

**CAPITAL MARKETS TRIBUNAL**

**IN THE MATTER OF STABLEVIEW ASSET MANAGEMENT INC. AND COLIN FISHER**

File No. 2020-40

**NOTICE OF MOTION OF THE RESPONDENT,  
COLIN FISHER**

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## NOTICE OF MOTION

### A. ORDER SOUGHT

The Moving Party (Respondent), Colin Fisher, respectfully requests, with notice to Staff, that the Capital Markets Tribunal (the “Tribunal”) make the following orders:

1. An order excluding the proposed testimony of Michael Groves as it is not relevant to any fact alleged in the Statement of Allegations;
2. An order striking paragraph 99 of the affidavit of Sherry Brown sworn May 13, 2022 as it is based on hearsay evidence from Michael Groves that is not relevant to any fact alleged in the Statement of Allegations;
3. Alternatively, if the evidence is not struck, an adjournment of the hearing to permit the Respondent an opportunity to respond with expert evidence; and
4. Such further and other relief and orders as counsel may advise and the Commission may deem appropriate.

### B. GROUNDS

The grounds for the motion are:

5. On December 16, 2020, Staff filed a Statement of Allegations against Stableview Asset Management Inc. and Colin Fisher pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5. Paragraph 1 of the Statement of Allegations is a summary of the allegations:

This proceeding centres on registrants acting as a portfolio manager (PM) and investment fund manager (IFM) who flagrantly disregarded investment restrictions when managing client money. The registrants advised clients that certain investment parameters and restrictions designed to limit risk would be respected in the registrants’ discretionary

management of client funds. The registrants then ignored these restrictions and increasingly invested client monies in a thinly-traded penny stock company that was suffering from a deteriorating financial position. In order to prop up this penny stock company, the registrants continued to gamble client money on it, repeatedly throwing good money after bad in a vicious cycle of ever-increasing risks and losses for the investors. The registrants did not tell clients about these investments or their deleterious effect on the restrictions set out in the registrants' agreements with clients. Nor did the registrants tell clients about the corporate registrant's receipt of "consulting" fees from the penny stock company. Through their actions, the registrants exposed clients to risks not contemplated by them and clients have been harmed. The registrants' actions were fraudulent.

6. There is no allegation that the manner by which Stableview's fund administrator, SGGG Fund Services ("SGGG"), valued the Stableview securities was improper or in breach of securities law.
7. The Statement of Allegations has never been amended.
8. Staff is not relying on any expert evidence on any issue.
9. The hearing in this matter is scheduled to proceed on May 24, 2022. As part of its case, Staff intends to call Michael Groves, a fund administrator at SGGG. The Witness Statement provides that Staff anticipates calling Mr. Groves to give evidence that includes:
  - (a) "SGGG policies and procedures regarding how Net Asset Value (NAV is to be calculated";
  - (b) "the preparation of NAV reports for Stableview, including the sources of information used and the reliance SGGG places on various sources of information in preparation of the reports (the "NAV Reports");
  - (c) " that SGGG is not in the business of valuing specific securities including, in this case, the Clarocity securities";

- (d) “that Stableview provided periodic values for the Clarocity bonds (Clarocity debentures as defined in the Statement of Allegations) and promissory notes to SGGG”;
- (e) “that he sent an email to Fisher on November 16, 2018 outlining his concerns to ensure SGGG was recording the valuation of the Stableview funds’ Clarocity positions correctly”;
- (f) “that SGGG was not aware of a margin call by LBS in August 2018”;
- (g) “the information and impact, if any, on Stableview Fund Clarocity securities holdings, and resulting iLookabout securities as a result of the transaction with iLookabout in July-August 2019”;
- (h) “communications that he had with Fisher regarding the impact, if any, of the standstill agreement on the value of iLookabout shares”; and
- (i) “why SGGG prepared revised NAV Reports for September to December 2019 to remove Clarocity promissory notes”.

10. This evidence is not relevant to the allegations in the Statement of Allegations.

11. On Monday, May 16, 2022, one week before the commencement of the hearing, Staff produced new disclosure relating to the evidence of Michael Groves. Among the new documents produced by Staff was a memorandum of Staff purporting to recount relevant evidence and “new information” that it had obtained from Michael Groves on May 11, 2022 (the “New Staff Memo”). Among the evidence described in the New Staff Memo is:

- (a) “Promissory Notes are valued at cost”;
  - (b) In 2018, Groves was concerned “that if the value of Clarocity common stock is going down so significantly will the company still be able to pay its interest payment”;
  - (c) Groves’ VP asked for “reassurance on the value of the bonds – the dropping value of the shares raised concerns about the ability of Clarocity to pay the bonds”;
  - (d) “SGGG relied on the fund to tell them if expected interest would not be paid”
  - (e) “Groves just needed to know what to value the notes at. They were valued at par, that is face value, which is slightly more than cost, and it was changed at Colin’s request. Using par value is not unusual”; and
  - (f) “The valuation of shares under a standstill agreement is decided by the fund manager”.
12. This evidence is not relevant to the allegations in the Statement of Allegations.
13. The proposed evidence is irrelevant, improper, and inadmissible. It should be excluded to avoid both prejudice to a fair hearing and an unnecessarily prolonged or delayed hearing.
14. Rules 1, 28 of the *Ontario Securities Commission Rules of Procedure and Forms*, Rule 8 of the *Ontario Securities Commission Practice Guideline*, and section 15 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c.S.22.
15. Such further grounds as counsel may advise and the Commission may permit.

**C. EVIDENCE**

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

16. The Statement of Allegations dated December 16, 2020;
17. The Witness Statement of Michael Groves;
18. The Memorandum of David Adler dated May 13, 2022; and
19. Such further documentary evidence as counsel may advise and the Commission may permit.

May 19, 2022

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