



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

22nd Floor
20 Queen Street West
Toronto ON M5H 3S8

22e étage
20, rue queen ouest
Toronto ON M5H 3S8

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

STATEMENT OF ALLEGATIONS

(Subsection 127(1) and Section 127.1 of the *Securities Act*, RSO 1990, c S.5)

A. ORDER SOUGHT

1. Staff of the Enforcement Branch (“**Enforcement Staff**”) of the Ontario Securities Commission (the “**Commission**”) request that the Commission make the following orders:
 - a) that trading in any securities or derivatives by the respondents, First Global Data Ltd. (“**FGD**”), Global Bioenergy Resources Inc. (“**GBR**”), Nayeem Alli, (“**Alli**”) Maurice Aziz (“**Aziz**”), Harish Bajaj (“**Bajaj**”) and Andre Itwaru (“**Itwaru**”) (collectively, the “**Respondents**”) cease permanently or for such period as is specified by the Commission, pursuant to paragraph 2 of subsection 127(1) of the *Securities Act*, RSO 1990, c S.5 (the “**Act**”);
 - b) that the acquisition of any securities by the Respondents is prohibited permanently or for such period as is specified by the Commission, pursuant to paragraph 2.1 of subsection 127(1) of the Act;
 - c) that any exemptions contained in Ontario securities law do not apply to the Respondents permanently or for such period as is specified by the Commission, pursuant to paragraph 3 of subsection 127(1) of the Act;

- d) that the Respondents be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;
- e) that Alli, Aziz, Bajaj and Itwaru (collectively, the “**Individual Respondents**”) resign any position that they hold as a director or officer of an issuer or a registrant, pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act;
- f) that the Individual Respondents be prohibited from becoming or acting as a director or officer of any issuer or a registrant permanently or for such period as is specified by the Commission, pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act;
- g) that the Individual Respondents be prohibited from becoming or acting as a registrant or as a promoter permanently or for such period as is specified by the Commission, pursuant to paragraph 8.5 of subsection 127(1) of the Act;
- h) that the Respondents each pay an administrative penalty of not more than \$1 million for each failure by the Respondents to comply with Ontario securities law, pursuant to paragraph 9 of subsection 127(1) of the Act;
- i) that the Respondents disgorge to the Commission any amounts obtained as a result of non-compliance with Ontario securities law, pursuant to paragraph 10 of subsection 127(1) of the Act;
- j) that the Respondents pay the costs of the Commission investigation and the hearing, pursuant to section 127.1 of the Act; and
- k) such other orders as the Commission considers appropriate in the public interest.

B. FACTS

Enforcement Staff make the following allegations of fact:

OVERVIEW

2. Investor protection is fundamental to securities regulation. The Respondents engaged in improper capital raising activities and made untrue and misleading statements to Ontario investors, which put investors’ financial interests at risk and compromised the integrity and reputation of Ontario’s capital markets.

3. In addition, the Respondents' misconduct undermined the following cornerstone principles of securities regulation:
 - a) **Registration:** Registration requirements serve critical gate-keeping and investor protection functions by ensuring that only properly qualified and suitable persons are permitted to engage in the business of trading and distributing securities. GBR, Aziz and Bajaj engaged in unregistered trading when soliciting the investments, and put the financial interests of investors at risk through misrepresentations and fraud.
 - b) **Prospectus Disclosure:** Capital raising requires a prospectus providing full, true and plain disclosure of all material facts relating to the securities being issued, or reliance on an available exemption from the prospectus requirement. The Respondents participated in distributions of securities without a prospectus, or reliance on an applicable exemption.
 - c) **Continuous Disclosure:** Ontario securities law imposes continuous disclosure requirements on reporting issuers, including financial disclosure requirements. FGD, as a public company, filed interim financial reports and comparative financial statements that contained material misstatements.
4. In the spring of 2015, GBR, primarily through Aziz and Bajaj, began raising money from Ontario investors, for the stated purpose of investing in bitumen mining and/or biodiesel production purportedly being undertaken by an affiliated Colombian company, Global Bioenergy Resource SAS ("**GBRSAS**").
5. At the same time, FGD was in dire need of a capital infusion. In order to raise capital, in August of 2015, FGD entered into an agreement with GBRSAS (the "**Debenture Agreement**") pursuant to which GBRSAS, primarily through Aziz and Bajaj, agreed to assist FGD in raising funds through a debenture offering bearing interest at 14% per year, known as the FGD series "G" debentures (the "**FGD Debentures**"). GBRSAS agreed to provide its assets as security.
6. The Debenture Agreement further provided that a portion of the funds raised through the debenture offering would be lent by FGD to GBRSAS for the deployment of FGD's

technology in return for promissory notes bearing interest at 16% per year (the “**Promissory Notes**”).

7. During the period of approximately May to December of 2015 (the “**Solicitation Period**”), \$4.4 million was raised through the distribution of the FGD Debentures to over 90 investors, the majority of whom were Ontario residents. This distribution occurred without a prospectus providing disclosure to investors, or an available exemption to the prospectus requirement. None of the FGD Parties or the GBR Parties (as defined below) were registered to trade or advise in securities in Ontario.
8. FGD and GBR made contradictory representations to investors regarding the intended use of their investment funds. FGD and GBR also made representations regarding the security backing the investment, which were untrue and amounted to prohibited representations. The conduct in respect of the GBR Parties soliciting the investments was fraudulent.
9. Particularly, subscription agreements and accompanying term sheets (collectively, the “**Subscription Documents**”), prepared by FGD, set out the terms of the FGD Debentures and represented that capital raised from the sale of the FGD Debentures would be used for FGD’s working capital. In contrast, the GBR Parties conveyed to investors in person and in marketing materials that investor funds would be used to finance bitumen mining and biodiesel operations in Colombia purportedly owned and operated by GBR SAS and/or GBR. However, neither GBR SAS nor GBR had any direct ownership interests or business operations in bitumen mining or biodiesel.
10. The capital raised from the sale of the FGD Debentures was used in a manner contrary to the representations. Of the approximately \$4.4 million raised, FGD retained approximately \$1.5 million. The remaining approximately \$2.9 million, or two-thirds, was provided to or for the benefit of GBR SAS. GBR SAS did not utilize any of the \$2.9 million to deploy FGD’s technology in Colombia. No payments of principal or interest were received by FGD in respect of the Promissory Notes, and FGD terminated the Debenture Agreement for non-performance.
11. Subscription Documents and marketing materials utilized during the Solicitation Period also stated that the FGD Debentures would be fully secured and guaranteed by a first charge against mining assets in Colombia purportedly owned and operated by GBR SAS. These

representations were not true. The FGD Debentures were not secured by any assets in Colombia, or otherwise.

12. \$4.4 million in FGD Debentures matured, none of the investors have been repaid and interest payments are in arrears.
13. GBR engaged in other improper capital raising activities and fraudulent conduct in 2015 through the solicitation of a \$450,000 loan (the “**GBR Debenture**”) from an Ontario investor who was not accredited (“**Investor X**”). An exorbitant rate of interest was promised to Investor X and it was represented to her that her investment would be secured by assets in Colombia (the same assets falsely represented to investors in the FGD Debentures as being the security for their investment). The investment was also not secured, has not been repaid and interest is in arrears.
14. In addition, FGD, as a public company, improperly recognized millions of dollars of debt as revenue in its comparative financial statements for fiscal 2016 and interim financial reports for each of the first three quarters of 2017.
15. By filing financial statements and related disclosures that contained material misstatements and were not prepared in accordance with Canadian generally accepted accounting principles for publicly accountable enterprises (“**GAAP**”), FGD compromised public confidence in the integrity of financial reporting and Ontario capital markets.

THE RESPONDENTS

16. Enforcement Staff’s specific allegations in respect of the conduct described above involve two groups:
 - i) the “**FGD Parties**” consisting of FGD, Alli and Itwaru; and
 - ii) the “**GBR Parties**” consisting of GBR, Aziz and Bajaj;and three transactions (defined below):
 - a) the FGD Debentures;
 - b) the GBR Debenture; and
 - c) the FGD Purported License Transactions.

17. The connection between the two groups results from a friendship between Alli, FGD's former Chief Financial Officer ("CFO"), and Aziz, a director of GBR at the material time.

(a) The FGD Parties

18. FGD is a Canadian company with its head office in Toronto, Ontario. FGD is a reporting issuer in Ontario, British Columbia and Alberta. Ontario is its principal regulator. FGD is listed on the TSX Venture Exchange, the Frankfurt Stock Exchange and the OTCQB.

19. FGD describes itself in press releases as an international financial technology company with two main lines of business: (a) mobile payments; and (b) cross border payments.

20. On May 4, 2018, the Commission issued a cease trade order in respect of FGD as a result of its failure to file financial reports and related disclosure documents and certificates (the "CTO"). The CTO continues to be in place.

21. Itwaru is a resident of Toronto, Ontario. He was the President, CEO and Chairman of the Board of FGD from November of 2012 until his resignation in January of 2019. He has never been registered with the Commission in any capacity.

22. Alli is a resident of Toronto, Ontario. Alli was appointed Chief Strategy Officer and a director of FGD on November 29, 2012. He became FGD's CFO on July 9, 2014. Alli resigned as FGD's CFO on or about October 2, 2017 but was re-appointed as "interim" CFO on November 27, 2017. Alli resigned as a director of FGD on November 27, 2017. On August 16, 2018, FGD announced that Alli was no longer with the company in any capacity. Alli has never been registered with the Commission.

(b) The GBR Parties

23. GBR is an Ontario corporation incorporated in August of 2015. GBR's office, during the material time, was in Richmond Hill, Ontario. GBR is not a reporting issuer and has never been registered with the Commission in any capacity.

24. GBR SAS is a Colombian corporation with offices in Bogota, Colombia. GBR SAS is not a reporting issuer and has never been registered with the Commission. GBR SAS is also known as, Global Bioenergy SAS, Global Bioenergy Resources SAS, Global Bio-Resources SAS and Global Bio Energy SAS (all such entities are referred to herein as GBR SAS).

25. GBR SAs was held out in various marketing materials prepared by the GBR Parties and used to solicit investments in the FGD Debentures, as having secured the mineral rights for the mining and export of high grade bitumen in Colombia and having built a fully functional biodiesel plant in Colombia.
26. In these marketing materials, the names “GBRSAS” (and the various iterations of that name identified above) and “GBR” were used interchangeably and inconsistently, suggesting that GBR and GBR SAs were essentially, one and the same, with GBR being the “Canadian Office” and GBR SAs being the “Colombian Office” for the purported Colombian mining and biodiesel rights and operations.
27. Aziz is an Ontario resident and a director of GBR. During the material time, Aziz held himself out as an officer and/or director of GBR SAs. Aziz has never been registered with the Commission. Aziz describes himself as being principally in the business of “business development”.
28. Bajaj is an Ontario resident and a director of GBR. During the material time, Bajaj held himself out as an officer and/or director of GBR SAs. Bajaj was registered as a Salesperson or Dealing Representative for a scholarship plan dealer from May 2004 to March 2014. Bajaj was not registered with the Commission in any capacity during the material time, and is not currently registered with the Commission.

BACKGROUND

(a) The FGD Debentures

29. In August of 2015, GBR SAs entered into the Debenture Agreement with FGD to assist FGD in raising funds through a debenture offering.
30. Pursuant to the Debenture Agreement, FGD agreed to provide GBR SAs with a portion of the funds raised through the FGD Debenture offering and with exclusive rights to deploy FGD’s technology in Colombia and elsewhere. In return, GBR SAs agreed to provide a guarantee to the investors of a first charge against all the assets of GBR SAs and the Promissory Notes to FGD in respect of the funds advanced.

31. Itwaru signed the Debenture Agreement on behalf of FGD and Aziz signed on behalf of GBRASAS. The Promissory Notes were signed by Itwaru or Alli on behalf of FGD and Aziz signed on behalf of GBRASAS.
32. The FGD Debentures were for a three-year term. They bore interest at the rate of 14% per year and offered a production-based royalty to be generated from the purported operating assets owned by GBRASAS in Colombia, payable to investors by FGD.
33. During the period of approximately May to December of 2015 (the Solicitation Period), Aziz and Bajaj, solicited investments for the Colombian bitumen mining and/or biodiesel operations. Ultimately, they raised \$4.4 million through the sale of FGD Debentures to over 90 investors resident in Ontario (the “**Debenture Holders**”). Many of the Debenture Holders did not qualify as accredited investors.
34. The Subscription Documents were prepared by FGD, and Alli or Itwaru signed and accepted the subscriptions on behalf of FGD.
35. Aziz and Bajaj prepared and/or directed the preparation of marketing materials and then used those materials to solicit investments in the Colombian operations through the FGD Debentures.
36. Many investors were solicited by way of radio advertisements placed by Bajaj and/or GBR, were existing clients of Bajaj’s tax business, or were referrals from other Debenture Holders.
37. FGD has never received any interest or principal payments from GBRASAS pursuant to the Promissory Notes. The first Promissory Note, for \$400,000, was executed by FGD and GBRASAS on August 25, 2015. The second Promissory Note, for \$150,000, was executed on September 16, 2015. In accordance with their terms, interest was due on a monthly basis. Despite having received no interest payments, FGD loaned an additional approximately \$2.4 million to or for the benefit of GBRASAS between October 23, 2015 and December 23, 2015.
38. On December 29, 2015, FGD terminated the Debenture Agreement for non-performance.
39. The FGD Debentures started maturing in August of 2018. None of them have been repaid and interest payments are in arrears.

(i) Unregistered Trading and Illegal Distribution

40. The FGD Debentures are “securities” as defined in subsection 1(1) of the Act.
41. The sales of the FGD Debentures were trades in securities not previously issued and were, therefore, distributions. A preliminary prospectus or prospectus was not filed with the Commission in connection with the FGD Debenture offering, nor were prospectus receipts obtained from the Director as required by subsection 53(1) of the Act. While each of the Debenture Holders completed a subscription agreement indicating that they were an accredited investor, this was not the case. Many of the Debenture Holders did not qualify as accredited investors nor did they qualify for any other exemption from the prospectus requirement set out in section 53 of the Act. Reports of exempt distributions, including Form 45-106F1, were not filed with the Commission.
42. None of the GBR Parties were registered with the Commission to trade in the FGD Debentures. By engaging in the conduct described above, GBR, Aziz and Bajaj engaged in, or held themselves out as engaging in, the business of trading in securities and participated in acts, solicitations, conduct or negotiations, directly or indirectly, in furtherance of the sale or disposition of securities for valuable consideration without the necessary registration or an applicable exemption from the registration requirement, contrary to subsection 25(1) of the Act.
43. By engaging in the conduct described above, FGD, Alli, Itwaru, GBR, Aziz and Bajaj participated in a distribution of securities without filing a preliminary prospectus or prospectus or an applicable exemption from the prospectus requirement, contrary to section 53 of the Act.

(ii) False and Improper Representations to Investors

Working Capital and Use of Funds Representations

44. Investors 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” (the “**Working Capital Representation**”).

45. Contrary to the Subscription Documents, which were presented to investors by Aziz and Bajaj, 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 GBRAS and/or GBR's bitumen mining and/or biodiesel operations in Colombia (the "**Use of Funds Representations**"). These representations were untrue. Neither GBRAS nor GBR had any direct ownership interests or business operations in bitumen mining or biodiesel.
46. Capital raised from the sale of the FGD Debentures was used as follows:
- a) FGD retained approximately \$1.5 million of the approximately \$4.4 million raised;
 - b) FGD provided approximately \$2.9 million to or for the benefit of GBRAS. The funds were not used for bitumen mining and/or biodiesel operations purportedly owned by GBRAS or GBR in Colombia; and
 - c) Approximately \$300,000 was used to make interest payments on the FGD Debentures and the GBR Debenture. In other words, investors were paid interest owing to them in respect of the FGD Debentures and GBR Debenture from the capital already raised in the FGD Debenture offering.

Security and GBRAS Operations Representations

47. It was further represented to the Debenture Holders, expressly or impliedly, including in the Subscription Documents, investor presentations, radio advertisements and/or in discussions with Aziz and/or Bajaj, that: (a) the FGD Debentures would be fully guaranteed and secured by assets owned by GBRAS; (b) the operations related to GBRAS' assets in Colombia were sufficient to generate a return on equity of 14% to make interest payments on the FGD Debentures; and (c) GBRAS had control over those operations (collectively, the "**GBRAS Security and Operations Representations**").
48. The GBRAS Security and Operations Representations contained in the Subscription Documents were untrue. The FGD Debentures were not guaranteed or secured and GBRAS did not have any direct ownership interests or business operations in bitumen mining or biodiesel. To the contrary, the owners of the assets in Colombia were not aware of the Debenture Agreement, did not pledge any assets in respect of the FGD Debentures and did not transfer title to those assets to GBRAS.

49. In August of 2018, FGD issued its comparative financial statements for the year ended December 31, 2017, in which FGD disclosed that there was no security against the assets pledged for the FGD Debentures and that the corresponding receivable from GBR SAS had been written off.

(iii) Fraudulent Conduct – the GBR Parties

50. By engaging in the conduct described in paragraphs 44 through 49 above, GBR, Aziz and Bajaj, as officers and directors of GBR, *de facto* officers and/or directors of GBR SAS, and given their role in the solicitation process for the FGD Debentures and their dealings with principals of GBR SAS, knew or ought to have known, during the Solicitation Period, that the Working Capital, Use of Funds and GBR SAS Security and Operations Representations, were false or misleading.

51. In particular, Aziz and Bajaj knew or ought to have known, during the Solicitation Period, that:

- a) some of the funds raised through the FGD Debenture offering had been directed towards coal mining projects in Colombia in respect of which GBR SAS had no asset or other ownership interest;
- b) the assets represented to investors as having been pledged by GBR SAS as security were not owned by GBR SAS, nor were any other assets pledged;
- c) no interest payments were made to FGD by GBR SAS pursuant to the Promissory Notes; and
- d) funds raised from the FGD Debenture offering were used to make interest payments on the FGD Debentures and GBR Debenture.

52. Aziz and Bajaj failed to inform the Debenture Holders of any of the foregoing and continued to solicit sales in the FGD Debentures and receive finder's fees, commissions and/or other fees for doing so.

53. This conduct put investors' pecuniary interests at risk.

54. Accordingly, GBR, Aziz and Bajaj engaged in or participated in acts, practices, or courses of conduct relating to securities that they knew or reasonably ought to have known perpetrated a fraud on persons or companies contrary to paragraph 126.1(b) of the Act.

(iv) Prohibited Representations – the GBR Parties

55. By engaging in the conduct described in paragraphs 44 through 49 above, GBR, Aziz and Bajaj, made untrue and/or misleading statements about matters relating to the FGD Debentures that a reasonable investor would consider relevant in deciding whether to enter into or maintain a trading or advising relationship and/or omitted information necessary to prevent the statements from being false or misleading in the circumstances in which they were made.

56. Accordingly, each of GBR, Aziz and Bajaj breached subsection 44(2) of the Act.

(v) Authorizing, Permitting or Acquiescing in GBR's Breaches of the Act

57. Aziz and Bajaj, as officers and directors of GBR, authorized, permitted or acquiesced in the conduct engaged in by GBR which constituted the breaches of securities law described above.

58. As a result, Aziz and Bajaj are deemed to have not complied with Ontario securities law pursuant to section 129.2 of the Act.

(vi) Prohibited Representations – the FGD Parties

59. The GBR SAS Security and Operations Representations contained in the Subscription Documents were untrue. Itwaru and Alli, as CEO and CFO of FGD respectively, knew or ought to have known this was the case and otherwise failed to take reasonable steps to confirm their accuracy during the Solicitation Period.

60. During the Solicitation Period, the FGD Parties failed to take reasonable or appropriate steps to ensure that GBR SAS owned the assets purportedly pledged to secure the FGD Debentures and/or that such assets had been pledged as security.

61. Alli and Itwaru continued to authorize the advancement of funds from FGD to or for the benefit of GBR SAS despite the fact that interest owing pursuant to the Promissory Notes was in arrears.

62. By engaging in the conduct described in paragraphs 47 through 49 and 59 through 61 above, FGD, made untrue and/or misleading statements about matters relating to the FGD Debentures that a reasonable investor would consider relevant in deciding whether to enter into or maintain a trading or advising relationship and/or omitted information necessary to prevent the statements from being false or misleading in the circumstances in which they were made.
63. Accordingly, FGD breached subsection 44(2) of the Act.

(vii) Authorizing, Permitting or Acquiescing in FGD's Breaches of the Act

64. Alli and Itwaru, as officers and directors of FGD during the material time, authorized, permitted or acquiesced in the conduct engaged in by FGD which constituted the breaches of securities law described above.
65. As a result, Alli and Itwaru are deemed to have not complied with Ontario securities law pursuant to section 129.2 of the Act.

(viii) Conduct Contrary to the Public Interest - the FGD Parties

66. By engaging in the conduct described in paragraphs 44 through 49 and 59 through 61 above, FGD, Alli and Itwaru's conduct was contrary to the public interest. In particular, contrary to the public interest, they failed to take reasonable or appropriate steps to ensure that the GBR Parties did not make false or misleading statements to investors or fail to provide investors with information necessary to prevent the statements made from being false or misleading.

(b) The GBR Debenture

67. In or around May of 2015, GBR, through Aziz, solicited an investor ("**Investor X**"), to loan funds to GBR allegedly to fund GBR SAS's purported mining operations in Colombia. Investor X initially met with Aziz and then attended an investor presentation at GBR's offices in Richmond Hill, Ontario.
68. 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).
69. Investor X was not initially provided with any documents regarding her two investments made in July and August of 2015. However, on or about October 1, 2015, Investor X was

provided with a GBR “Debenture Term Sheet” (the “**GBR Debenture Term Sheet**”) purportedly confirming her \$450,000 investment in GBR.

70. The GBR Debenture Term Sheet contained the following representations regarding the attributes of the GBR Debenture, which had already been conveyed to Investor X by GBR: (a) the GBR Debenture would pay simple interest at a rate of 4% per month; (b) Investor X’s investment was 100% secured and was guaranteed by a first charge against all of the assets of GBRSAS (the same assets purportedly securing and guaranteeing the FGD Debentures); and (c) 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 (the “**GBR Debenture Representations**”).

(i) Fraudulent Conduct - GBR and Aziz

71. Contrary to the GBR Debenture Representations:
- a) Investor X has received only sporadic interest payments and such payments are in arrears;
 - b) Despite repeated demands, Investor X has not been repaid any of her principal; and
 - c) GBRSAS did not hold title to the assets purportedly pledged as security.
72. This conduct put Investor X’s pecuniary interests at risk.
73. By engaging in the conduct described in paragraphs 67 through 72 above, GBR and Aziz engaged in or participated in acts, practices or courses of conduct relating to securities that they knew or reasonably ought to have known perpetrated a fraud on persons or companies contrary to paragraph 126.1(1)(b) of the Act.

(ii) Prohibited Representations - GBR and Aziz

74. As a result of the foregoing, GBR and Aziz made untrue or misleading statements about matters that a reasonable investor would consider relevant in deciding whether to enter into a trading or advising relationship and/or omitted information necessary to prevent the statements from being false or misleading in the circumstances in which they were made.
75. As such, GBR and Aziz breached subsection 44(2) of the Act.

(iii) Authorizing, Permitting or Acquiescing in GBR’s Breaches of the Act

76. Aziz, as an officer and director of GBR, authorized, permitted or acquiesced in the conduct engaged in by GBR which constituted the breaches of Ontario securities laws described above.
77. As a result, Aziz is deemed to have not complied with Ontario securities laws pursuant to section 129.2 of the Act.

(c) FGD Purported License Transactions

78. Between January of 2016 and November of 2017, FGD purportedly sold technology license agreements (the “**FGD Purported License Transactions**”) to investors, many of whom are resident in Ontario. The documentation prepared in respect of the FGD Purported License Transactions stated that the funds were advanced in exchange for the issuance of exclusive licenses to market and deploy FGD’s technology. Such was not the case. Rather, in many instances, no licences were ever issued, and no steps were intended to be taken, or were in fact taken, to market or deploy the technology. Investors loaned funds to FGD based on representations that such loans would be repaid with interest on agreed upon terms.
79. From 2016 until August of 2018, FGD reported the FGD Purported License Transactions as revenue in its interim financial reports for the quarters ending March 31, June 30 and September 30, 2017, and in its comparative financial statements for the year ended December 31, 2016 (the “**Financial Reports**”). Because certain of those transactions were, in fact, financial liabilities, the Financial Reports were not prepared in accordance with GAAP and contained material misstatements.
80. Following inquiries from Enforcement Staff, on August 2, 2018, FGD issued its comparative financial statements and Management Discussion and Analysis for the year ended December 31, 2017 and restated its comparative financial statements for the year ended December 31, 2016. On August 29 and November 29, 2018, FGD issued its interim financial statements and Management Discussion and Analysis for the interim periods ending March 31, June 30 and September 30, 2018, and restated its interim financial reports for the periods ending March 31, June 30 and September 30, 2017. The restatements corrected the misstatements relating to the FGD Purported License Transactions (collectively, referred to as the “**Restated Financial Reports**”).

81. For the fiscal year ended December 31, 2016, the restatement resulted in a reported revenue of \$3.5 million and a net loss of \$3.5 million, down from a previously reported revenue of \$6.2 million and a net loss of approximately \$655,000. For the nine months ended September 30, 2017, the restatement resulted in reported revenue of \$1.2 million, down from a previously reported revenue of \$11.2 million, and a restated net loss of \$8.9 million, from a previously reported net income of \$150,000.

(i) Breaches of Ontario Securities Law by FGD Parties – Financial Reporting

82. Given the foregoing, FGD has filed financial reports that were not prepared in accordance with GAAP and contained material misstatements. Itwaru, as CEO, and Alli, as CFO, certified the Interim and Annual Filings that were not prepared in accordance with GAAP and were materially misstated.

83. Accordingly, FGD contravened subsections 77(1) and 78(1) and 122(1)(b) of the Act, and part 3.2(1)(a) of National Instrument 52-107 *Financial Disclosure*.

84. Itwaru and Alli, as officers and directors of FGD during the material time, authorized, permitted or acquiesced in the conduct engaged in by FGD which constituted the breaches of Ontario securities laws described above.

85. As a result, Itwaru and Alli are deemed to have not complied with Ontario securities laws pursuant to section 129.2 of the Act.

C. BREACHES OF ONTARIO SECURITIES LAW AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

(a) The FGD Debentures

86. The specific allegations advanced by Enforcement Staff in respect of the FGD Debentures are:

- a) During the Solicitation Period, GBR, Aziz and Bajaj engaged in, or held themselves out as engaging in, the business of trading in securities and participated in acts, solicitations, conduct or negotiations, directly or indirectly, in furtherance of the sale or disposition of securities for valuable consideration without the necessary registration or an applicable exemption from the registration requirement, contrary to subsection 25(1) of the Act;

- b) During the Solicitation Period, FGD, Alli, Itwaru, GBR, Aziz and Bajaj participated in a distribution of securities without filing a preliminary prospectus or prospectus or an applicable exemption from the prospectus requirement, contrary to section 53 of the Act;
- c) During the Solicitation Period, GBR, Aziz and Bajaj 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 on any person or company, contrary to paragraph 126.1(1)(b) of the Act;
- d) During the Solicitation Period, FGD, GBR, Aziz and Bajaj 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 subsection 44(2) of the Act;
- e) Alli and Itwaru authorized, permitted or acquiesced in FGD's non-compliance with Ontario securities law, contrary to section 129.2 of the Act;
- f) Aziz and Bajaj authorized, permitted or acquiesced in GBR's non-compliance with Ontario securities law, contrary to section 129.2 of the Act; and
- g) FGD's, Alli's, Itwaru's, GBR's, Aziz's and Bajaj's conduct was contrary to the public interest and harmful to the integrity of the capital markets in Ontario.

(b) The GBR Debenture

87. The specific allegations advanced by Enforcement Staff in respect of the GBR Debenture are:

- a) Between May of 2015 and August of 2015, GBR and Aziz 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 on any person or company, contrary to paragraph 126.1(1)(b) of the Act;
- b) Between May of 2015 and August of 2015, GBR and Aziz made numerous 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 subsection 44(2) of the Act;

- c) Aziz authorized, permitted or acquiesced in GBR's non-compliance with Ontario securities law, contrary to section 129.2 of the Act; and
- d) GBR's and Aziz's conduct was contrary to the public interest and harmful to the integrity of the capital markets in Ontario.

(c) FGD Purported License Transactions

88. The specific allegations advanced by Enforcement Staff in respect of the FGD Purported License Transactions are:

- a) FGD failed to file interim financial reports for each of the quarters ending March 31, June 30 and September 30, 2017 made up and certified as required by the regulations and in accordance with GAAP, contrary to subsection 77(1) of the Act;
- b) FGD failed to file the comparative financial statements for the year ended December 31, 2016 made up and certified as required by the regulations and in accordance with GAAP, contrary to subsection 78(1) of the Act;
- c) FGD made statements in its interim financial reports for each of the quarters ending March 31, June 30 and September 30, 2017, and its comparative financial statements for the year ended December 31, 2016 that in a material respect and at the time and in the light of the circumstances under which they were made, were misleading or untrue or failed to state a fact that was required or necessary to make the statement not misleading, contrary to subsection 122(1)(b) of the Act;
- d) FGD failed to prepare financial statements, included in a document filed by an issuer under National Instrument 51-102, in accordance with GAAP applicable to publicly accountable enterprises, contrary to part 3.2(1)(a) of National Instrument 52-107 *Financial Disclosure*;
- e) Alli and Itwaru authorized, permitted or acquiesced in FGD's non-compliance with Ontario securities law, contrary to section 129.2 of the Act; and
- f) FGD, Alli and Itwaru's conduct was contrary to the public interest and harmful to the integrity of the capital markets in Ontario.

89. Enforcement Staff reserve the right to amend these allegations and to make such further and other allegations as Enforcement Staff may advise and the Commission may permit.

DATED at Toronto, May 31, 2019.

Melissa MacKewn

Crawley MacKewn Brush LLP

Suite 800

179 John Street

Toronto, ON M5T 1X4

Tel: (416) 217-0840

E-mail: MMacKewn@CMBLaw.ca

Litigation Counsel for Staff of the

Ontario Securities Commission