



Ontario  
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Commission

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Citation: Threegold Resources Inc. (Re), 2021 ONSEC 15  
Date: 2021-05-27  
File No. 2019-42

**IN THE MATTER OF  
THREEGOLD RESOURCES INC.,  
VICTOR GONCALVES and JON SNELSON**

**REASONS FOR DECISION**

**Hearing:** In Writing

**Decision:** May 27, 2021

**Panel:** M. Cecilia Williams Commissioner and Chair of the Panel

**Submissions received from:** Alexandra Mathushenko For Staff of the Commission

No one appearing on behalf of  
Threegold Resources Inc.

## REASONS FOR DECISION

### I. OVERVIEW

- [1] Staff of the Commission (**Staff**) brought a motion on February 3, 2021 seeking the following orders:
- a. waiving service of the Notice of Hearing, Statement of Allegations, and all future process on the respondent Threegold Resources Inc. (**Threegold**) and proceeding with an enforcement action against Threegold in Threegold's absence under Rules 6(4) and 21(3) of the *Ontario Securities Commission Rules of Procedure and Forms* (**Rules**)<sup>1</sup>;
  - b. relieving Staff of its Rule 27(1) disclosure obligations in respect of Threegold under Rule 3;
  - c. combining the merits and sanctions hearing against Threegold under Rule 3 and Rule 35(1);
  - d. that the enforcement proceeding against Threegold be conducted as a written hearing in accordance with Rule 23(3);
  - e. that this motion be heard in writing in accordance with Rule 23(3);
  - f. that this motion be heard without notice to Threegold in accordance with Rule 28(5)(a); and
  - g. an order extending the timelines for delivery of materials in accordance with Rule 3, Rule 4(2) and Rule 28(4), if required.
- [2] In support of its motion, Staff submitted an affidavit from Sherry Brown, sworn February 22, 2021.<sup>2</sup> At the request of the Panel, Staff also submitted redacted affidavits from the individual respondents Jon Snelson (**Snelson**), sworn July 16, 2020,<sup>3</sup> and Victor Goncalves (**Goncalves**), sworn August 20, 2020.<sup>4</sup> The Snelson and Goncalves affidavits were redacted so that they only provided evidence that is relevant to the issues to be decided on this motion. Staff has entered into a settlement agreement with the individual respondents, Goncalves and Snelson, which was approved by order of the Commission dated February 8, 2021.
- [3] I issued an order on March 15, 2021, granting most of the relief sought by Staff, with reasons to follow. The relief requested in paragraph 1.g above was not required in these circumstances. I also did not order that the merits and sanctions hearing proceed in the absence of Threegold, as that is an issue for the panel hearing the merits and sanctions hearing to determine. These are my reasons.
- [4] The issues I need to decide on this motion are:
- a. have Staff exhausted all reasonable efforts to serve Threegold;
  - b. may a combined merits and sanctions hearing be held absent the consent of the parties; and

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<sup>1</sup> (2019) 42 OSCB 9714

<sup>2</sup> Exhibit 1, Affidavit of Sherry Brown, sworn February 22, 2021

<sup>3</sup> Exhibit 2, Redacted Affidavit of Jon Snelson, sworn July 16, 2020

<sup>4</sup> Exhibit 3, Redacted Affidavit of Victor Goncalves, sworn August 20, 2020

- c. have Staff established a “good reason” for the enforcement proceeding to be conducted in writing.

## II. ANALYSIS

### A. Order waiving service

- [5] Staff submits that they have exhausted all reasonable efforts to identify a Threegold representative or an operative Threegold business address. Staff submits that I should therefore exercise my discretion under the Rules to waive service of the Notice of Hearing, Statement of Allegations and all future process on Threegold, dispense with Staff’s Rule 27 disclosure obligations and continue the enforcement proceedings in Threegold’s absence.
- [6] Staff provided affidavit evidence of their efforts to locate and serve Threegold. Those efforts included: following the leads from corporate documentation and information obtained from former directors and officers, retaining a Quebec process server to attend in person at Threegold’s registered corporate address, trying to identify a general corporate contact number and email address and attempting to contact Threegold by email. Staff emailed its Enforcement Notice to Threegold’s last known address and have received no response.
- [7] Staff’s efforts suggest that:
- at present there are no officers, directors or anyone else conducting any business on behalf of Threegold;
  - there have been no directors of Threegold since June 2018, when the last two directors, Snelson and Bruno Crescenzi, resigned;
  - Threegold is not conducting any business activities;
  - Threegold has no operational business address;
  - Threegold’s registered corporate address is neither a domicile nor a registered office or place of business;
  - Threegold was delisted from the NEX Exchange on April 1, 2020;
  - No liquidation or dissolution of Threegold has been initiated; and
  - Threegold has not filed for bankruptcy.
- [8] Staff submits that they have exhausted all reasonable efforts to serve Threegold and there is no identifiable “officer, director, agent or business partner” of Threegold for service purposes and that to continue to send material to Threegold’s address would be futile and raise security concerns in relation to sensitive or confidential documents.
- [9] The Commission is required to give “reasonable notice” to parties to a proceeding,<sup>5</sup> but may proceed in the absence of a party who has been given notice.<sup>6</sup>
- [10] The Rules provide that the Commission may waive any of its Rules, as it considers appropriate to further the objective of ensuring that proceedings are

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<sup>5</sup> *Statutory Powers Procedure Act*, RSO 1990, c. S.22 (**SPPA**), s 6(1)

<sup>6</sup> SPPA s 7(1)

conducted in a just, expeditious and cost effective manner.<sup>7</sup> Moreover, the Rules provide that a panel may waive service.<sup>8</sup>

[11] The Commission has waived service when satisfied that all reasonable efforts to make service have been made.<sup>9</sup>

[12] I find that Staff has exhausted all reasonable efforts to identify a Threegold representative or an operative business address. Therefore, the requirement to serve notice of this motion, the Notice of Hearing, Statement of Allegations, and all future process on Threegold is waived and the enforcement proceeding may proceed in Threegold's absence.

[13] Given my decision to waive service, requiring Staff to meet its disclosure obligation to Threegold under Rule 27(1) would serve no practical purposes and would be a waste of Staff resources. I also find that attempting to deliver confidential disclosure materials to Threegold's former business address may raise security concerns. Therefore, Staff is relieved of its Rule 27(1) disclosure obligations in this matter.

**B. Order combining the merits and sanctions hearings and conducting the hearing in writing**

[14] Staff submits that it is in the public interest for the Commission to consider the allegations against Threegold and decide on the merits and sanctions, if any, in a combined written hearing. In support of this proposition Staff submits that Threegold continues to exist as a public company and could be reactivated and the cease trade order against Threegold could be lifted were Threegold to file its outstanding continuous disclosure.

[15] I agree that it is in the public interest to ensure that the allegations against Threegold are considered to protect the capital markets in the event that Threegold be reactivated without the serious allegations against the company having been considered and addressed, as the panel hearing those allegations considers appropriate.

[16] Staff submits that it would be in the public interest to hold the Threegold enforcement hearing in writing and combining the merits and sanctions hearing because:

- there is no identifiable person to represent Threegold or advise counsel and no realistic prospect of Threegold participating in the proceeding;
- the matter involves no novel securities law issues; and
- staff expects to tender all evidence in the proceeding by affidavits.

[17] Given these factors, Staff submits, an oral hearing would needlessly consume Commission resources, as would conducting separate merits and sanctions hearings.

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<sup>7</sup> Rules, r 3

<sup>8</sup> Rules, r 6(4)

<sup>9</sup> *Lehman Brothers & Associates Corporation et al* (2011), 34 OSCB 12717, paras 26-30, 34; *New Futures Trading International Corporation et al* (2013), 36 OSCB 3925 (***New Futures Trading International Corporation et al***) paras 11-14

- [18] In addition, Staff submits Threegold's non-participation also constitutes a "good reason" to conduct the hearing in writing.
- [19] I deal first with Staff's request for a combined merits and sanctions hearing.
- [20] Commission Rules provide that if a panel makes a finding in an enforcement proceeding that provides a basis for sanctions and costs, a separate hearing will be held to consider costs and sanctions, unless the parties agree that all issues may be decided in one hearing.<sup>10</sup>
- [21] Staff submits that the Commission may hold a combined merits and sanctions hearing absent the parties' consent by virtue of its ability to waive any of its rules in order to ensure a proceeding is conducted in a just, expeditious and cost-effective manner.<sup>11</sup>
- [22] In this instance, there is no identifiable individual to represent Threegold nor to advise counsel and no realistic prospect of Threegold participating in the hearing. There is, therefore, no means of obtaining Threegold's consent to a combined hearing.
- [23] Holding two separate hearings in the circumstances would needlessly waste Commission resources.
- [24] It is appropriate, in the interest of ensuring a just, expeditious and cost-effective enforcement proceeding, to waive the requirement for a separate sanctions hearing under Rule 35(1) and to hold a combined merits and sanctions hearing.
- [25] I turn now to whether the combined hearing should be conducted in writing.
- [26] The Commission may order a hearing be conducted in writing if there is "good reason" to do so.<sup>12</sup>
- [27] Staff submits that there is "good reason" to hold the hearing in writing for the reasons outlined in paragraph 24 above and because an oral hearing would needlessly consume Commission resources.
- [28] *New Futures Trading International Corporation et al* involved similar circumstances where Staff had exhausted all reasonable steps to serve the individual respondent.<sup>13</sup> In that instance the panel, after granting the motion to waive the requirement for service, proceeded to conduct the hearing in writing in the absence of the respondents in that matter.<sup>14</sup>
- [29] I find that these circumstances constitute "good reason" to hold a hearing in writing. I reserve, however, the right to hold an in-person, virtual hearing after receiving and considering Staff's written materials if the Panel hearing the proceeding deem it necessary.

### **C. Holding this hearing in writing**

- [30] Commission Rules also permit a hearing to be conducted in writing if the only purpose of the hearing is to deal with procedural matters.<sup>15</sup> Staff submits, and I

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<sup>10</sup> Rules, r 35(1)

<sup>11</sup> Rules, rr 3 and 1

<sup>12</sup> Rules, r 23(3)

<sup>13</sup> *New Futures Trading International Corporation et al*, para 11

<sup>14</sup> *New Futures Trading International Corporation et al*, 2013 ONSEC 21, para 10

<sup>15</sup> Rules, r 23(3)

agree, that the sole purpose of this motion is to address procedural issues and therefore it may be conducted in writing.

**D. Considering this motion without notice**

[31] For the reasons set out above in paragraphs 5 to 12, waiving service of all process on Threegold, service of this motion on Threegold is also waived.

**III. CONCLUSION AND ORDER**

[32] For the reasons set out above, I ordered that:

- a. pursuant to Subrule 28(5)(a) of the Rules, Staff is permitted to bring this motion without notice to Threegold;
- b. pursuant to Subrule 23(3) of the Rules, this motion shall be heard in writing;
- c. pursuant to Subrule 6(4) of Rules, the requirement that Staff serve the Notice of Hearing, Statement of Allegations, and all future processes on Threegold is waived;
- d. pursuant to Rule 3 of the Rules, Staff's disclosure obligations in respect of Threegold pursuant to Subrule 27(1) are waived;
- e. pursuant to Rule 3 and Subrule 35(1) of the Rules, the merits and the sanctions and costs hearings against Threegold shall be combined; and
- f. pursuant to Subrule 23(3) of the Rules, the enforcement proceeding against Threegold shall be conducted as a written hearing.

Dated at Toronto this 27<sup>th</sup> day of May, 2021.

*"M. Cecilia Williams"*  
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M. Cecilia Williams