Capital Markets Tribunal
Tribunal des marchés financiers
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Citation: *Oasis World Trading Inc (Re)*, 2026 ONCMT 4
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File No. 2023-38

IN THE MATTER OF
OASIS WORLD TRADING INC.,
ZHEN (STEVEN) PANG and RIKESH MODI

REASONS FOR DECISION ON A MOTION

Adjudicators:	Mary Condon (chair of the panel) Andrea Burke Sandra Blake	
Hearing:	June 2 and July 4, 2025	
Appearances:	Johanna Braden Hanchu Chen	For the Ontario Securities Commission
	Janice Wright Greg Temelini	For Oasis World Trading Inc., Zhen (Steven) Pang and Rikesh Modi

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REASONS FOR DECISION ON A MOTION

1. OVERVIEW

[1] The respondents brought a motion to permanently stay this enforcement proceeding against them on the ground of abuse of process. The respondents say that the Commission withheld unquestionably relevant documents and information from them that ought to have been disclosed throughout the proceeding and has demonstrated a fundamental misunderstanding of its disclosure obligations.

[2] We dismissed the respondents' motion on July 9, 2025.[1] These are our reasons for dismissing the respondents' motion and instead granting alternative relief requiring the Commission to conduct a further review of its disclosure and make additional disclosure as applicable, in accordance with its obligations under the Capital Markets Tribunal *Rules of Procedure (**Rules of Procedure**)*.

[3] These reasons also address our preliminary decision to hear the stay motion when it was brought in the middle of the merits hearing, rather than at the end of the evidentiary portion of the hearing.

2. BACKGROUND

2.1 Summary of allegations

[4] This proceeding involves allegations of market manipulation, unregistered trading and failure to establish and maintain systems of control and supervision, against Oasis World Trading Inc., an Ontario company, and two individual respondents associated with Oasis. The alleged market manipulation involves traders in China trading on the Toronto Stock Exchange (**TSX**) and the Australian Securities Exchange (**ASX**).

2.2 Summary of grounds for respondents' stay motion

[5] The respondents allege that the Commission has repeatedly withheld relevant documents and information that ought to have been disclosed to them, has

[1] (2025), 48 OSCB 6347

sought ways to limit disclosure and has taken positions throughout this proceeding that are contrary to the Commission's disclosure obligations. They further allege that the issue is not simply about late disclosure of certain relevant documents in one proceeding, nor is it about one Commission team's approach to disclosure, but it is instead about the Commission itself not accepting its disclosure obligations.

[6] The respondents assert that at virtually every turn in this proceeding, the Commission has demonstrated its unwillingness to adhere to well-established disclosure obligations, thereby acting in a manner contrary to its responsibilities in the exercise of enforcement powers.

[7] The respondents rely on numerous instances of alleged disclosure deficiencies, as well as the Commission's asserted positions in respect of the same, as grounds for their motion. They say that these instances (particularly when considered together) are offensive to society's notions of fair play and decency. We summarize these instances in chronological order below.

2.2.1 Witness summaries

[8] In June 2024, prior to the commencement of the merits hearing, the respondents brought a motion seeking wide-ranging relief related to disclosure, primarily focused on the Commission's witness summaries. On August 27, 2024, the Tribunal issued an order granting some of the requested relief.[2] The Tribunal's Reasons for Decision[3] explained why the Tribunal found the Commission's witness summaries deficient in some respects and ordered the Commission to serve revised witness summaries.

[9] The respondents allege that the 2024 motion is one example of numerous disclosure failures by the Commission, including its failure to disclose the substance of its witnesses' anticipated evidence in accordance with the *Rules of Procedure*. They emphasize that the Tribunal disagreed with the Commission's position that it need not disclose all of the substance of a witness's anticipated

[2] (2024), 47 OSCB 6865

[3] *Oasis World Trading Inc (Re)*, 2024 ONCMT 20 (***Oasis Motion Reasons***)

testimony, finding it inconsistent with the principles behind, and the plain words of, rule 28(3) of the *Rules of Procedure*.[4]

2.2.2 Translated documents

[10] On March 20, 2025, less than six weeks before the start of the merits hearing and well after the deadline set for the Commission to complete its disclosure of relevant documents, the Commission disclosed over 150 English translations of Chinese "QQ chats" as part of the book of documents it intended to rely on at the merits hearing. The Commission obtained many of these English translations years prior, during the investigation leading up to this enforcement proceeding. At the April 3, 2025, case management hearing, the final case management hearing before the start of the merits hearing, the respondents sought production of other English translations prepared by outside translators of relevant Chinese documents in the Commission's possession.

[11] The Commission initially asserted that internal English translations prepared by the Commission, and internal communications at the Commission about such translations, was subject to litigation privilege and not required to be disclosed. In response to this, the respondents clarified that they were not seeking production of internal Commission privileged work product. The Commission then addressed any English translations prepared by outside translators that had not been disclosed. It took the position that because the Chinese versions of these documents had already been produced, the respondents were not entitled to disclosure of any English translations in the Commission's possession unless the Commission intended to rely upon the English translations at the merits hearing.

[12] The Commission submitted that because the "relevant information" was available to the respondents in one form (*i.e.,* the Chinese version which had been produced) the respondents were not entitled as part of disclosure to receive the information in another form (i*.e.,* the existing English translations of the same documents). After we took a break to consider the parties' submissions, the Commission returned to indicate that its previously articulated broad legal position "is not necessarily supported" and it agreed to produce any withheld

[4] *Oasis Motion Reasons* at para 20

English translations prepared by outside translators.[5] We agreed with the Commission's revised position and issued an order clarifying that this should extend to certified as well as non-certified outside translations, which included translations in draft form.[6]

2.2.3 Excerpts and merged trading data spreadsheets

[13] On April 8, 2025, less than a month before the start of the merits hearing, the Commission delivered an affidavit of its investigator. The affidavit was delivered in compliance with previously scheduled timelines. It was in this affidavit, for the first time, that the Commission produced spreadsheets of excerpted trading data for each of the 239 Canadian instances of alleged manipulative trading and spreadsheets of excerpted and "blended" data for each of the 404 Australian instances of alleged manipulative trading.

[14] The respondents submit that despite this data forming the basis of the allegations of manipulative trading, prior to April 8 the Commission had only disclosed the Canadian trading data in un-excerpted form along with the time ranges of the relevant orders and trades in that data. The Commission provided the Australian data in three separate spreadsheets (orders, trades, quotes) that did not "blend" together information, but identified the time ranges of the relevant orders, trades and quotes. The respondents submit that this is another example of a problematic approach to disclosure, although an objection was not raised by the respondents before this motion.

2.2.4 Highlighted trading data spreadsheets

[15] On May 7, 2025, during the merits hearing, the Commission's investigator gave evidence-in-chief explaining the significance of the data in three of the 643 spreadsheets of excerpted trading data contained in his affidavit. While doing so, he applied various filters and highlighting to assist in reviewing the extracted data, explaining why these instances of alleged manipulative activity were identified. The parties provided brief submissions about how best to deal with this real-time evidence for the purpose of the merits hearing record.

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[5] Hearing Transcript, *Oasis World Trading Inc (Re)*, April 3, 2025, at p 31 lines 10-15

[6] (2025), 48 OSCB 3267

[16] We determined that any spreadsheets that the investigator filtered and highlighted during his examination should be marked as exhibits. The respondents did not object to this proposal but raised concerns about any intention to similarly highlight all 643 spreadsheets and seek to introduce those in evidence. The Commission stated that was not its intention.

[17] Nevertheless, on the night of May 7, 2025, the Commission provided the respondents with highlighted versions of all 643 excerpted spreadsheets. At the merits hearing on May 8, the Commission indicated that it intended to seek to mark as exhibits all of these highlighted excerpted spreadsheets in bundles, failing which it intended to have the investigator highlight each and every one of them in real-time during his evidence-in-chief.

[18] We received submissions from the parties on the issue. The respondents' initial position was that this disclosure was late and should be excluded. However, the respondents conceded that the highlighted spreadsheets might be helpful to us. The respondents therefore sought and were granted a full day adjournment following the completion of the investigator's examination-in-chief to give them the opportunity to review the highlighted spreadsheets.

2.2.5 2013 correspondence

[19] On May 26, 2025, during cross-examination, the respondents showed the Commission's investigator a copy of correspondence between the Commission and Oasis dated October 16, 2013, (**October letter**) in which the Commission stated that "it has become aware that..[Oasis] may be engaging in activity that may trigger the application of the registration and prospectus requirements under the Securities Act."[7] The letter requested that Oasis provide certain information to the Commission. The October letter related to a Commission investigation of Oasis resulting in a settlement between Oasis and Zheng (Steven) Pang in 2015. The respondents also showed the investigator a November 19, 2013, letter from Oasis (**November letter**) responding to the Commission's request for information. The November letter provided a detailed description of Oasis' business and the view that "while in the business of day

[7] Exhibit 28, Letter dated October 16, 2013 at p 1

trading, [Oasis] is exempt from the registration provisions in section 25 of the Securities Act Ontario under section 8.5 of National Instrument 31-103 in that all of its trades are made through Jitney acting as its agent."[8]

[20] The investigator confirmed that he reviewed this correspondence as part of his investigation. The Commission disclosed the November letter to the respondents but did not disclose the October letter.

[21] Initially, the Commission suggested that the October letter may not have been disclosed because it may not be relevant as it is a document from the Commission containing information requests. The Commission later submitted that because the requests for information contained in the October letter were repeated in the November letter, and there was nothing in the October letter that was not also in the November letter, the non-disclosure of the October letter did not raise any disclosure concerns. Ultimately, the Commission acknowledged that it should have disclosed the October letter. The Commission sought to justify the failure on the basis that disclosure need not be perfect, and the respondents could have brought a disclosure motion and did not.

2.2.6 Witness meeting notes and communications and CIRO report

[22] On the evening of May 27, 2025, the Commission provided further disclosure to the respondents of:

a. notes of a meeting between the Commission and a witness and her counsel;

b. a cut and pasted portion of an email between the witness's counsel and the Commission; and

c. a report from the Canadian Investment Regulatory Organization (**CIRO**) related to Oasis' current executing broker, Independent Trading Group Inc. (**ITG**).

[23] The meeting with the witness took place on May 8, before the witness was scheduled to testify on May 28. The Commission apologized for its inadvertence in making late disclosure of these materials.

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[8] Exhibit 29, Letter dated November 19, 2013 at p 4

[24] The parties made submissions about the late disclosure on May 28. The respondents raised concerns about the completeness of the Commission's disclosure. The Commission submitted that all necessary disclosure had now been made.

[25] We directed the Commission to:

a. disclose notes of any substantive communications between the Commission and the witness's counsel, including the original email that had been cut and pasted before it was disclosed;

b. provide information about the context in which the Commission received the CIRO report; and

c. review the Commission's disclosure of notes and emails regarding communications with potential witnesses at Jitney Trade/Canaccord and provide further disclosure of substantive communications.

[26] We directed the Commission to do so because:

a. the disclosure of a cut and pasted extract of a communication with a witness's counsel, instead of the relevant original email;

b. the late disclosure of the CIRO report without disclosing the context in which the report was obtained by the Commission; and

c. the late disclosure of the Commission's communications with a potential witness;

raised concerns about the completeness of the Commission's disclosure.

[27] The Commission did not make any submissions on May 28 that the notes of its meetings with witnesses might be subject to privilege. Nor did the Commission submit that its disclosure obligations were subject to a standard limiting disclosure of information obtained during witness preparation meetings to "new investigative facts".

[28] The Commission disclosed the original email that had been cut and pasted and further documents related to the CIRO report and how the Commission obtained the report.

[29] On May 29, the Commission also disclosed notes of three meetings with potential witnesses that took place in February 2025, and email communications between the Commission and one witness's counsel between March 31 and April 24, and on May 7. The Commission's email (**May 29 email**) that delivered these materials to the respondents stated: "These documents were not disclosed at the time because they provide no new investigative facts and, as such, in [its] view are not disclosable as generally understood. They are being disclosed to [the respondents] now out of an abundance of caution given the Panel's direction that the Commission re-review disclosure...and that the Commission disclose notes of 'any substantive communication'".[9]

[30] The Commission had previously disclosed meeting notes with individuals on its witness list, stating that such disclosure was made pursuant to its ongoing disclosure obligations.

[31] The parties made further submissions about the Commission's disclosure obligations on May 29. The merits hearing was adjourned until June 2 without any further evidence being heard. On June 2, the respondents advised that they intended to bring this stay motion. The disclosure issues between May 27 and May 29, together with the respondents' remaining concerns about disclosure given the Commission's May 29 email, were the precipitating factors in the respondents bringing this motion.

3. ISSUES

[32] On this stay motion we must determine the following issues:

a. Has the Commission engaged in conduct that is offensive to societal notions of fair play and decency such that continuing with the hearing in the face of such conduct would be harmful to the integrity of the justice system?

b. Is there an alternative remedy capable of redressing the alleged harm or prejudice?

[9] Exhibit 48, Motion Record of the Respondents, Affidavit of Janice Wright, Volume 1, Exhibit J

[33] Before we turn to the substantive issues on the stay motion, we begin with a preliminary issue – when is it appropriate to hear the respondents' motion? We decided to schedule the motion in the middle of the merits hearing, adjourning remaining dates, rather than wait until the conclusion of the evidentiary portion of the merits hearing, for the reasons below.

4. ANALYSIS

4.1 Timing of the stay motion

[34] On June 2, the respondents explained that they were bringing a motion to stay the proceeding because, not only did they receive late disclosure of various documents, but the Commission was operating on the basis of a fundamental misunderstanding of the law of disclosure such that the Commission's disclosure had been potentially irremediably tainted. The respondents had no confidence that they had received appropriate disclosure overall and argued it would be unfair to proceed with the merits hearing in the circumstances.

[35] The respondents requested that their stay motion be scheduled and heard as the next step in the proceeding, and the merits hearing be adjourned pending resolution of the motion. The Commission submitted that the stay motion was premature and the hearing and adjudication of the stay motion should wait until the conclusion of the merits hearing. We decided that the stay motion should be heard and adjudicated prior to resuming the merits hearing.

[36] When to hear and rule on a motion for a stay of a proceeding is a matter for the Tribunal's discretion[10] and may depend on a number of factors and considerations. As an overarching matter, we focussed on ensuring that the proceeding is procedurally fair as well as efficient.

[37] The parties did not refer us to any prior decisions of the Tribunal where a respondent sought to bring a stay motion mid-way through a merits hearing.

[38] We considered the framework questions set out in *Mega-C Power Corporation (Re)*[11] for deciding at what stage a motion should be heard, even though those

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[10] *R v La,* 1997 CanLII 309 (SCC) (***La***) at para 27

[11] 2007 ONSEC 4 (***Mega-C***) at para 34; *Azeff (Re)*, 2012 ONSEC 16 at para 380

questions were formulated in the context of a decision about whether a motion should be heard prior to the commencement of a merits hearing. *Mega-C* articulates these questions as follows:

a. "Can the issues raised in the motions be fairly, properly or completely resolved without regard to contested facts and the anticipated evidence that will be presented at the hearing on the merits? In other words, will the evidence relied upon on the motions likely be distinct from, and unique of, the evidence to be tendered at the hearing on the merits?"

b. "Is it necessary for a fair hearing that the relief sought in the motions be granted prior to the proceeding on its merits?"

c. "Will the resolution of the issues raised in the motions materially advance the resolution of the matter, or materially narrow the issues to be resolved at the hearing on the merits such that it will be efficient and effective to have them resolved in advance of the commencement of the hearing on the merits?"

[39] The Commission submitted that in this case all three of the *Mega-C* questions should be answered in the negative, indicating that it is preferable for the stay motion to be heard after the conclusion of the merits hearing. We disagreed.

[40] In our view, the issues raised in the respondents' stay motion could be properly resolved without us first having to hear the remaining evidence to be tendered in the merits hearing. Here the conduct allegedly amounting to an abuse of process (that is, a fundamental misunderstanding or misapplication of the Commission's disclosure obligations), does not depend on facts that need to be clarified through further evidence in the merits hearing.

[41] Unlike the circumstances in *Groia v Law Society of Upper Canada,*[12] we did not require the full evidentiary record of the merits hearing to assess the prejudice caused by the alleged abusive misconduct and tailor an appropriate remedy. We found further support in *Mega-C* which provides "motions relating to [the Commission's] disclosure obligations and motions for particulars, are the types of motions that should be brought and heard well in advance of the substantive

[12] 2018 SCC 27 at para 144

hearing on the merits: they raise issues which can be fairly, properly and completely resolved without regard to contested facts and anticipated evidence that will be the subject matter of the hearing".[13]

[42] In addition, if the respondents' position that the Commission had not met its full disclosure obligations proved correct, the associated prejudice would be perpetuated or aggravated by continuing the merits hearing and deferring the stay motion until after the merits hearing is complete. We accepted the general principle that tainted or incomplete disclosure may impair the respondents' ability to make full answer and defence and risks procedural unfairness.[14]

[43] We were also mindful that deciding the stay motion at the earlier stage of the proceeding allowed for more than one possible remedy, while waiting until the conclusion of the hearing would allow no remedy other than a stay. The respondents specifically noted that hearing the motion at this stage would allow for corrective disclosure to be ordered in the event that a stay of the proceeding is not appropriate. This also weighed in favour of hearing the motion at this stage.[15]

[44] While the resolution of the respondents' motion before the conclusion of the merits hearing would not necessarily narrow the issues to be resolved at the hearing, unless the respondents were successful in obtaining a stay, we agreed that it was more efficient and effective for the merits hearing process to resolve the motion when it was brought.

[45] Ultimately, and primarily due to our consideration of the first two *Mega-C* questions as discussed above, we concluded that it was more efficient and fair for the merits hearing process to resolve the motion earlier rather than later and that there was nothing about the nature of the motion that required the evidentiary portion of the merits hearing to be completed before the motion could be fairly, properly and completely resolved.

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[13] *Mega-C* at para 37
[14] *La* at para 23
[15] *La* at para 27

4.2 Test for a stay of proceeding

[46] Before we turn to the substantive issues on the stay motion, we will outline the test to be applied when considering a motion for a stay of proceeding.

[47] A stay of proceeding for abuse of process is a drastic remedy available only in the clearest of cases.[16] The parties agreed that the test for a stay for abuse of process is as follows:

a. there is prejudice to a party's right to a fair hearing or the integrity of the justice system that will be manifested, perpetuated or aggravated through the conduct of the proceeding, or by its outcome;

b. there is no alternative remedy capable of redressing the prejudice; and

c. where there is still uncertainty over whether a stay is warranted, the interests in favour of granting a stay must outweigh the interest that society has in having a final decision on the merits.[17]

[48] There are two categories of cases where a stay of proceeding for abuse of process might be available. The main category is where the party's right to a fair hearing has been prejudiced and that prejudice will be carried forward through the conduct of the proceeding. The residual category is where continuing the proceeding would be offensive to the societal notions of fair play and decency and would be harmful to the integrity of the justice system.[18] The test for a stay for abuse of process is the same for both categories. The two categories are reflected in the first part of the test.

[49] When the residual category is invoked, the state conduct must be so troublesome that having a trial – even a fair one – will leave the impression that the justice system condones conduct that offends society's sense of fair play and decency which will harm the integrity of the justice system.[19]

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[16] *Bridging Finance Inc (Re),* 2023 ONCMT 24 at para 5; *R v Babos*, 2014 SCC 16 (***Babos***) at para 31

[17] *Canada Cannabis Corporation (Re)*, 2023 ONCMT 41 (***Canada Cannabis***) at para 26, citing *Babos* at para 32

[18] *Canada Cannabis* at para 27; *Gong (Re),* 2023 ONCMT 28 (***Gong***) at para 10, citing *Babos* at para 31

[19] *Gong* at para 10, citing *Babos* at para 35

[50] As explained by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Tobiass*, to satisfy the residual category warranting a stay of proceeding, generally (although there may be exceptional cases of past misconduct that is so egregious), it must appear that the offensive state conduct is likely to continue in the future.[20]

[51] The respondents sought a stay based solely on the residual category. They submitted that the Commission's fundamentally flawed approach to disclosure has infected the entire proceeding and represents established Commission practice which suggests a pervasive, systemic problem.

[52] In particular, the respondents focussed on the disclosure of notes of meetings with witnesses and potential witnesses and highlighted the Commission's submission that notes of meetings with witnesses and potential witnesses are not disclosable as a matter of course. The Commission submitted that several other senior counsel at the Commission share this same view. According to the respondents this was evidence that the issues raised on this motion are not about one Commission team's approach to disclosure, but is instead about the entire Commission's approach to disclosure—as widespread and wholly endorsed by senior counsel at the Commission. The respondents also submitted that the Commission:

a. repeatedly excluded from disclosure clearly relevant information;

b. demonstrated its unwillingness to adhere to well-established disclosure obligations; and

c. adopted a strident, anti-disclosure posture—often with shifting rationales offered for non-disclosure-in argument, only relenting with the threat of, or an actual, Tribunal order.

[53] The respondents further submitted that there is a legitimate concern that all proceedings before this Tribunal are or will be tainted by an incorrect interpretation and application of the law of disclosure as well as a failure to

[20] 1997 CanLII 322 at para 91; see also *Gong* at para 17

seriously and rigorously fulfil the public duties of officials prosecuting breaches of the *Securities Act.*

[54] The respondents alleged that the Commission's conduct was offensive to societal notions of fair play and decency and harmful to the integrity of the Tribunal's process.

4.3 Does the Commission's conduct relating to disclosure warrant a stay of this proceeding?

4.3.1 What are the Commission's disclosure obligations?

[55] Disclosure obligations have been codified in rule 28 of the *Rules of Procedure*. Subrule 28(1) requires disclosure of "all non-privileged documents in the Commission's possession that are relevant to the Commission's allegations, including documents that have a reasonable possibility of being relevant to the respondents' ability to make full answer and defence".

[56] The Tribunal has consistently held that the Commission's disclosure obligation embodies a disclosure standard similar to that imposed on the Crown in criminal proceedings by *R v Stinchcombe,*[21] although it is important to note that in this proceeding, unlike in *Stinchcombe*, the respondents' liberty and *Charter* rights are not at stake. Further, even at its highest, the *Stinchcombe* standard does not require perfection in disclosure.[22] The underlying objective is overall fairness to the respondent.[23]

[57] In making disclosure, the Commission must err on the side of inclusion.[24]

4.3.1.a What are the Commission's disclosure obligations regarding communications with potential witnesses and witnesses in preparation for a hearing?

[58] The Commission and the respondents fundamentally disagree about the scope of the Commission's disclosure obligations regarding communications with potential

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[21] 1991 CanLII 45 (SCC) (***Stinchcombe***); *BDO Canada LLP (Re)*, 2019 ONSEC 21 (***BDO***) at para 13; *Kitmitto (Re)*, 2020 ONSEC 15 (***Kitmitto***) at para 19; *Cormark Securities Inc (Re)*, 2023 ONCMT 23 at para 16; *Shambleau v Ontario (Securities Commission)*, 2003 CarswellOnt 446 (Div Ct) at para 6

[22] *Kitmitto* at para 81

[23] *Kitmitto* at para 81

[24] *BDO* at para 14

witnesses during hearing preparation sessions. The parties' written and oral submissions on the motion focussed primarily on this question. The respondents' submissions that the Commission's conduct around disclosure reflected a pervasive, systemic problem that was widespread and endorsed by senior counsel at the Commission also focussed primarily on this question.

[59] The respondents' position is that Commission notes of meetings with witnesses and potential witnesses are unquestionably relevant and must be disclosed.

[60] The Commission's position is that there is no absolute obligation on the Commission to disclose notes taken while counsel is preparing a witness to testify, as these notes may be subject to litigation privilege, but any relevant information the witness discloses during such meetings that is "new" or "different" should be disclosed.

[61] The parties did not refer us to any prior Tribunal decisions that have specifically considered how litigation privilege intersects with the Commission's duty to disclose information gained during witness hearing preparation sessions.

[62] In the circumstances, we find that the respondents' expectation that they would receive Commission notes of witness preparation meetings is not surprising, given that:

a. the Commission acknowledged that production of such notes is a frequent Commission practice;

b. the Commission produced numerous such notes to the respondents in this case under cover emails that indicated that the Commission was doing so pursuant to the Commission's "ongoing disclosure obligations"; and

c. there was an exchange between the parties at the final case management hearing regarding any additional disclosure that could be expected from the Commission, and the Commission stated that "[it] understands that there are notes [of contact with witnesses] that get disclosed, and [it] intend[s] to do that under the disclosure standard. And [it will] do that on

a timely basis when [it has] relevant information that's in addition to what's in the disclosure to disclose"[25].

[63] The Commission referenced numerous administrative and criminal law cases as well as extracts from the Public Prosecution Service of Canada Deskbook that recognize that litigation privilege applies to counsel's notes taken of witness preparation sessions where the dominant purpose is preparing for current or anticipated litigation, and that the residual disclosure obligation only extends to "new" or "different" information than previously disclosed.[26] The Commission first articulated this position in this proceeding on May 29 (without expressly referring to litigation privilege) and elaborated on it in the Commission's submissions on this motion. It reflects the reality that the notes of counsel's meetings to prepare witnesses for hearing can, and often do, reflect counsel's thinking and strategy.

[64] Based on the authorities provided by the Commission, we agree with the Commission's general proposition that it may claim that notes taken by counsel in connection with preparing a potential or actual witness to testify at a hearing are subject to litigation privilege and need not be disclosed. Instead, any relevant information the potential or actual witness discloses during such preparation meetings that is "new" or "different" from the Commission's prior disclosure to respondents in an enforcement proceeding should be disclosed. That disclosure of "new" or "different" information need not be made in the form of disclosing the actual notes taken by counsel.

[65] The respondents' submissions were focussed exclusively on an alleged absolute obligation of the Commission to disclose notes of meetings with potential or actual witnesses. The respondents did not assert that the Commission failed to meet the requirement to disclose (in a form other than production of the notes themselves) any relevant "new" or "different" information in the notes of the

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[25] Hearing Transcript, *Oasis World Trading Inc (Re)*, April 3, 2025 at p 22 line 23 to p 23 line 6

[26] *R v O'Connor,* 1995 CanLII 51 (SCC); *Law Society of Upper Canada v Kivisto,* 2016 ONLSTH 203 at paras 36-37; *Gordenier v The Ontario Provincial Police,* 2022 ONCPC 6 at paras 12-13; Exhibit 49, Motion Record of the Ontario Securities Commission, Affidavit of Yu Chen affirmed June 13, 2025, Exhibit 5, Public Prosecution Service of Canada Deskbook at pp 38 and 45; *R v McKinnon*, 2014 BCSC 245 at paras 12-14; *R v Dunn*, 2012 ONSC 2748 at paras 53-67; *R v Card*, 2002 ABQB 537 at para 19; *Krull v The Ontario Provincial Police,* 2021 ONCPC 9 at paras 8, 26, 28-29; *R v Gateway Industries Ltd,* 1998 CanLII 868 at para 23; *LSUC v Dyment,* 2014 ONLSTA 26 (CanLII) at paras 43-53

three meetings with potential witnesses in February 2025 that the Commission produced to the respondents on May 29. Neither party made any submissions or provided any evidence going to the question of whether these notes contained relevant "new" or "different" information not previously disclosed. We make no finding on this point.

4.3.2 Did the Commission's conduct relating to disclosure amount to an abuse of process in the residual category?

[66] We did not find that the Commission's conduct in relation to disclosure was offensive to societal notions of fair play and decency such that continuing with the proceeding in the face of that conduct would be harmful to the integrity of the justice system. The respondents did not establish facts that warrant a finding of abuse of process in the residual category, and therefore we declined to grant a stay of the proceeding.

[67] As explained above, a significant part of the respondents' case was based on the principal submission, with which we disagree, that all counsel meeting notes made during witness preparation sessions must be disclosed by the Commission.

[68] In coming to our conclusion, we also considered the additional disclosure issues raised by the respondents, both singularly and in totality, and find that they do not amount to conduct that is so offensive or so egregious to satisfy the residual category. Where we did have concerns about particular disclosure issues raised by the respondents, we found that the errors in disclosure and errors in judgment calls relating to disclosure were not established to be likely to continue in the future and were not so egregious that they warranted a stay. We found the fact that the Commission ultimately acknowledged a number of these errors, albeit after first being challenged by the respondents as to the sufficiency of its disclosure, relevant to our consideration.

[69] While the Tribunal disagreed with the Commission's position on various aspects of the respondents' 2024 disclosure motion, including the motion in relation to the adequacy of the Commission's witness summaries, we do not conclude that the Commission's position on that motion is evidence of an abuse of process.

[70] The Commission initially proffered justification for not producing English translations of previously produced relevant Chinese documents on grounds that

because the "relevant information" was available to the respondents in one form (*i.e.,* the Chinese version which had been produced), the respondents were not entitled as part of disclosure to receive the information in another existing form (i*.e.,* the existing English translations of the same documents). We reject this rationale unless there is some other valid reason (e.g. privilege) for not disclosing the second document.

[71] We also reject the Commission's initial explanation for failing to produce the clearly relevant October letter on grounds that its contents were repeated in the November letter, which was disclosed to the respondents. The Commission has an obligation to disclose relevant, non-privileged documents. We understand the principles underlying the Commission's disclosure requirements in rule 28 of the *Rules of Procedure* to encompass the obligation that all relevant non-privileged documents should be disclosed, including documents that contain some or all of the same information as other relevant documents that have already been disclosed. Indeed, this Tribunal has previously confirmed that even where there are two different versions of the same relevant (non-privileged) document, the Commission should not be deciding which version should be disclosed. If a document is relevant (and not privileged), both versions should be disclosed.[27]

[72] That said, these two examples (which raise similar issues) are not, in our view, sufficient to establish alone, or together with other issues raised by the respondents, an abuse of process arising from the Commission's approach to its disclosure obligations warranting a stay, particularly considering that the Commission acknowledged its error in both instances.

[73] The trading excerpts were created by the Commission's investigator by extracting and reformatting data that was produced in other forms to the respondents, and the Commission submitted that it was available to the respondents to create similar excerpts using the data and other information that was produced and provided to them. The Commission submitted that these excerpts were litigation aids, rather than documents subject to disclosure obligations.

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[27] *Kitmitto* at paras 42-45

[74] This point was not sufficiently briefed or argued by the parties and, as a result, we are unable to determine whether the trading extracts were litigation aids or documents that ought to have been disclosed in the ordinary course. However, in our view, regardless of the proper characterization of the documents, the respondents could have brought a motion for particulars seeking the relevant details of the examples of alleged market manipulation, prior to the commencement of the merits hearing. They also could have sought an adjournment of the merits hearing after receiving the voluminous trading extracts in the investigator's affidavit delivered before the start of the merits hearing. They did not do so.

[75] We conclude that issues relating to the admissibility of the highlighted trading data are neutral, given the respondents' acknowledgement that such highlighted spreadsheets would be useful to the Tribunal and their alternative proposal that they be given an adjournment to consider these documents, which was granted.

4.4 Can an alternative remedy address the alleged harm?

[76] Having decided that the respondents had not satisfied the test for a stay of proceeding, we considered whether an alternative remedy could address the disclosure issues they raised.

[77] We found that in this case the Commission made several errors with respect to both its disclosure obligations and in making judgment calls concerning disclosure.

[78] We acknowledge that arguments over disclosure are not uncommon in contested hearings and during this proceeding many disclosure matters had either been dealt with by a previous motion or been acknowledged and ameliorated, or were errors of judgment.

[79] While we accept the Commission's submission that we must assume good faith on the part of the Commission in the exercise of its function, we found a recurring disclosure issue, centering on the position that if disclosure has been provided in one form, it need not be provided in another existing form.

[80] Our finding of this recurring disclosure issue arose primarily from the Commission's initially proffered explanations seeking to justify the non-disclosure

of English translations of previously produced Chinese documents and the non-disclosure of the October letter.

[81] This caused us to have concerns that there may have been other disclosure-related errors in an admittedly complex matter. In the interests of ensuring that the respondents have had the opportunity to make full answer and defence to the Commission's allegations, we ordered a review of disclosure be undertaken by the Commission, and specifically identified the Commission's obligation to disclose additional relevant non-privileged documents and information notwithstanding that the document or information may exist in another form that has already been disclosed.

[82] We also identified the Commission's obligation (consistent with its submissions) to disclose relevant "new" and "different" information received from communications with potential witnesses (or their counsel) where litigation privilege is claimed, in recognition of the fact that our May 28 direction was limited to communications with potential witnesses at Jitney Trade/Canaccord and did not extend to any and all notes of meetings with other potential witnesses that might exist.

5. CONCLUSION

[83] For these reasons, we dismissed the respondents' motion for a stay of proceeding but granted alternative relief as follows:

a. the Commission shall conduct a further review of all documents and other things in its possession not already disclosed to the respondents and make additional disclosure as applicable, in accordance with its obligations under rule 28 of the Capital Markets Tribunal *Rules of Procedure*, including that the Commission shall:

   i. disclose any additional relevant documents and information notwithstanding that the document or information may exist in another form that has already been disclosed; and

   ii. disclose all relevant communications with, and relevant previously undisclosed information received from, any persons who are witnesses in this proceeding or who at any time were potential

witnesses and their counsel, subject to any claimed litigation privilege.

Dated at Toronto this 22nd day of January, 2026

"Mary Condon"

Mary Condon

"Andrea Burke"

Andrea Burke

"Sandra Blake"

Sandra Blake