] Accordingly, we dismiss the applications to revoke the [REDACTED] Freeze Orders and the [REDACTED] Freeze Orders at this time on the basis of the legal arguments posed by the Common Issue.

Other basis for revoking the [REDACTED] Freeze Orders

[62] The fact that the Commission has revoked or varied freeze orders with respect to other respondents is not relevant to our deliberations here. Our task is to assess whether it is prejudicial to the public interest to revoke or vary freeze orders with respect to each specific [REDACTED] Applicant in this application based on the evidence before us pertaining to that [REDACTED] Applicant. That is what we have done.

[63] In that regard, we are satisfied, from the evidence before us, that there is *prima facie* evidence that the [REDACTED] Applicants were significant participants in, [REDACTED] the “cash swap” transactions that we had found (in the temporary order extension decisions) to *prima facie* raise significant public interest concerns.

[64] The [REDACTED] Applicants did not submit any evidence of prejudice caused by the [REDACTED] Freeze Orders.

[65] With respect to the [REDACTED] Freeze Order against the joint bank account, we agree with the executive director that an otherwise valid freeze order is not invalidated because another person has an ownership interest in the frozen asset. To hold otherwise would make it easy to frustrate section 151 by adding the name of a nominee owner to the frozen assets. Furthermore, there is no evidence before us with respect to the circumstances of the other owner of the joint bank account nor the impact of the [REDACTED] Freeze Order on him.

[66] We find that there is no new and compelling evidence or evidence of any significant change in circumstances that would warrant revoking the [REDACTED] Freeze Orders.

[67] For the above reasons, we find that it would be prejudicial to the public interest to revoke the [REDACTED] Freeze Orders in their entirety.

Request to vary the [REDACTED] Freeze Orders

[68] The [REDACTED] Applicants relied on the same arguments asserted above for their application to vary the [REDACTED] Freeze Orders.

[69] For the reasons stated above, we find there is no persuasive reason why it would not be contrary to the public interest to reduce the frozen assets by [REDACTED]

[70] With respect to [REDACTED] request to use [REDACTED] of the frozen funds to buy securities that would remain in the frozen accounts, we need look no further than current events in the capital markets to appreciate that the [REDACTED] may be easily dissipated through fluctuations in the value of any purchased securities. We find that it would also be contrary to the public interest to permit the [REDACTED] cash to be invested in securities.

VI. Conclusions and Rulings

[71] We have declined to revoke the [REDACTED] Freeze Orders and the [REDACTED] Freeze Orders at this time, on the basis of the legal arguments posed by the Common Issue.

[72] We have found that it would be prejudicial to the public interest at this time to revoke or vary the [REDACTED] Freeze Orders, as requested by the [REDACTED] Applicants.

[73] We dismiss the [REDACTED] Application in its entirety. We dismiss the [REDACTED] Applications only with respect to the Common Issue.

July 10, 2020

For the Commission

Audrey T. Ho
Commissioner

Judith Downes
Commissioner