

IN THE MATTER OF
MILLER BERNSTEIN LLP

File No. 2023-2

MOTION OF MILLER BERNSTEIN LLP

(For an adjournment under Rule 29 of the
Capital Markets Tribunal Rules of Procedure and Forms)

A. ORDER SOUGHT

The moving party, Bernstein LLP (“Miller Bernstein”), requests that the Tribunal make the following orders:

1. An order adjourning the hearing of the Miller Bernstein’s application, which is currently scheduled to take place on May 25, 2023, pending a determination of whether Miller Bernstein continues to have reason to proceed with its application or whether the application will instead be withdrawn.

B. GROUNDS

The grounds for the request are:

2. Miller Bernstein’s application is for relief from the common law implied undertaking rule to permit the use certain portions of transcripts and a related letter disclosed by Staff to Miller Bernstein in the course of a long-ago concluded enforcement proceeding. The application is currently scheduled to be heard by the Tribunal on May 25, 2023.
3. Miller Bernstein seeks such relief to permit it to use the materials in response to a motion of CSTC Inc. (“CSTC”) for an order assigning to CSTC the claims of Buckingham Securities Corporation, as advanced by its court-appointed receiver-manager, in the Ontario Superior Court of Justice proceeding bearing Court File No. 03-CV-260914CM3 (the “Receiver’s Action”).
4. An agreement in principle has been reached that contemplates the withdrawal of CSTC’s motion in the Receiver’s Action, and the dismissal of the Receiver’s Action.
5. Counsel to the relevant parties to the Receiver’s Action are working to finalize a corresponding settlement, which will involve steps being taken before the Ontario Superior Court of Justice to formally and finally resolve the Receiver’s Action.
6. Since the purpose of the application is solely in connection with in the Receiver’s Action, Miller Bernstein will in all likelihood no longer have reason to proceed with the application and, in that case, will instead withdraw the application.

7. Miller Bernstein therefore requests the adjournment of the May 23, 2023 hearing pending a determination of whether Miller Bernstein continues to have reason to proceed with the application or will instead withdraw the application.
8. Miller Bernstein will advise the Tribunal on the earliest possible date whether it intends to proceed with the application and, if that were to be the case, would engage with the Tribunal in the normal course in order to obtain a new hearing date.

C. EVIDENCE

Miller Bernstein intends to rely on the following evidence for the motion:

9. The affidavit of Nathan Shaheen sworn May 19, 2023.
10. Such further or other evidence as counsel may advise and the Tribunal may permit.

May 19, 2023

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