

Ontario Capital Markets Tribunal Considers Poison Pills under Public Interest Jurisdiction

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The Ontario Capital Markets Tribunal (the Tribunal) considered and refined the standard for its use of the public interest jurisdiction under section 127 of the *Securities Act* (Ontario)¹ in the absence of a contravention of Ontario securities laws. While framed in the context of an application to cease trade a shareholder rights plan, this new coherent standard for the exercise of its public interest power will likely be applied in future proceedings.

The applicant Riot Platforms, Inc. (Riot) is a Bitcoin mining and digital infrastructure company that is the largest shareholder of Bitfarms Ltd. (Bitfarms), an Ontario reporting issuer and a Bitcoin mining company. In 2023 and 2024, Riot submitted several confidential proposals to Bitfarms with respect to a potential business combination of the two companies. In June 2024, Bitfarms adopted a shareholder rights plan with a “trigger” of 15% under which Bitfarms shareholders, other than the shareholder that triggered the plan, would become entitled to purchase additional Bitfarms shares at half price. The take-over bid regime threshold is 20%.² Riot owned almost 15% of Bitfarms’s outstanding shares and no other shareholder held close to that amount. Riot applied under section 127 of the Act for an order cease trading the Bitfarms plan in the public interest.

The Tribunal reviewed its prior decisions describing the public interest authority and found that the appropriate standard should fall somewhere between the “unfairness” and “abusive” ends of the spectrum. The Tribunal held that it is in the public interest to cease trade a shareholder rights plan only if: (i) the applicant demonstrates that the plan undermines, in a “real and substantial way”, and with “public effect”, one or more clearly discernible animating principles underlying Ontario securities law, and (ii) the respondent does not demonstrate exceptional circumstances that would justify the continuation of the plan. In this case, the 15% rights plan satisfied the criteria to be cease traded since the 15% trigger would undermine, in a real and substantial way, the animating principles underlying the take-over bid regime, and Bitfarms had not proven sufficient exceptional circumstances.

The full decision can be found [here](#).

¹ *Securities Act*, [RSO 1990, c S.5](#).

² NI 62-104.

Cassels

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