



Capital
Markets
Tribunal

Tribunal
des marchés
financiers

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

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

Citation: *Mithaq Canada Inc (Re)*, 2023 ONCMT 51
Date: 2023-12-20
File No. 2023-28

**IN THE MATTER OF
MITHAQ CANADA INC.**

-and-

**IN THE MATTER OF
AIMIA INC.**

-and-

**IN THE MATTER OF
A HEARING AND REVIEW OF A DECISION OF THE TORONTO STOCK EXCHANGE**

**REASONS FOR DECISION
(Rule 21(4) of the *Capital Markets Tribunal Rules of Procedure and Forms*)**

Adjudicator: Timothy Moseley

Hearing: In writing; final written submissions received November 21, 2023

Appearances:

Teresa M. Tomchak Lauren Harper	For Eagle 1250 Investments Group LLC
David D. Conklin Jerred Kiss	Special Committee of the Board of Directors of Aimia Inc.
Andrew Gray Sarah Whitmore Hanna Singer	For Mithaq Canada Inc.
Orestes Pasparakis James Renihan	For Aimia Inc.
Eliot Kolers	For the Toronto Stock Exchange
Cullen Price Jason Koskela Anna Huculak	For Staff of the Ontario Securities Commission

REASONS FOR DECISION

1. OVERVIEW

- [1] These reasons relate to two requests to intervene in this proceeding. Mithaq Canada Inc. brings the proceeding against Aimia Inc., seeking an order cease trading Aimia Inc.'s shareholder rights plan and a private placement by Aimia. Mithaq also seeks an order setting aside a related decision of the Toronto Stock Exchange, and other relief. Mithaq's application arises in the context of its offer to acquire all of Aimia's shares.
- [2] Eagle 1250 Investment Group LLC (the lead investor in the private placement) and the Special Committee of Aimia's board of directors both sought leave to intervene in the application. They asked to be able to file evidence, to cross-examine witnesses, and to make written and oral submissions.
- [3] Mithaq and Aimia consented to Eagle's and the Special Committee's requests. Neither of the two other parties (Staff of the Ontario Securities Commission and the Toronto Stock Exchange) opposed the requests.
- [4] The motions proceeded in writing.¹ On November 23, 2023, I issued an order² granting both motions. These are the reasons for my order.
- [5] As I explain below, each of Eagle and the Special Committee has a substantial interest in the outcome of this proceeding. Each may bring a unique perspective. Their participation will not unduly impair the efficiency of the proceeding.

2. ANALYSIS

2.1 Introduction

- [6] Rule 21(4) of the Tribunal's *Rules of Procedure and Forms* provides that the Tribunal may grant intervenor status, on appropriate terms. In considering a

¹ I have marked the affidavit of Roger Crandall sworn November 6, 2023, filed on behalf of Eagle, as Exhibit 1 in this written hearing. I have marked the affidavit of Karen Basian sworn November 8, 2023, filed on behalf of the Special Committee, as Exhibit 2.

² *Mithaq Canada Inc (Re)*, (2023) 46 OSCB 9591

request for intervention in a transaction-related proceeding such as this one, the Tribunal will consider whether the proposed intervenor:

- a. has a direct financial or other substantial interest in the outcome of the proceeding; and
- b. has a useful and different perspective than those of the existing parties, and can bring that perspective to the proceeding without unfairly prejudicing the parties or unduly impairing the efficiency of the proceeding.³

2.2 Eagle

[7] I begin with Eagle's request.

[8] Eagle has a direct financial interest in the outcome of Mithaq's application. That interest arises from a private placement of Aimia shares and warrants that closed on October 21, 2023, although it closed subject to the possibility that the private placement will be unwound if Mithaq's application succeeds.

[9] Under the private placement, Eagle acquired units consisting of Aimia common shares and common share purchase warrants. Eagle did not previously own any Aimia shares, but after the private placement it holds 6.24% of Aimia's outstanding shares. The cost to Eagle was approximately \$18.3 million.

[10] Eagle's portion of the private placement is large both in its dollar amount and in the size of the shareholding. An unwinding of the private placement would be significant to Eagle. Eagle's financial interest in the outcome of this proceeding is therefore both direct and substantial.

[11] Eagle has another interest. In this application, Mithaq makes allegations about the intentions of Eagle and its principals, and the extent to which they may have acted together, or will act together, with Aimia and its principals. Eagle therefore has a substantial, although non-financial, additional interest in the outcome of this proceeding.

³ *Wilks Brothers LLC (Re)*, 2021 ONSC 25 at para 54; *ESW Capital LLC (Re)*, 2021 ONSC 7 at para 62; *Eco Oro Minerals Corp (Re)*, 2017 ONSC 23 at para 71

- [12] While Eagle's interests are aligned with some of Aimia's interests, Eagle can bring a useful and unique perspective to the proceeding, particularly with respect to the negotiation of the private placement. It can bring that perspective without unfairly prejudicing the parties, as is evident from the parties' positions on Eagle's request.
- [13] Further, Eagle's participation will not unduly impair the efficiency of the proceeding. All parties, together with Eagle and the Special Committee, agreed on a schedule for exchanging materials before the merits hearing. They also agreed on the allocation of time for oral submissions at that hearing. Eagle's participation will neither extend the time period before the merits hearing nor unduly lengthen the hearing itself. Further, any risk of duplication between Aimia and Eagle can be addressed in the terms of an order.
- [14] Eagle satisfies the test for intervenor status. Eagle may therefore file evidence and written submissions, and may cross-examine witnesses and make oral submissions at the merits hearing. Its participation shall not duplicate that of other parties and shall be limited to facts and issues relating to its own involvement in the issues in this proceeding.

2.3 Special Committee

- [15] I turn to the Special Committee's request.
- [16] Aimia's board of directors formed the committee, made up of four independent directors, in response to Mithaq's take-over bid. The committee evaluated Mithaq's offer, and made a recommendation to Aimia's board.
- [17] The Special Committee has no financial interest in the outcome of this proceeding. However, Mithaq explicitly challenges the process that the committee followed in responding to Mithaq's bid. Mithaq submits that those alleged deficiencies in the process should influence the merits hearing panel's decision on Mithaq's application. The Special Committee therefore has a direct interest in addressing the integrity of its own process, and by extension the

outcome of this proceeding.⁴ It satisfies the first branch of the test for intervention.

[18] The Special Committee satisfies the second branch of the test for the same reasons as apply to Eagle. The Special Committee's participation will not unduly impair the efficiency of the proceeding, and none of the parties objects.

[19] The Special Committee may therefore file evidence and written submissions, and may cross-examine witnesses and make oral submissions at the merits hearing. Its participation shall not duplicate that of other parties and shall be limited to facts and issues relating to its own involvement in the issues in this proceeding.

3. CONCLUSION

[20] For the reasons above, I ordered that:

- a. each of Eagle and the Special Committee may, on or before November 28, 2023: (i) serve and file relevant affidavit evidence, and (ii) serve and file written submissions of no more than ten pages;
- b. each of Eagle and the Special Committee may cross-examine witnesses at the merits hearing in this proceeding on December 12 and 13, 2023; and
- c. all of Eagle's and the Special Committee's participation, including that listed above, shall not duplicate that of other parties and shall be limited to facts and issues relating to the intervenor's own involvement in the issues in this proceeding.

Dated at Toronto this 20th day of December, 2023

"Timothy Moseley"

Timothy Moseley

⁴ *Magna International Inc (Re)*, 2010 ONSEC 12 at para 58