

**IN THE MATTER OF
FIRST GLOBAL DATA LTD., GLOBAL BIOENERGY RESOURCES INC.,
NAYEEM ALLI, MAURICE AZIZ, HARISH BAJAJ, AND ANDRE ITWARU**

File No.: 2019-22

**MOTION
OF STAFF OF THE ONTARIO SECURITIES COMMISSION**

(For an order directing Staff to apply to the Superior Court of Justice for an order
under Section 152 of the *Securities Act*, RSO 1990, c S.5)

A. ORDER SOUGHT

The Moving Party, Staff of the Ontario Securities Commission (**Staff**), requests, with notice, that the Ontario Securities Commission (the **Commission**) make the following order in the form attached as Schedule “A”:

1. an order pursuant to s. 5.1 of the *Statutory Powers Procedure Act*, RSO 1990, s S.22 (the **SPPA**) and Rule 23(3) of the *Ontario Securities Commission Rules of Procedure and Forms*, (2019) 42 OSCB 9714 (the **Rules of Procedure**) that this motion be heard in writing;
2. an order providing that Staff may apply to the Ontario Superior Court of Justice pursuant to s. 152 of the *Securities Act*, RSO 1990, c S.5 (the **Act**) seeking an order from the Ontario Superior Court of Justice:
 - a. appointing the members of the panel assigned to the merits hearing in this proceeding (the **Hearing Panel**) to take the evidence of Adriana Rios Garcia, an individual who resides in Sunny Isles Beach, Florida, for use in the merits hearing before the Commission;
 - b. providing for the issuance of a letter of request directed to the judicial authorities of the State of Florida requesting the issuing of such process as is necessary to compel Adriana Rios Garcia to attend and give testimony before the Hearing

Panel by video link and audio link, on oath or otherwise, in the merits hearing before the Commission;

- c. providing that the testimony of Adriana Rios Garcia shall be taken at the office of Kahn & Resnik P.L., located at the DCOTA Office Center, 1815 Griffin Road, Suite 207, Dania, Florida 33004, or at such other location as Staff may advise upon reasonable notice, so that the Hearing Panel, sitting in Toronto, is able to observe and participate by video link and audio link and make any required evidentiary rulings;
 - d. providing that Adriana Rios Garcia shall give her testimony during the merits hearing before the Commission, commencing on October 5, 2020 at 10:00 a.m. Eastern Time or on such other dates and times thereafter as Staff may advise upon reasonable notice;
 - e. prescribing that the procedural and evidentiary rules of Ontario will apply to the examination of Adriana Rios Garcia to the extent permissible by the laws of Florida;
 - f. providing for the payment by the Commission of the greater of any witness fees and travel expenses as may be required by the laws of Ontario and by the laws of Florida, as applicable; and
3. Such further and other orders as counsel may advise and the Commission deems just.

B. GROUNDS

The grounds for the motion are as follows:

1. The Commission issued a Notice of Hearing on May 31, 2019 to commence these proceedings against the above-named Respondents and consider whether it is in the public interest for the Commission to make the orders requested in the Statement of Allegations issued on May 31, 2019;
2. The Statement of Allegations includes the following allegations:

- a. Staff's allegations involve two groups:
 - i. First Global Data Ltd. (**FGD**), Nayeem Alli and Andre Itwaru (the **FGD Parties**); and
 - ii. Global Bioenergy Resources Inc. (**GBR**), Maurice Aziz and Harish Bajaj (the **GBR Parties**);

FGD Debentures

- b. During the period of approximately May to December of 2015, the GBR Parties raised \$4.4 million through the distribution of FGD series “G” debentures (the **FGD Debentures**) to over 90 investors (the **Debenture Holders**), the majority of whom were Ontario residents;
- c. Debenture Holders were provided with subscription agreements and accompanying term sheets (collectively, the **Subscription Documents**), which set out the terms of the FGD Debentures and included a representation that the funds raised would be used for FGD’s “general working capital”;
- d. Contrary to the Subscription Documents, certain Debenture Holders were told by Aziz and/or Bajaj that the funds they had invested in the FGD Debentures would be used to finance bitumen mining and/or biodiesel operations in Colombia purportedly owned and operated by GBR and/or an affiliated Colombian company, Global Bioenergy Resource SAS (**GBRSAS**). These representations were untrue;
- e. It was further represented to the Debenture Holders that: (i) the FGD Debentures would be fully guaranteed and secured by assets owned by GBRSAS; (ii) the operations related to GBRSAS’ assets in Colombia were sufficient to generate a return on equity of 14% to make interest payments on the FGD Debentures; and (iii) GBRSAS had control over those operations. These representations were untrue;

- f. This distribution occurred without a prospectus providing disclosure to investors. Many of the Debenture Holders did not qualify as accredited investors nor did they qualify for any other exemption from the prospectus requirement;
- g. By engaging in this conduct:
 - i. The GBR Parties directly or indirectly engaged or participated in an act, practice or course of conduct relating to securities that they knew or reasonably ought to have known perpetrated a fraud, contrary to s. 126.1(1)(b) of the Act;
 - ii. FGD and the GBR Parties made untrue, false, or misleading representations that a reasonable investor would have considered relevant in deciding whether to enter into or maintain a trading relationship, contrary to s. 44(2) of the Act;
 - iii. The GBR Parties engaged in the business of trading in securities contrary to s. 25(1) of the Act;
 - iv. The GBR Parties and FGD Parties participated in a distribution of securities without filing a prospectus or an applicable exemption from the prospectus requirement, contrary to s. 53 of the Act;
 - v. Alli and Itwaru authorized, permitted or acquiesced in FGD's non-compliance with Ontario securities law and Aziz and Bajaj authorized, permitted or acquiesced in GBR's non-compliance with Ontario securities law and accordingly are each deemed to have not complied with Ontario securities law pursuant to s. 129.2 of the Act; and
 - vi. The Respondents' conduct was contrary to the public interest;

GBR Debenture

- h. The In or around May of 2015, GBR, through Aziz, solicited an investor (**Investor X**), to loan funds to GBR allegedly to fund GBRsAS's purported

mining operations in Colombia. Investor X loaned GBR \$350,000 on or around July 2, 2015 and an additional \$98,000 on or around August 13, 2015 (the investments are collectively referred to as, the **GBR Debenture**);

- i. On or about October 1, 2015, Investor X was provided with a GBR “Debenture Term Sheet” purportedly confirming her \$450,000 investment in GBR. The term sheet contained the following representations regarding the attributes of the GBR Debenture, which had already been conveyed to Investor X by GBR:
 - i. the GBR Debenture would pay simple interest at a rate of 4% per month;
 - ii. Investor X’s investment was 100% secured and was guaranteed by a first charge against all of the assets of GBR SAS (the same assets purportedly securing and guaranteeing the FGD Debentures); and
 - iii. the first charge was, at a minimum, equal to 142% of the amount invested by Investor X. In addition, Investor X was told by GBR that she would be entitled to profit sharing in addition to interest;
- j. By engaging in this conduct:
 - i. GBR and Aziz engaged or participated in an act, practice or course of conduct relating to securities that they knew or reasonably ought to have known perpetrated a fraud, contrary to s. 126.1(1)(b) of the Act;
 - ii. GBR and Aziz made untrue, false, or misleading representations that a reasonable investor would have considered relevant in deciding whether to enter into or maintain a trading relationship, contrary to s. 44(2) of the Act; and
 - iii. Aziz authorized, permitted or acquiesced in GBR’s non-compliance with Ontario securities law and accordingly is deemed to have not complied with Ontario securities law pursuant to s. 129.2 of the Act;

3. The Commission issued an Order on February 7, 2020 ordering that the merits hearing for this proceeding will commence on October 5, 2020 and continue on dates specified by the Commission in the Order, until January 15, 2021;
4. Garcia resides in Sunny Isles Beach, Florida;
5. Staff's investigation has revealed that Garcia have relevant evidence concerning the allegations at issue in this matter relating to the FGD Debentures and the GBR Debenture described above;
6. Staff intends to rely on the evidence of Garcia as part of its case;
7. Section 152 of the Act;
8. Section 5.1 of the SPPA;
9. Rules 23(3), 26(2) and 28 of the Rules of Procedure; and
10. Such further and other grounds as counsel may advise and the Commission deems just.

C. EVIDENCE

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

1. Affidavit of Sherry Brown sworn September 1, 2020; and
2. Such other evidence as counsel may advise and the Commission may permit.

DATED this 2nd day of September, 2020.

ONTARIO SECURITIES COMMISSION

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Staff of the Ontario Securities Commission

Schedule "A"

Draft Order



Ontario
Securities
Commission
3S8

Commission des
valeurs mobilières
de l'Ontario

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20 Queen Street West
Toronto ON M5H 3S8

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File No. 2019-22

Timothy Moseley, Vice-Chair and Chair of the Panel

[DATE], 2020

ORDER

WHEREAS the Ontario Securities Commission held a hearing in writing to consider a request of Staff of the Commission (**Staff**) for an order pursuant to section 152 of the *Securities Act*, RSO 1990, c S.5 (the **Act**);

ON READING Staff's Motion Record and on considering that no party opposes the relief sought;

IT IS ORDERED THAT:

4. Staff may apply, on behalf of the Commission, to the Ontario Superior Court of Justice pursuant to section 152 of the Act for an Order:
 - a. appointing the members of the panel assigned to the merits hearing in this proceeding (the **Hearing Panel**) to take the evidence of Adriana Rios Garcia, an individual who resides in Sunny Isles Beach, Florida, for use in the merits hearing before the Commission;
 - b. providing for the issuance of a letter of request directed to the judicial authorities of the State of Florida requesting the issuing of such process as is necessary to compel Adriana Rios Garcia to attend and give testimony before the Hearing Panel by video link and audio link, on oath or otherwise, in the merits hearing before the Commission;
 - c. providing that the testimony of Adriana Rios Garcia shall be taken at the office of Kahn & Resnik P.L., located at the DCOTA Office Center, 1815 Griffin Road, Suite 207, Dania, Florida 33004, or at such other location as Staff may advise

upon reasonable notice, so that the Hearing Panel, sitting in Toronto, is able to observe and participate by video link and audio link and make any required evidentiary rulings;

- d. providing that Adriana Rios Garcia shall give her testimony during the merits hearing before the Commission, commencing on October 5, 2020 at 10:00 a.m. Eastern Time or on such other dates and times thereafter as Staff may advise upon reasonable notice;
- e. prescribing that the procedural and evidentiary rules of Ontario will apply to the examination of Adriana Rios Garcia to the extent permissible by the laws of Florida; and
- f. providing for the payment by the Commission of the greater of any witness fees and travel expenses as may be required by the laws of Ontario and by the laws of Florida, as applicable.

Timothy Moseley