

**IN THE MATTER OF  
FIRST GLOBAL DATA LTD., GLOBAL BIOENERGY RESOURCES INC.,  
NAYEEM ALLI, MAURICE AZIZ, HARISH BAJAJ, AND ANDRE ITWARU**

File No.: 2019-22

**MOTION  
OF STAFF OF THE ONTARIO SECURITIES COMMISSION**

(For an order directing Staff to apply to the Superior Court of Justice for an order under Section 152 of the *Securities Act*, RSO 1990, c S.5)

**A. ORDER SOUGHT**

The Moving Party, Staff of the Ontario Securities Commission (**Staff**), requests, with notice, that the Ontario Securities Commission (the **Commission**) make the following order in the form attached as Schedule “A”:

1. an order pursuant to s. 5.1 of the *Statutory Powers Procedure Act*, RSO 1990, s S.22 (the **SPPA**) and Rule 23(3) of the *Ontario Securities Commission Rules of Procedure and Forms*, (2019) 42 OSCB 9714 (the **Rules of Procedure**) that this motion be heard in writing;
2. an order providing that Staff may apply to the Ontario Superior Court of Justice pursuant to s. 152 of the *Securities Act*, RSO 1990, c S.5 (the **Act**) seeking an order from the Ontario Superior Court of Justice:
  - a. appointing the members of the panel assigned to the merits hearing in the above-named matter (the **Hearing Panel**) to take the evidence of Yan Lauzon, an individual who resides in Varennes, Quebec and Jake Fehr, an individual who resides in Grunthal, Manitoba, for use in the merits hearing before the Commission;
  - b. providing for the issuance of a letter of request directed to the judicial authorities of the Province of Quebec and the Province of Manitoba, requesting the issuing of such process as is necessary to compel Lauzon and Fehr to attend and be

examined before the Hearing Panel by video link and audio link on oath or otherwise in the merits hearing before the Commission;

- c. providing that the examination of Lauzon shall take place in Quebec at the Autorité des marchés financiers' office, located at 800 Victoria square, 4th Floor, Montreal, Quebec H4Z 1G3, or at such other location as may be advised by Staff upon reasonable notice, so that the Hearing Panel, sitting in Toronto, is able to observe and participate in the examination by video link and audio link and make any required evidentiary rulings;
  - d. providing that the examination of Fehr shall take place in Manitoba at the Manitoba Securities Commission's office, located at 500 - 400 St. Mary Avenue Winnipeg, Manitoba R3C 4K5, or at such other location as may be advised by Staff upon reasonable notice, so that the Hearing Panel, sitting in Toronto, is able to observe and participate in the examination by video link and audio link and make any required evidentiary rulings;
  - e. providing that the examination of Lauzon and Fehr shall take place during the merits hearing before the Commission, commencing on October 5, 2020 at 10:00 am Eastern Time or on such other dates thereafter and times as may be advised by Staff upon reasonable notice;
  - f. prescribing that the procedural and evidentiary rules of Ontario will apply to the examinations of Lauzon and Fehr to the extent permissible by the laws of Quebec and Manitoba; and
  - g. providing for the payment by the Commission of the greater of any witness fees and travel expenses as may be required by the laws of Ontario and by the laws of Quebec and Manitoba;
3. The issuance of summonses for Lauzon and Fehr pursuant to Rule 26 of the Rules of Procedure and s. 12 of the SPPA in the form attached as Schedule "B"; and
  4. Such further and other orders as counsel may advise and the Commission deems just.

## **B. GROUNDS**

The grounds for the motion are as follows:

1. The Commission issued a Notice of Hearing on May 31, 2019 to commence these proceedings against the above-named Respondents and consider whether it is in the public interest for the Commission to make the orders requested in the Statement of Allegations issued on May 31, 2019;
2. The Statement of Allegations includes the following allegations:
  - a. Staff's allegations involve two groups:
    - i. First Global Data Ltd. (**FGD**), Nayeem Alli and Andre Itwaru (the **FGD Parties**); and
    - ii. Global Bioenergy Resources Inc. (**GBR**), Maurice Aziz and Harish Bajaj (the **GBR Parties**);

### ***FGD Debentures***

- b. During the period of approximately May to December of 2015, the GBR Parties raised \$4.4 million through the distribution of FGD series "G" debentures (the **FGD Debentures**) to over 90 investors (the **Debenture Holders**), the majority of whom were Ontario residents;
- c. Debenture Holders were provided with subscription agreements and accompanying term sheets (collectively, the **Subscription Documents**), which set out the terms of the FGD Debentures and included a representation that the funds raised would be used for FGD's "general working capital";
- d. Contrary to the Subscription Documents, certain Debenture Holders were told by Aziz and/or Bajaj that the funds they had invested in the FGD Debentures would be used to finance bitumen mining and/or biodiesel operations in Colombia purportedly owned and operated by GBR and/or an affiliated Colombian

company, Global Bioenergy Resource SAS (**GBRSAS**). These representations were untrue;

- e. It was further represented to the Debenture Holders that: (i) the FGD Debentures would be fully guaranteed and secured by assets owned by GBR SAS; (ii) the operations related to GBR SAS' assets in Colombia were sufficient to generate a return on equity of 14% to make interest payments on the FGD Debentures; and (iii) GBR SAS had control over those operations. These representations were untrue;
- f. This distribution occurred without a prospectus providing disclosure to investors. Many of the Debenture Holders did not qualify as accredited investors nor did they qualify for any other exemption from the prospectus requirement;
- g. By engaging in this conduct:
  - i. The GBR Parties directly or indirectly engaged or participated in an act, practice or course of conduct relating to securities that they knew or reasonably ought to have known perpetrated a fraud, contrary to s. 126.1(1)(b) of the Act;
  - ii. FGD and the GBR Parties made untrue, false, or misleading representations that a reasonable investor would have considered relevant in deciding whether to enter into or maintain a trading relationship, contrary to s. 44(2) of the Act;
  - iii. The GBR Parties engaged in the business of trading in securities contrary to s. 25(1) of the Act;
  - iv. The GBR Parties and FGD Parties participated in a distribution of securities without filing a prospectus or an applicable exemption from the prospectus requirement, contrary to s. 53 of the Act;
  - v. Alli and Itwaru authorized, permitted or acquiesced in FGD's non-compliance with Ontario securities law and Aziz and Bajaj authorized,

permitted or acquiesced in GBR's non-compliance with Ontario securities law and accordingly are each deemed to have not complied with Ontario securities law pursuant to s. 129.2 of the Act; and

- vi. The Respondents' conduct was contrary to the public interest;

***FGD Purported License Transactions***

- h. Between January of 2016 and November of 2017, FGD purportedly sold technology license agreements (the **FGD Purported License Transactions**) to investors, many of whom are resident in Ontario. The documentation prepared in respect of the FGD Purported License Transactions stated that the funds were advanced in exchange for the issuance of exclusive licenses to market and deploy FGD's technology. Such was not the case. Rather, in many instances, no licences were ever issued, and no steps were intended to be taken, or were in fact taken, to market or deploy the technology. Investors loaned funds to FGD based on representations that such loans would be repaid with interest on agreed upon terms;
- i. From 2016 until August of 2018, FGD reported the FGD Purported License Transactions as revenue in its interim financial reports for the quarters ending March 31, June 30 and September 30, 2017, and in its comparative financial statements for the year ended December 31, 2016. Because certain of those transactions were, in fact, financial liabilities, the financial reports were not prepared in accordance with GAAP and contained material misstatements;
- j. FGD restated its comparative financial statements for the year ended December 31, 2016 and its interim financial reports for the periods ending March 31, June 30 and September 30, 2017. The restatements corrected the misstatements relating to the FGD Purported License Transactions;
- k. By engaging in this conduct:

- i. FGD contravened ss. 77(1), 78(1) and 122(1)(b) of the Act, and part 3.2(1)(a) of National Instrument 52-107 *Financial Disclosure*;
  - ii. Itwaru and Alli, as officers and directors of FGD during the material time, authorized, permitted or acquiesced in the conduct engaged in by FGD which constituted the breaches of Ontario securities laws described above. As a result, Itwaru and Alli are each deemed to have not complied with Ontario securities law pursuant to s. 129.2 of the Act; and
  - iii. the FGD Parties' conduct was contrary to the public interest;
3. The Commission issued an Order on February 7, 2020 ordering that the merits hearing for this proceeding will commence on October 5, 2020 and continue on dates specified by the Commission in the Order, until January 15, 2021;
4. Lauzon is a resident of Varennes, Quebec;
5. Fehr is a resident of Grunthal, Manitoba;
6. Staff's investigation has revealed that Lauzon and Fehr have relevant evidence concerning the allegations at issue in this matter relating to the FGD Debentures and the FGD Purported License Transactions described above;
7. Staff intends to rely on the evidence of Lauzon and Fehr as part of its case;
8. Staff require the issuance of summonses for Lauzon and Fehr in order to seek certification of such summonses by the Ontario Superior Court of Justice under the Ontario *Interprovincial Summonses Act*, RSO 1990, c I.12 in the event such certification is necessary for the judicial authorities of the Province of Quebec and the Province of Manitoba to issue such process as is necessary to compel the attendance of Lauzon and Fehr;
9. Section 152 of the Act;
10. Sections 5.1 and 12 of the SPPA;

11. Rules 23(3), 26(2) and 28 of the Rules of Procedure; and

12. Such further and other grounds as counsel may advise and the Commission deems just.

**C. EVIDENCE**

The Moving Party intends to rely on the following evidence for the motion:

1. Affidavit of Sherry Brown sworn August 10, 2020; and
2. Such other evidence as counsel may advise and the Commission may permit.

**DATED** this 10<sup>th</sup> day of August, 2020.

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*Staff of the Ontario Securities Commission*