

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

File No. 2023-38

**MOTION
OF THE RESPONDENTS
(Rule 28(3) of the Capital Markets Tribunal's *Rules of Procedure*)**

A. ORDER SOUGHT

Oasis World Trading Inc. (“**Oasis**”), Zhen (Steven) Pang and Rikesh Modi (collectively the “**Respondents**” or “**Moving Parties**”), request, with notice, that the Capital Markets Tribunal (the “**Tribunal**”) make the following orders:

- i) That Staff of the Ontario Securities Commission (“**Staff**”) shall serve on the Respondents a list of witnesses that Staff intends to call which complies with Rule 28(3), in particular, a list of witnesses that names the specific witnesses that Staff intend to call;
- ii) That Staff shall serve Witness Summaries on the Respondents that comply with Rule 28(3) and, in particular, that set out the substance of each witness’s expected testimony and identify any document or thing to which each witness is expected to refer;
- iii) That Staff shall disclose unredacted transcripts of the examinations of all witnesses interviewed as part of the investigation, including, but not limited to, witnesses that Staff intend to call at the merits hearing in accordance with its disclosure obligations under Rule 28 and the *Stinchcombe* standard;
- iv) That Staff shall disclose other relevant documents which Staff have refused to disclose but are relevant because of, among other things, the expected testimony referred to in

its Witness Summaries, and Staff's disclosure obligations under Rule 28 and the *Stinchcombe* standard;

v) That Staff shall complete the foregoing within 30 days of the Tribunal's orders; and

vi) Such further relief as counsel may request and the Tribunal may permit.

B. GROUNDS

The grounds for the motion are:

Background, Allegations, and Procedural History

1. Staff's investigation underlying this proceeding has been ongoing for more than four years.
2. On May 13, 2020, the Commission issued an order under s. 11(1)(a) of the Ontario *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "*Act*") starting an investigation which led to this proceeding. A further s. 11(1)(a) order was issued on January 28, 2022.
3. Staff served Enforcement Notices on the Respondents in May 2023.
4. Approximately 7 months later, on December 28, 2023, the Tribunal issued a Notice of Hearing in this proceeding respecting a Statement of Allegations filed on December 21, 2023.
5. The Statement of Allegations contains three primary allegations:
 - i) Oasis, Pang, and Modi engaged in manipulative trading contrary to s. 126.1(1)(a) of the *Act*;
 - ii) Oasis, and Pang and Modi as officers and directors of Oasis, failed to establish and maintain systems of control and supervision contrary to s. 32(2) of the *Act*, or alternatively, contrary to the public interest; and

- iii) Oasis, and Pang and Modi as officers and directors of Oasis, engaged in the business of trading in securities without being registered to do so and without an applicable exemption from the registration requirement contrary to s. 25(1) of the *Act*.
6. Staff seek permanent market participation bans for each Respondent, as well as administrative penalties, disgorgement, and costs. The proposed sanctions will put the Respondents out of business.
7. With respect to the allegation of manipulative trading, which is at the heart of the proceeding, the Statement of Allegations outlines three groups of trades that Staff allege are manipulative:
- i) From January 1, 2018, to December 31, 2018, Oasis engaged in “at least” 404 instances of locked and crossed market spoofing on foreign securities exchanges (Statement of Allegations, para. 23);
 - ii) Between January 1, 2018, and December 31, 2020, Oasis engaged in “at least” 239 instances of spoofing or quote manipulation on Canadian markets (Statement of Allegations, para. 28); and
 - iii) During the period from January 1, 2018, to December 31, 2020, Oasis executed “approximately” 10,511 wash trades on 759 symbols on two Canadian securities exchanges (Statement of Allegations, para. 29).
8. The Statement of Allegations does not otherwise identify particulars about the alleged manipulative trading such as the dates or times of the trades at issue, the securities at issue, the foreign securities exchanges at issue, or the Canadian markets or securities exchanges at issue.
9. Since shortly after the Allegations were issued, the Respondents have been seeking specific information about the allegations, and in particular, about the impugned trades and the relevant evidence underlying the manipulative trading allegations.

10. On January 18, 2024, the Respondents wrote to Staff requesting particulars of various aspects of the Statement of Allegations, including the manipulative trading allegations. The Respondents reiterated their request on February 6, 2024. Staff refused to provide any particulars indicating that the Respondents' request was premature given that disclosure was forthcoming.
11. On January 22, 2024, the Tribunal held the first case management hearing in this proceeding. At that hearing, the Tribunal issued an order requiring Staff to provide disclosure on February 21, 2024; and to serve and file a Witness List, serve Witness Summaries and indicate any intention to call an expert witness by May 8, 2024. The Tribunal also set May 15, 2024, for the second case management hearing.
12. Staff provided an initial tranche of disclosure on February 21, 2024, which contained approximately 7,000 documents, including voluminous trading data.
13. There were numerous problems with disclosure, primary among them that key trading data did not identify the correct time of the trades at issue.
14. Timing of the trades is an essential issue to evaluating and establishing allegations of spoofing and quote manipulation.
15. In addition, there appeared to be many documents missing, and various attachments (or children documents) were divorced from their parent documents. For example, there would be a cover letter identifying documents, data, or attachments, but no way of telling whether the documents, data, or attachments were in disclosure or where they were in disclosure.
16. The Respondents and Staff attempted to work out these issues through the exchange of numerous pieces of correspondence and a telephone conversation.
17. Ultimately, some requests were fulfilled, but Staff's responses and disclosure of documents were delayed. Staff advised the Respondents on two occasions that the delays were because the Commission's eDiscovery team is short-staffed.

18. Many requests remain outstanding, and disclosure of documents remains incomplete.
19. On May 8, 2024, Staff served and filed a Witness List with six witnesses and related Witness Summaries. Staff have not indicated any intention to call an expert witness.
20. On May 15, 2024, the Tribunal held the second case management hearing in this proceeding. The Respondents advised that there were deficiencies with Staff's Witness Summaries. Among other deadlines, the Tribunal set a deadline of June 10, 2024, for the Respondents to bring a motion regarding the sufficiency of Staff's Witness Summaries.
21. Two days later, on May 17, 2024, the Respondents delivered a ten-page letter to Staff outlining in detail the deficiencies with Staff's Witness List, Witness Summaries, and disclosure (arising from the Witness Summaries).
22. Staff responded on June 4, 2024. Staff's response corrected references to certain documents in its Witness Summaries, but otherwise failed to ameliorate the Witness Summaries considering the deficiencies identified by the Respondents. Moreover, Staff's correspondence made clear that there is a fundamental difference between Staff and the Respondents respecting the requirements of Rule 28(3), and Staff's related disclosure obligations under *Stinchcombe*.

Staff's Witness List and Witness Summaries do not Comply with Rule 28(3)

23. With respect to Staff's Witness List, Staff have failed to properly identify the witnesses they intend to call.
24. With respect to Staff's Witness Summaries, they suffer from the following three defects:
 - i) They fail to include the substance of each witness's expected testimony;
 - ii) They fail to identify any document or thing to which each witness is expected to refer;
and

iii) Staff have refused to disclose documents relevant to the expected testimony of their witnesses.

25. Each of these issues is dealt with in turn.

Staff's Witness List does not Identify the Witnesses Staff Intend to Call

26. One of the witnesses Staff intend to call is Andre Goguen who is identified in the related Witness Summary as a Senior Manager, Product Management at Cboe Canada Inc.

27. Mr. Goguen's Witness Summary indicates that Staff "anticipates calling Mr. Goguen, or another representative from Cboe Canada Inc". Staff have therefore failed to identify the witness that Staff intends to call and have not complied with Rule 28(3).

28. Staff do not believe they have to commit to specific witnesses in a Witness List. If Staff are correct, a Witness List would be entirely meaningless and would deny Respondents the opportunity to research and/or contact proposed witnesses in advance of the merits hearing.

Staff's Witness Summaries do not Identify the Substance of the Expected Testimony

29. On the issue of the substance of expected witness testimony, Staff's Witness Summaries are defective in many respects. Fundamentally, Staff's Witness Summaries are drafted in an unbounded and open-ended fashion. Rather than providing the substance of each witness's expected testimony, Staff have provided some substantive detail while riddling the Witness Summaries with phrases expressly designed to allow Staff to elicit additional, undisclosed substantive testimony from their witnesses. The result is a perversion of the Witness Summary requirement which fails to provide disclosure of the substance of witness testimony to the Respondents.

30. For example, Staff's Witness Summaries often identify a topic area but do not provide the substance of the witness's expected testimony on the topic area. In Danielle Raymond's Witness Summary (Chief Compliance Officer of JitneyTrade and VP Compliance of

Canaccord Genuity), Staff indicate that Ms. Raymond is anticipated to testify about the following:

- “a. Her role at JitneyTrade/Canaccord;
- b. The organizational structure of JitneyTrade/Canaccord, including its compliance staff;
- c. The relationship between Oasis and JitneyTrade/Canaccord;
- d. Her communications with Oasis;
- e. Her understanding of Oasis’s business; and
- f. The supervision of Oasis by JitneyTrade/Canaccord.”

31. No further information is provided. No substance of Ms. Raymond’s expected testimony on, for example, the “relationship” between Oasis and its broker, JitneyTrade/Canaccord, is disclosed. These are merely topic areas, not the witness’s expected substantive testimony *about* the topic areas. This is the approach Staff have taken to each of the Witness Summaries.

32. Staff’s Witness Summaries are also replete with other open-ended phrases such as “including”. The use of such phrases indicates that Staff intends to elicit other, undisclosed substantive testimony from its witnesses. This is not appropriate and provides no meaningful disclosure to the Respondents.

33. As an additional example, Staff’s approach to their Witness Summaries may be best exemplified by the preambular paragraph to the Witness Summary of its primary witness and lead investigator, Yu Chen:

“This Witness Summary provides an overview of the anticipated evidence of Yu Chen at the merits hearing of this matter. It is not intended to be a comprehensive account of the investigative steps taken, or of the results of the investigation, or of the testimony of Mr. Chen. Mr. Chen may refer to the facts and documents referred to in this Witness Summary as part of his testimony in this matter. Mr. Chen may also refer to other

documents in the OSC hearing brief. There are several admissions from the Respondents' compelled examinations that Mr. Chen will refer to as part of this summary. The relevant excerpts of these admissions from the Respondents' transcripts will be provided as part of the merits hearing."

34. The only purpose of this paragraph is to attempt to permit Mr. Chen to testify to substantive matters and refer to documents that are not set out or identified in his Witness Summary. This preambular paragraph demonstrates Staff's flawed approach to fulfilling the Witness Summary requirement.

Staff's Witness Summaries do not Identify the Documents to Which the Witnesses are Expected to Refer

35. Throughout their Witness Summaries, Staff use generic and open-ended characterizations of documents, rather than identifying documents to which the witnesses are expected to refer. The Witness Summaries are rife with phrases such as "introduce related documents", and "introduce evidence". These phrases are insufficient to meet the requirements of Rule 28(3). Staff do not even purport to limit the universe of potential documents in their Witness Summaries to documents disclosed to the Respondents.

36. A particularly egregious example is found in the following paragraph from the Witness Summary of Mr. Chen:

"Mr. Chen will describe the methodology used to determine the level of Oasis's trading activity on Canadian markets and the facts obtained from that methodology. Mr. Chen will also describe and introduce the available trading data relating to Oasis."

37. This paragraph is problematic for several reasons including the failure to identify the substance of Mr. Chen's expected testimony about his "methodology". With respect to the issue of documents, the phrase "introduce the available trading data relating to Oasis" could potentially refer to thousands of documents disclosed to the Respondents, assuming it is even limited to the universe of documents disclosed by Staff to the Respondents (which is not apparent from the Witness Summary).

Staff have Refused to Disclose Documents Relevant to the Expected Testimony of Their Witnesses

38. Staff's Witness Summaries reveal that there are relevant documents that ought to be disclosed by Staff as they are relevant to the expected testimony of their witnesses. Staff have refused to disclose them.
39. For example, in the Witness Summaries of three of their witnesses (Danielle Raymond, Marc Sansregret, and Eric Cote) Staff indicate that each of these three witnesses is expected to testify, at least in part, in accordance with transcripts of their examinations. The transcripts contain redactions by Staff. Staff have refused to disclose unredacted transcripts to the Respondents.
40. When pressed on this issue, Staff have indicated that the Respondents have failed to articulate a basis for the disclosure of unredacted witness transcripts. In effect, Staff have shifted the burden of disclosure to the Respondents which calls into question Staff's approach to disclosure in this proceeding and their understanding and application of the *Stinchcombe* standard.
41. As a further example, Staff have also refused to disclose attachments to a letter of March 5, 2020, from the Australian Securities & Exchange Commission ("ASIC") to the OSC's Enforcement Branch. As discussed above, Staff are alleging that Oasis breached the *Act* by engaging in "at least" 404 instances of locked and crossed market spoofing on foreign securities exchanges. Those foreign securities exchanges are in Australia.
42. On its face, the ASIC letter identifies six attached documents that relate to information and methodology used by ASIC to identify possible trading issues related to Oasis. Mr. Chen indicates in his Witness Summary that he intends to refer to ASIC's "referral" to the OSC and its methodology in his testimony. Staff have, however, refused to disclose the attachments on the ground that they are not relevant. It is inconceivable that these documents can be withheld on the ground that they are not relevant given the Allegations at issue and Mr. Chen's expected testimony.

Staff's Failure to Comply with Rule 28 is Threatening the Fairness of the Proceeding and Impairing the Respondents' Rights

43. At this stage of the investigation and the proceeding, Staff are either unable or unwilling to provide details of the testimony and documentary evidence they intend to adduce to prove their Allegations, particularly respecting the manipulative trading allegations at the heart of the proceeding. Staff are acting contrary to Rule 28 and their obligations under *Stinchcombe*.
44. Staff's conduct is threatening the Respondents' right to full answer and defence – to understand the case they must meet. The Respondents are unable to make informed decisions about what evidence, if any, to call in response to Staff's case.
45. Moreover, it is difficult to see how the parties will be able to conduct an efficient and effective merits hearing before the Tribunal based on where matters stand at present.
46. The Respondents rely on s. 2 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22; Rules 1 and 28 of the Capital Markets Tribunal's *Rules of Procedure*; principles of procedural fairness, natural justice, and full answer and defence; and the *Stinchcombe* disclosure standard.

C. EVIDENCE

The Moving Parties intend to rely on the following evidence for the motion:

- i) The affidavit of Janice Wright, to be affirmed; and
- ii) Any other evidence that the Tribunal requires and permits.

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