



## REASONS FOR DECISION

### 1. OVERVIEW

- [1] Mark Odorico (**Odorico**) requested a confidentiality order over certain documents contained in the Record of Original Proceeding (**Record**) filed within his application seeking hearing and review of two decisions of the Investment Industry Regulatory Organization of Canada (**IIROC**). We initially ordered that the entire Record would remain confidential pending further order of the Tribunal.
- [2] Odorico, IIROC Staff and Staff of the Ontario Securities Commission (**OSC**) were able to reach agreement on the requested redactions, except for two redactions sought by Mr. Odorico which were opposed by IIROC Staff and OSC Staff.
- [3] On November 22, 2022, we issued a confidentiality order over the agreed upon redactions to the Record and dismissed the two additional requests by Mr. Odorico. These are our reasons for that decision.

### 2. ANALYSIS

- [4] Under Rule 22(4) of the *Capital Market Tribunal Rules of Procedure and Forms* and subsection 2(2) of the *Tribunal Adjudicative Records Act, 2019*,<sup>1</sup> a panel may order that an adjudicative record be kept confidential, if it determines that “intimate financial or personal matters or other matters contained in the record are of such a nature that the public interest or the interest of a person served by avoiding disclosure outweighs the desirability of adhering to the principle that the record be available to the public.”<sup>2</sup>
- [5] The redactions sought to the Record relate to intimate personal medical information regarding Odorico. The Tribunal has previously acknowledged that disclosure of medical information may infringe on privacy and avoiding the disclosure of those medical specifics which are not relevant to the proceeding

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<sup>1</sup> SO 2019, c 7, Sch 60

<sup>2</sup> *Kitmitto (Re)*, 2022 ONCMT 12 (**Kitmitto**) at para 80

outweighs the desirability that the medical information be made available to the public.<sup>3</sup>

- [6] We accordingly ordered that the portions of the Record regarding Odorico's medical information, as agreed to by the parties, be marked as confidential and only redacted versions be available to the public. We find that the redactions requested appropriately balance the principles of transparency and privacy.
- [7] Odorico made two additional requests for a confidentiality order, which were opposed by IIROC Staff and OSC Staff. Firstly, he requested that his doctor's name and contact information be redacted from Exhibit 9 of the Record as Mr. Odorico did not want the doctor "bothered by members of the public."
- [8] We dismissed this request. The doctor's professional contact information is presumably publicly available and the fact that members of the public "may bother him", as submitted by Odorico, is not a relevant consideration in these circumstances. Furthermore, it is not "personal information" of the nature that should presumptively be redacted in accordance with section 3 of the *Capital Markets Tribunal Practice Guideline*.
- [9] Secondly, he requested that a document contained at tab 74 of Exhibit 1 of the Record be fully redacted. The document is a letter of reprimand and warning from Odorico's former employer relating to events which were connected to the subject of the IIROC proceedings below. Odorico submits that because the letter is marked "Personal and Confidential" he feels that there is no need for it to be in the public record.
- [10] We dismissed this request. Simply because a document is marked as "personal and confidential" does not mean it meets the standard required to depart from the principle that Tribunal hearings and the documents submitted must be open to public. The letter contains information which relates to this proceeding and which is also contained in the IIROC merits decision below. Odorico has not persuaded us that this letter meets the test for a confidentiality order.

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<sup>3</sup> *Kitmitto* at para 81

**3. CONCLUSION**

[11] For the reasons set out above, we ordered that only the redacted version of the Record be available to the public and that Odorico's additional requests for confidentiality be dismissed.

Dated at Toronto this 30<sup>th</sup> day of November, 2022

*"Andrea Burke"*

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Andrea Burke

*"Sandra Blake"*

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