

IN THE MATTER OF THE *SECURITIES ACT*, R.S.O. 1990, c. S.5

- and -

IN THE MATTER OF
MAJD KITMITTO, STEVEN VANNATTA, CHRISTOPHER CANDUSSO, CLAUDIO
CANDUSSO, DONALD ALEXANDER (SANDY) GOSS, JOHN FIELDING AND
FRANK FAKHRY

MOTION
OF THE RESPONDENT DONALD ALEXANDER (SANDY) GOSS

For an Order Striking Out Certain Paragraphs of the Affidavits Served by Staff
and for a Direction under Rule 28

A. ORDER SOUGHT

The Moving Party, the Respondent Donald Alexander (Sandy) Goss, requests with notice that this Commission make the following Order:

1. striking out those parts of the Affidavit of Christine George sworn September 11, 2020 (the "George Affidavit") as indicated in the redacted George Affidavit included in the Motion Record;
2. striking out those parts of the Affidavit of Anne Paiement sworn September 11, 2020 (the "Paiement Affidavit") as indicated in the redacted Paiement Affidavit included in the Motion Record;
3. directing that Staff may not otherwise tender as part of its case in chief the compelled testimony given by a Respondent who does not face an allegation of misleading Staff, without prejudice to Staff's ability to seek to tender the compelled

testimony of any Respondent who decides at the conclusion of Staff's case not to testify; and

4. such further and other relief as Goss may advise and this Commission may permit.

B. GROUNDS

The grounds for this motion are:

1. this Commission issued a Notice of Hearing pursuant to section 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, in connection with a Statement of Allegations dated November 23, 2018;
2. on September 11, 2020, Staff served the George Affidavit and the Paiement Affidavit;
3. certain paragraphs of the George Affidavit and the Paiement Affidavit tender compelled testimony of Goss, as well as the other Respondents, given at their respective compelled interviews by Staff;
4. absent an allegation that a Respondent has misled Staff, that Respondent's compelled testimony ought not to be tendered by Staff as part of its case in chief;
5. there is no allegation in the Statement of Allegations that Goss or certain of the other Respondents misled Staff;
6. as such, the only appropriate uses by Staff of the compelled testimony of Goss and those other Respondents are:
 - a. if the Respondent testifies at the hearing, to impeach that Respondent on cross-examination; or

- b. if the Respondent does not testify, to tender that testimony as against that Respondent at the conclusion of its case, if permitted to do so by the Panel;
7. Goss and those other Respondents are entitled to consider all of the evidence advanced by Staff before deciding whether they will testify at the hearing;
8. if Staff is permitted to rely on the compelled testimony of Goss and those other Respondents as part of its case in chief, Goss and those other Respondents will effectively be deprived of that decision, which would prejudice the fairness of the hearing in this proceeding;
9. accordingly, the impugned paragraphs contained in the George Affidavit and the Paiement Affidavit must be struck out and Staff must not otherwise be permitted to tender the compelled testimony given by Goss or the other Respondents who do not face an allegation of misleading Staff;
10. however, the Order sought on this motion ought to be without prejudice to Staff's ability to seek to tender the compelled testimony of any Respondent who decides at the conclusion of Staff's case not to testify;
11. rule 28 of the *Ontario Securities Commission Rules of Procedure and Forms*; and
12. such further and other grounds as Goss may advise and this Commission may permit.

C. EVIDENCE

Goss intends to rely on the following evidence for this motion:

1. the George Affidavit and the Paiement Affidavit, both redacted to remove the impugned paragraphs; and

2. such further and other evidence as Goss may advise and this Commission may permit.

DATED this 21st day of September, 2020.

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MOTION

THE RESPONDENT DONALD ALEXANDER (SANDY) GOSS

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