

ONTARIO SECURITIES COMMISSION

(Applicant)

– and –

PURPOSE INVESTMENTS INC. and SOM SEIF

(Respondents)

File No. 2025-18

MOTION

(For particulars and additional disclosure of documents from the Ontario Securities Commission under Rules 22(2) and 28, respectively, of the Capital Markets Tribunal *Rules of Procedure*, made under the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, s. 25)

A. ORDER SOUGHT

Additional Documents

1. The moving party Som Seif (“**Mr. Seif**”) requests an Order under Rule 28 of the Capital Markets Tribunal Rules of Procedure (the “**Rules**”) requiring the Ontario Securities Commission (the “**Commission**”) to produce the following non-privileged materials:

- a) All correspondence between the Commission and, apart from Purpose Investments Inc. (“**Purpose**”), the four other investment fund managers (the “**Affected Managers**”) identified on the “Refilings and Errors List” that made corrective disclosure regarding ESG disclosures in 2022 and 2023 in connection with any review conducted by the Commission culminating in this disclosure, including the ESG continuous disclosure reviews (the “**ESG CD Reviews**”) referenced in CSA

Staff Notice 81-334 *ESG-Related Investment Fund Disclosure* and CSA Staff Notice 81-334 (revised) *ESG-Related Investment Fund Disclosure* (collectively, the “**CSA Staff Notices**”);

- b) All internal communications among staff of the Commission and among other member securities regulatory authorities of the Canadian Securities Administrators (“CSA”) for the period from September 2019 to March 2023 (the “**Relevant Period**”) concerning:
 - (i) The ESG-related disclosures of Purpose, Mr. Seif and the Affected Managers;
 - (ii) ESG disclosure standards or guidance applicable to investment funds that integrate ESG factors in their investment management processes as distinct from those using ESG-exclusion criteria;
 - (iii) Guidance or internal deliberations on ESG disclosure expectations in connection with the publication of sales communications and consistency between sales communications and prospectus disclosure by investment fund managers in the context of the preparation and publication of the Staff Notices;
- c) Any other summaries, memoranda or briefing notes prepared by the Commission or its staff during the Relevant Period regarding ESG disclosure expectations by investment fund managers in sales communications or prospectuses; and

- d) Any non-privileged notes prepared by the Commission staff assigned to this matter, including notes of meetings, calls or internal discussions.
- 2. An Order requiring the Commission staff to prepare and deliver a privilege log to the Respondents describing any withheld documents with sufficient detail to assess any privilege claims.

Particulars

- 3. An Order under Rule 22(2) of the *Rules* requiring the Commission to provide particulars with respect to the allegation at paragraph 22(d) of the Amended Application for Enforcement Proceeding dated November 17, 2025 (the “**Enforcement Application**”) that Mr. Seif “authorized, permitted or acquiesced in Purpose’s breaches of Ontario securities law” under section 129.2 of the *Securities Act*, RSO 1990, c S.5 (the “***Securities Act***”).
- 4. Mr. Seif requires particulars to make full answer and defence to these allegations and to understand the grounds upon which the Commission is claiming sanctions against him personally. The particulars sought include:
 - a) The specific conduct, communications, decisions, omissions or other acts that are alleged to constitute Mr. Seif “authorizing”, “permitting” or “acquiescing” in Purpose’s alleged breaches of Ontario securities law;
 - b) The specific documents, records, information or materials that are allegedly connected to each of the above-referenced acts; and

- c) The specific dates, or reasonable time periods, in which Mr. Seif is alleged to have engaged in each of the above-referenced acts.
- 5. Such further and other relief as counsel may advise and the Tribunal may permit.

B. GROUNDS FOR THE MOTION

Additional Documents

- 6. In accordance with the Tribunal's Order dated October 6, 2025, the Commission made initial disclosure to the Respondents on October 10, 2025. The Commission delivered a second tranche of disclosure on November 10, 2025. The disclosures provided to date do not contain any records described in paragraph 1 above, with the limited exception of certain communications between Purpose and the Commission in the course of an ESG CD Review.
- 7. The requested disclosure is relevant to the allegations in the Enforcement Application, in which the Commission alleges that Purpose and/or Mr. Seif made nineteen untrue or misleading public statements about the integration of ESG considerations in most or all of its managed funds over the Relevant Period (the "**ESG Sales Communications**"). Among other things, the Commission alleges that Purpose's consideration of ESG factors was "*ad hoc*" and not universally applied across its managed funds. Mr. Seif strenuously denies the Commission's allegations.
- 8. The allegations set out in the Enforcement Application squarely put in issue the standard of ESG disclosure over the Relevant Period as well as the meaning of "ESG integration" in the investment fund context.

9. Importantly, there was no guidance from the CSA about its ESG disclosure expectations during the Relevant Period until the publication of CSA Staff Notice 81-334 in January 2022. CSA Staff Notice 81-334 was later revised in March 2024 (the “**Revised Guidance**”), to reflect evolving regulatory expectations. For the first time, the Revised Guidance explicitly acknowledged the industry practice of ESG integration or, as the CSA defined it, limited consideration ESG.
10. The Staff Notices each confirm that the CSA was actively reviewing ESG disclosures over the Relevant Period. As confirmed in the Revised Guidance, CSA members ultimately required certain managers to make corrective disclosure, including, by necessary implication, the Affected Managers. National Instrument 81-102 investment funds of the Affected Managers were placed on the Commission’s “Refilings and Errors List” in the fall of 2022 and 2023.
11. Based on the references to the ESG CD Reviews in the Staff Notices, it appears that the CSA drafted the Staff Notices based, in part, on its assessment of Purpose’s public statements and/or those of other Affected Managers. None of these other Managers have had proceedings taken against them by the Commission.
12. As in the case of policy statements, Staff Notices are not binding pronouncements of law. However, the Commission regularly references its own guidance (and that of the CSA) in legal submissions respecting the standards that the Tribunal ought to apply in its assessment of alleged violations of Ontario securities law and the public interest. This may especially be the case where, as here, the enforcement matter is unprecedented and a case of first instance.

13. Unlike OSC and CSA policy statements, Staff guidance is not subject to public consultation and comment periods. CSA guidance commonly follows “street sweeps” such as the ESG CD Reviews herein but the grounds upon which the guidance is based is not otherwise transparent to the public.
14. Based on Tribunal precedents (and those of its predecessor and other securities regulatory authorities), the Commission staff may try to argue that the Staff Notices should inform the standard by which the Tribunal assesses the allegations regarding Purpose’s public statements. If it does so, the Commission could be “pulling itself up by its own bootstraps” by referencing guidance that was developed, at least in part, on the basis of the very allegations that are now being prosecuted. The requested records are relevant to assessing whether or to what extent this is the case.
15. The Respondents’ concern is not theoretical. Paragraphs 18 and 19 of the Enforcement Application reference that Purpose made corrective disclosure following the ESG CD Review. The Commission alleges that Purpose thereby acknowledged that it did not comply with the Commission’s ESG standards. While there is no merit to these allegations, these standards must have been informed by the Staff Notices as described above, which, in turn, were informed by the ESG CD Reviews.
16. For the foregoing reasons, the Respondents cannot make full answer and defence to the allegations without the requested disclosure. The disclosure sought is narrowly tailored to non-privileged materials directly relevant to the allegations and evolving disclosure expectations described in the Staff Notices.

17. OSC Staff Notice 15-708 *Enforcement Branch Document Production Guidance*, requires recipients of summonses issued under Part 6 of the *Securities Act* or a direction under section 19 of the *Act* to produce an index of any records removed from a production to the Commission on the basis of privilege. The same standard should apply to the Commission's disclosure obligations once an enforcement proceeding has been commenced.
18. Finally, the Commission has not made disclosure of any notes created by the staff or investigator(s) in this case, including the type of records of non-email communications with third parties that are regularly produced to respondents. If these records exist, they should be produced.

Particulars

19. The Commission has failed to set out particulars of material facts to substantiate the allegation at paragraph 22(d) of the Enforcement Application that Mr. Seif "authorized, permitted or acquiesced in Purpose's breaches of Ontario securities law as set out above and is therefore liable for those breaches pursuant to s. 129.2 of the Act". All that the Commission has done is make a bald and unsubstantiated allegation. It is deeply troubling that Mr. Seif alone has had proceedings taken against him.
20. Accordingly, contrary to Rule 22(2) of the *Rules*, the Commission has not supplied Mr. Seif with a satisfactory understanding of the grounds upon which it is seeking to hold him personally liable for these unparticularized alleged acts or omissions.

21. The allegations contained in paragraphs 20 and 21 of the Enforcement Application are conclusory and lack any factual detail; the Commission alleges that Mr. Seif “did not act to prevent Purpose from making false or misleading statements regarding its consideration of ESG factors”, “allowed misrepresentations to persist during the Material Time” and “provided quotes and reviewed and edited some of the ESG Sales Communications before they were made by Purpose”. Among other things, the Commission does not identify:
- a) The specific statements and ESG Sales Communications alleged to be in issue;
 - b) The specific steps alleged to constitute authorization, permission or acquiescence;
or
 - c) The dates, or reasonable timeframes, of Mr. Seif’s alleged conduct.
22. The Tribunal’s jurisprudence recognizes that with respect to liability for breaches of the *Securities Act*, as a matter of legal principle, corporations are legally separate and distinct from their officers and directors.
23. Particulars are required to ensure that fairness in the proceeding is preserved.
24. For the foregoing reasons, Mr. Seif cannot make full answer and defence to the allegations contained in paragraph 22(d) of the Enforcement Application without the requested particulars.

C. EVIDENCE

25. The following documentary evidence will be used at the hearing of the motion:
- a) The Amended Application for Enforcement Proceeding in this matter;

- b) The affidavit of John Hunter to be sworn and the exhibits thereto; and
- c) Such further and other documentary evidence as counsel may advise and the Tribunal may permit.

DATED this 4th day of December, 2025.

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