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| *Unofficial English Translation* | | |  |
| Autorité des marchés financiers c. Larivière | | | 2022 QCTMF 48 |
| FINANCIAL MARKETS ADMINISTRATIVE TRIBUNAL | | | |
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| PROVINCE OF QUEBEC | | | |
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| FILE NO.: | 2022-021 | | |
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| DECISION NO.: | 2022-021-001 | | |
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| DATE: | July 29, 2022 | | |
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| BEFORE: | | |  | | --- | | Mtre. NICOLE MARTINEAU | | Mtre. ANTONIETTA MELCHIORRE | | | |
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| |  | | --- | | AUTORITÉ DES MARCHÉS FINANCIERS | | Applicant | | v. | | **VANESSA LARIVIÈRE**, residing at [...], Brossard, Quebec [...] | | and | | **EVA ROSE BEAUTÉ INC.**, having its domicile at [...], Brossard, Quebec, [...]  and  **EVA ROSE CAPITAL INC.**, having its domicile at 1-6030 Boul. Chevrier, Brossard, Quebec, J4Z 0L3 | | Respondents | | and | | **TORONTO DOMINION BANK (TD Bank),** a legal entity having a place of business at66 Wellington Street West, 15th floor, Toronto, Ontario, M5K 1A2, and having a branch at 8330 Boul. Taschereau, Suite 400, Brossard, Quebec, J4X 1C2, as well as at 9780 Boul. Leduc, Suite 5, Brossard, Quebec, J4Y 0B3 | | and | | **BANK OF MONTREAL (BMO),** a legally constituted legal entity having its head office at 129 Rue Saint-Jacques, Montréal, Quebec, H2Y 1L6, and having a branch at 119 Rue Saint-Jacques, Montréal, Quebec, H2Y 1L6 | | and | | **FP MARKETS LLC,** a legally constituted legal entity with a place of business at First St. Vincent Bank Ltd Building, 1st floor, James Street, Kingstown, St. Vincent and the Grenadines  Impleaded parties | | | | |
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| *EX PARTE* DECISION | | | |
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# OVERVIEW

1. On July 25, 2022, during an ongoing investigation, the Autorité des marchés financiers (“Authority”) filed an urgent request for an *ex parte* hearing with the Financial Markets Administrative Tribunal (“Tribunal”) to obtain freeze orders against Vanessa Larivière and Eva Rose Beauté Inc. (“Eva Rose Beauté”), as well as in respect of the impleaded parties, prohibition orders against engaging in security and derivatives transactions, prohibitions against acting as a dealer or adviser against Vanessa Larivière and Eva Rose Beauté Inc., as well as specific measures to ensure compliance with the law.
2. For the reasons mentioned below, the Tribunal heard the Authority's request at an *ex parte* hearing[[1]](#footnote-1) held on July 26 and 27, 2022.
3. During the deliberation of this case, the Authority filed an amended *ex parte* request to add Eva Rose Capital Inc. (“Eva Rose Capital”) as a respondent and to request that the Tribunal rule on this respondent.
4. The Tribunal heard this amended request at an *ex parte* hearing held on July 28, 2022. The Tribunal granted the request for amendment and allowed the investigation to be reopened to hear evidence concerning Eva Rose Capital.
5. The Authority is responsible for enforcing the *Securities Act*[[2]](#footnote-2) and the *Derivatives Act.*[[3]](#footnote-3) The Authority exercises the functions set out in this legislation in the manner provided in section 7 of the *Act respecting the regulation of the financial sector.*[[4]](#footnote-4)
6. Vanessa Larivière previously held a certificate with the Authority under the *Act respecting the distribution of financial products and services,*[[5]](#footnote-5) in the insurance of persons category and, under the *Securities Act*, in the category of dealer representative for a mutual fund dealer.[[6]](#footnote-6)
7. Since May 15, 2018, Vanessa Larivière has not been registered with the Authority in any capacity.[[7]](#footnote-7)
8. Despite the above, Vanessa Larivière allegedly posted on her LinkedIn page that she is a financial security adviser at RBC and a mutual fund adviser at Investors Group.[[8]](#footnote-8)
9. She allegedly also posted on her Facebook page that she is a mutual fund adviser at IG Wealth Management.[[9]](#footnote-9)
10. Eva Rose Beauté was constituted on September 1, 2020 under the *Business Corporations Act[[10]](#footnote-10)* and its declared activity is “women’s beauty salon”.[[11]](#footnote-11) Eva Rose Beauté declares that it is domiciled at the same address as the home of Vanessa Larivière.[[12]](#footnote-12)
11. Vanessa Larivière is apparently the sole shareholder of Eva Rose Beauté and holds the positions of president and secretary.[[13]](#footnote-13)
12. Eva Rose Beauté is not registered in any capacity with the Authority.[[14]](#footnote-14)
13. Eva Rose Capital was constituted very recently, on July 15, 2022, under the *Canadian Business Corporations Act.*[[15]](#footnote-15) Vanessa Larivière appears to be the sole shareholder of this company and holds the positions of president and secretary.[[16]](#footnote-16)
14. Eva Rose Capital’s reported activities are “holding company”, “distribution, management of subsidiary companies”, “investment companies” and “investment in movable and real property”.[[17]](#footnote-17)
15. Eva Rose Capital does not appear to be registered in any capacity with the Authority. In addition, this company does not appear to be registered in any category based on the Authority’s public register.[[18]](#footnote-18)
16. The Authority’s request was made under section 115.1 of the *Act respecting the regulation of the financial sector* whereby the Tribunal may render a decision adversely affecting the rights of a person without a prior hearing if urgent action is required or to prevent irreparable harm.
17. The Authority filed its request without notice to the other parties pursuant to section 23 of the *Rules of Procedure of the Financial Markets Administrative Tribunal*[[19]](#footnote-19) (“Regulations”)*.* This provision allows a request based on imperative reasons to be heard by the Tribunal without notice to the other parties.
18. The Authority filed the affidavit required by section 19 of the Regulations with its initial request and its amended request. This provision stipulates that a request based on imperative reasons must be filed with a sworn affidavit in support of the facts of the request and imperative reasons on which it is based.
19. A copy of the amended request filed by the Authority, including the required affidavit, is appended to this decision.
20. The Authority alleges that Vanessa Larivière solicited investors to entrust her with sums of money for the purpose of subsequently injecting and investing these funds in the platform of the impleaded party, FP Markets LLC (“FP Markets”), a trading and exchange platform for a wide range of contracts for differences (“CFDs”), the underlying of which may be based on forex, equities, commodities, stock market indices, and cryptocurrencies.
21. Agreements were allegedly entered into with at least two investors for the purposes of the proposed investments.[[20]](#footnote-20) Under these agreements, Vanessa Larivière would share equally with the investors in the profits generated by the transactions carried out.
22. One of the agreements signed by an investor[[21]](#footnote-21) contains provisions that suggest that Eva Rose Beauté would be a party to the agreement and that the assets covered by the agreement would remain in its name.[[22]](#footnote-22)
23. An amount of more than $177,000 was allegedly collected from two investors under these agreements for the purpose of subsequently investing the funds in the FP Markets platform to trade in derivatives.
24. Vanessa Larivière allegedly deposited the funds obtained from these two investors in her personal bank accounts.[[23]](#footnote-23)
25. The Authority also alleges that at least one investor provided a cheque in the amount of $10,000[[24]](#footnote-24) containing the mention “loan”, and that this cheque was deposited in Vanessa Larivière’s bank account.
26. The Autority further alleges that Vanessa Larivière offered the two investors who had signed an agreement to open an account with FTMO for them, to pay the fees to open these accounts, to carry out the transactions free of charge until the initial repayment of the principal, and to share the profits thereafter.
27. The Authority alleges that FTMO allows experienced traders to purchase and sell CFDs, the underlying of which may be based on the following products: forex, equities, commodities, and cryptocurrencies.
28. Vanessa Larivière allegedly considered this offer to the two investors to be a good way to “get back on one’s feet” quickly while taking little risk.[[25]](#footnote-25)
29. According to the Authority, Vanessa Larivière and Eva Rose Beauté acted and continue to act as traders and advisers under the *Securities Act* and the *Derivatives Act* without holding the registrations required to do so with the Authority. In so doing, these respondents allegedly committed and continue to commit breaches of section 148 of the *Securities Act* and section 54 of the *Derivatives Act.*
30. The Authority further alleges that Vanessa Larivière and Eva Rose Beauté did not prepare a prospectus as required by the *Securities Act* in order to distribute to the investing public investment contracts and instruments evidencing a loan of money and that, as a result, they have committed and continue to commit breaches of section 11 of the *Securities Act*.
31. Furthermore, the Authority states that its investigation, which is ongoing, reveals that Vanessa Larivière appears to have used the money obtained from investors to pay personal expenses.
32. According to the Authority, the constitution of Eva Rose Capital contemporaneously with the alleged breaches by Vanessa Larivière and Eva Rose Beauté raises fears that they may continue their activities in contravention of the *Securities Act* and the *Derivatives Act* through this new company.
33. The Authority further alleges that Eva Rose Capital has a name very similar to that of Eva Rose Beauté, which could create confusion among the investing public.
34. The Authority argues that there is an urgent need for the Tribunal to issue the orders set out in the findings of its amended request to prevent the respondents from squandering the significant funds they have already gained through alleged illegal activities, and to prevent the respondents from continuing these illegal activities, which are likely to cause irreparable harm to investors, the integrity of financial markets, and the investing public’s confidence in these markets.
35. In view of the urgency alleged and demonstrated by the Authority to prevent irreparable harm[[26]](#footnote-26) to investors, the Tribunal heard its request and its amended request at an *ex parte* hearing held on July 26, 27 and 28, 2022.
36. The Tribunal recalls that, in an urgent situation or to avoid irreparable harm, it may render a decision adversely affecting the rights of a person without a prior hearing.[[27]](#footnote-27)
37. In its analysis and determination of the issues raised, the Tribunal must address the following questions:
38. Does the evidence adduced by the Authority show any apparent breaches by the respondents of the *Securities Act* and the *Derivatives Act*, or actions contrary to the public interest?
39. Is this a situation where urgent action is required and/or irreparable harm may be caused if the Tribunal does not render a decision without first hearing the respondents and the impleaded parties?
40. If so, what preventive, protective and conservatory measures should the Tribunal take in the public interest?
41. After its analysis, the Tribunal responds in the affirmative to the first two questions above and concludes that it is in the public interest to issue all the orders sought by the Authority as protective, preventive and conservatory measures.

**ANALYSIS**

**Question 1: Does the evidence adduced by the Authority show any apparent breaches by the respondents to the *Securities Act* and the *Derivatives Act,* or actions contrary to the public interest?**

1. In the opinion of the Tribunal, the Authority adduced clear and convincing evidence that Vanessa Larivière and Eva Rose Beauté committed and continue to commit material breaches of the *Securities Act* and the *Derivatives Act*.
2. More specifically, Vanessa Larivière allegedly solicited investors to entrust her with sums of money under agreements that appear to constitute “investment contracts”, which are a “form of investment” subject to the *Securities Act*.[[28]](#footnote-28)
3. Vanessa Larivière and Eva Rose Beauté each appear to have distributed an investment contract at least once, without preparing a prospectus approved by the Authority or without an exemption to that effect, in contravention of section 11 of the *Securities Act*. In addition, Vanessa Larivière allegedly distributed an instrument evidencing a loan of money without preparing a prospectus approved by the Authority, in contravention of section11 of the *Securities Act*.
4. Vanessa Larivière and Eva Rose Beauté allegedly acted as advisers and dealers without being registered with the Authority as such, in contravention of section 148 of the *Securities Act*.
5. Due to the fact that the funds invested by the investors were subsequently traded in derivatives, Vanessa Larivière and Eva Rose Beauté appear to have acted as advisers and dealers in derivatives without being registered as such with the Authority, in contravention of section 54 of the *Derivatives Act*.
6. With regard to Eva Rose Capital, in the opinion of the Tribunal, the Authority demonstrated that the constitution of this company, contemporaneously with the apparent breaches alleged against Vanessa Larivière and Eva Rose Beauté, would appear to constitute an act contrary to the public interest.
7. The Tribunal notes that the *Securities Act*, legislation generally recognized as being a law of public order, applies to all “forms of investment” described in its section 1. These types of investments include:

“2° an instrument, other than a bond, evidencing a loan of money;”

“7° an investment contract”.

1. An investment contract is defined as follows in the *Securities Act:*[[29]](#footnote-29)

“An investment contract is a contract whereby a person, having been led to expect profits, undertakes to participate in the risk of a venture by a contribution of capital or loan, without having the required knowledge to carry on the venture or without obtaining the right to participate directly in decisions concerning the carrying on of the venture.”

1. The *Securities Act* also provides that any person intending to make a distribution of “securities” must prepare a prospectus to be approved by the Authority or must be otherwise exempted therefrom.[[30]](#footnote-30) Forms of investment, such as instruments evidencing a loan of money and investment contracts described in section 1 of the *Securities Act*, are subject to the obligations applicable to the distribution of securities, including the preparation of a prospectus subject to approval by the Authority.
2. The Tribunal notes that the purpose of the prospectus is to provide full, true and plain disclosure of all material facts relating to the investment.[[31]](#footnote-31)
3. The *Securities Act* also provides that any person acting as a “dealer” or “adviser” must be registered as such with the Authority.[[32]](#footnote-32)
4. Section 5 of the *Securities Act* defines the term "adviser" as follows:

“"adviser" means a person engaging in or holding themself out as engaging in the business of advising another with respect to investment in or the purchase or sale of securities, or the business of managing a securities portfolio;”

1. The term “dealer” is defined as follows:[[33]](#footnote-33)

“dealer” means a person engaging in or holding themself out as engaging in the business of

(1) trading in securities as principal or agent;

(2) distributing a security for their own account or for another’s account; or

(3) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of an activity described in paragraph 1 or 2.”

1. The *Derivatives Act* also stipulates that advisers and dealers must register with the Authority. In addition, section 3 of the *Derivatives Act* provides definitions of “adviser” and “dealer” in relation to derivatives that are very similar to those found in the *Securities Act*.
2. In order to find that Vanessa Larivière and Eva Rose Beauté allegedly committed apparent breaches of the *Securities Act* and the *Derivatives Act*, the Tribunal considered the evidence described below.
3. Vanessa Larivière does not appear to be registered in any capacity with the Authority at this time.[[34]](#footnote-34) Nor does she appear to have filed a report of exempt distribution or a prospectus, to have received approval of a prospectus by the Authority, or to have received an exemption from making such a filing.[[35]](#footnote-35)
4. Vanessa Larivière appears to be the sole shareholder, director and manager of Eva Rose Beauté.[[36]](#footnote-36) She allegedly holds the position of president.
5. Eva Rose Beauté does not appear to be registered in any capacity with the Authority.[[37]](#footnote-37) Nor does it appear to have filed a report of exempt distribution or a prospectus, to have received approval of a prospectus by the Authority, or to have received an exemption from making such a filing.[[38]](#footnote-38).
6. Vanessa Larivière is alleged to have presented herself as a “trader”, having taken a “trading” course, and implied that she was even certified by the Authority. She apparently also stated that she had launched an investment firm.
7. Vanessa Larivière solicited investors essentially from among her circle of friends or acquaintances and her family so that they would entrust her with sums of money that would subsequently be injected and invested in the platform of the impleaded party, FP Markets, a trading and exchange platform for a wide range of contracts for difference (“CFDs”), the underlying of which may be based on forex, equities, commodities, stock market indices, and cryptocurrencies.
8. Vanessa Larivière allegedly suggested to investors that she had never lost money and that the proposed investments did not involve any risk. She also suggested that there would be staggering profits.
9. Due to her solicitation efforts and representations, Vanessa Larivière allegedly convinced at least three people to entrust her with funds for investment purposes.
10. In the case of two of these investors, Vanessa Larivière allegedly undertook to invest the funds entrusted and to share 50% of the profits earned from the investments with them.
11. Two partnership agreements entitled “*Trading Partnership Agreement*” were entered into by two of the investors.[[39]](#footnote-39)
12. Article 2 of the agreement signed by the first investor provides that “The firm name of the Partnership will be under the company owned by Vanessa Larivière: Eva Rose \_\_\_\_\_\_.”
13. In addition, this agreement provides that:

“Title to Partnership Property

28 Title to all Partnership Property will remain in the name of the Partnership. No Partner or group of Partners will have any ownership interest in such Partnership Property, in whole or in part”.

1. These provisions suggest that Eva Rose Beauté would be party to this partnership agreement and that the assets of the partnership would remain in its name.
2. The first investor to sign the agreement apparently invested approximately $120,000.[[40]](#footnote-40)
3. The Tribunal notes that the money used by this first investor came from their personal lines of credit, which had to be repaid quickly. Moreover, the agreement provides that the capital would be repaid to the investor within seven working days of a request to that effect.
4. Vanessa Larivière is also said to have entered into an agreement with a second investor the terms of which are very similar to those contained in the first agreement, with the exception that it contains no mention of Eva Rose Beauté.[[41]](#footnote-41)
5. The second investor reportedly invested $58,000.[[42]](#footnote-42)
6. According to the agreement signed by this second investor, the capital would be repaid, in large part, within a short period of time.
7. Despite what is indicated in the agreements signed by the two investors, they apparently were not involved in the choice of investments. Neither of the two investors have any investment knowledge or experience.
8. Vanessa Larivière allegedly deposited the funds from these investors in her personal bank accounts.[[43]](#footnote-43)
9. With regard to the third investor, the latter reportedly gave Vanessa Larivière $11,000, including a cheque for $10,000 dated June 15, 2022 containing the statement “loan”.[[44]](#footnote-44)
10. After the funds were provided by the two investors who signed agreements*,* these persons received emails containing what appears to be a statement from FP Markets, leading them to believe that the funds had actually been deposited and that substantial profits had been made.[[45]](#footnote-45)
11. Despite the undertakings in the agreements as to when the capital would be repaid and notwithstanding all kinds of promises and excuses to justify the refusal to repay the investors, $75,752.88 is allegedly still due to the first investor and $17,000 to the second investor.[[46]](#footnote-46)
12. In the opinion of the Tribunal, the agreements signed by the first two investors constitute investment contracts within the meaning of the *Securities Act*. Indeed, these contracts meet all the criteria of an investment contract, specifically:
13. a contract whereby a person undertakes,
14. having been led to expect profits,
15. to participate in the risk of a venture by a contribution of capital or loan,
16. without having the required knowledge to carry on the venture,
17. or without obtaining the right to participate directly in decisions concerning the carrying on of the venture.
18. The investments to which the investors apparently subscribed are securities that qualify as either investment contracts within the meaning of the *Securities Act*, in the case of the two investors who entered into agreements,or instruments evidencing a loan of money, in the case of the third investor who appears to have loaned $10,000 to Vanessa Larivière.
19. The Tribunal points out that the terms set out in the agreements are very similar to those set out in the contracts referred to in *Autorité des* *marchés financiers* v. *Kerkhoven.*[[47]](#footnote-47)
20. In that case, the Tribunal considered as an investment contract, a contract under which the respondent invested and managed alone the sums of money provided by the investors in exchange for a 50% share of the profits resulting from the investments.
21. The Tribunal is of the opinion that both Vanessa Larivière and Eva Rose Beauté distributed a form of investment subject to the *Securities Act* without preparing a prospectus subject to approval by the Authority in contravention of section 11 of the *Securities Act*. Furthermore, they appear to have as dealers and advisers without being registered as such with the Authority, in contravention of section 148 of the *Securities Act*.
22. With regard to the breach of section 54 of the *Derivatives Act*, that is, having acted as advisers and dealers with respect to derivatives without being registered with the Authority, the evidence adduced by the Authority shows that the funds invested by the investors under the agreements were apparently subsequently traded in derivatives.
23. The Tribunal points out that the funds initially paid were subsequently invested in the FP Markets platform for the purpose of derivative trading. Such trading in derivatives trigger the requirement for Vanessa Larivière and Eva Rose Beauté to register with the Authority in accordance with section 54 of the *Derivatives Act*.
24. In addition, Vanessa Larivière reportedly offered to open an account with FTMO for the two investors who signed agreements. The evidence adduced reveals that FTMO is a company that allows experienced “traders” to offer derivatives to the public, among other means through contracts for difference (CFDs), the underlying of which may be based on a range of financial products.[[48]](#footnote-48)
25. The evidence establishes that the respondents are not registered with the Authority to engage in activities as dealers or advisers under the *Derivatives Act*. Consequently, the Tribunal considers that these respondents allegedly committed breaches under section 54 of the *Derivatives Act*.
26. In the case of Eva Rose Capital, the evidence shows that it was created on July 15, 2022.[[49]](#footnote-49)
27. Vanessa Larivière is reportedly the sole shareholder, director and manager of Eva Rose Capital. She holds the position of president. Eva Rose Capital’s business activities are described as follows: “Holding company”, “distribution, management of subsidiary companies”, “investment companies”, and “investment in movable and real property”.
28. Eva Rose Capital is apparently not registered with the Authority.[[50]](#footnote-50)
29. According to the Authority, the constitution of this company contemporaneously with the alleged breaches by Vanessa Larivière and Eva Rosa Beauté raises fears that the latter are using Eva Rose Capital to pursue the same ends.
30. The Tribunal notes that the Authority is at the beginning of its investigation and the evidence does not allow it, at this stage, to establish that Eva Rose Capital has committed any breaches of the *Securities Act* and/or the *Derivatives Act*.
31. However, the Tribunal recognizes that the constitution of this new company, which bears a name very similar to that of Eva Rose Beauté, could create confusion among the investing public.
32. Eva Rosa Capital’s intention to operate in the field of “distribution” and “investment”, according to the description of its business activities[[51]](#footnote-51), appears questionable in the current circumstances.
33. In the opinion of the Tribunal, the constitution of Eva Rose Capital contemporaneously with the apparent breaches alleged against Vanessa Larivière and Eva Rose Beauté would appear to constitute an act contrary to the public interest, thus allowing the Tribunal to issue orders[[52]](#footnote-52) that are protective, preventive, conservatory, and provisional in nature.

**Question 2: Is this a situation where urgent action is required and/or irreparable harm may be caused if the Tribunal does not render a decision without first hearing the respondents and the impleaded parties?**

1. After hearing and considering all the evidence adduced by the Authority, the Tribunal answers this question in the affirmative. The Tribunal considers the situation to require urgent action and to present a risk of irreparable harm unless it renders a decision without first hearing the respondents and the impleaded parties.
2. Section 115.1, paragraph 2 of the *Act respecting the regulation of the financial sector* provides that the Tribunal may render a decision adversely affecting the rights of a person, without a prior hearing, if urgent action is required or to prevent irreparable harm.
3. According to the evidence adduced, Vanessa Larivière and Eva Rose Beauté committed and continue to commit breaches of section 148 of the *Securities Act* and section 54 of the *Derivatives Act* by acting as dealers and advisers without holding the required registrations with the Authority.
4. Vanessa Larivière and Eva Rose Beauté allegedly distributed and continue to distribute,[[53]](#footnote-53) to the public, investment contracts and instruments evidencing a loan of money without having prepared a prospectus subject to approval by the Authority, all in contravention of section 11 of the *Securities Act*.
5. The Tribunal points out that the constitution of Eva Rose Capital contemporaneously with the apparent breaches alleged against Vanessa Larivière and Eva Rose Beauté would appear to constitute an act contrary to the public interest, thus allowing the Tribunal to make orders of a protective, preventive, conservatory, and provisional nature.
6. The Tribunal notes that the Authority’s investigation, which is ongoing, reveals in particular that:

* The respondents do not appear to be registered in any capacity with the Authority;
* Vanessa Larivière and Eva Rose Beauté apparently did not file a report of exempt distribution or a prospectus, did not receive approval of a prospectus by the Authority, and did not receive an exemption from making such a filing;[[54]](#footnote-54)
* The agreements entered into with two investors[[55]](#footnote-55) allegedly constitute investment contracts subject to the *Securities Act.* Vanessa Larivière and Eva Rose Beauté appear to have distributed such an investment contract at least once each, without having prepared a prospectus subject to approval by the Authority;
* Vanessa Larivière reportedly made a distribution of an instrument evidencing a loan of money on at least one occasion[[56]](#footnote-56), i.e. on June 15, 2022, without having prepared a prospectus subject to approval by the Authority;
* In connection with these investments, Vanessa Larivière and Eva Rose Beauté reportedly acted as advisers and dealers under the *Securities Act* without being registered as such with the Authority;
* The amounts paid by at least two investors under investment contracts, representing more than $177,000, were apparently subsequently invested in the FP Markets platform to trade in derivatives. These transactions appear to have been made without Vanessa Larivière and Eva Rose Beauté being registered with the Authority as advisers and dealers under the *Derivatives Act*;
* On June 17, 2022, Vanessa Larivière allegedly offered to the two investors who had entered into investment contracts to trade the funds they had paid on the FTMO platforms; These representations were apparently made without Vanessa Larivière being registered with the Authority as an adviser and dealer under the *Derivatives Act*;
* Vanessa Larivière allegedly deposited the funds obtained from investors in her personal bank accounts;[[57]](#footnote-57)
* Nearly $93,000 is allegedly still owed to the two investors who entered into investment contracts;
* Vanessa Larivière allegedly justified the delay in repaying the investments by the fact that she had received several large sums of money from some 30 new customers and that, as a result of these cash inflows, her bank account had been frozen;
* As part of its investigation, the Authority carried out an analysis of the bank accounts of Vanessa Larivière and Eva Rose Beauté. That analysis reveals the following:
* One of Vanessa Larivière’s personal accounts reportedly shows inflows of $548,468 and outflows of $580,225 for the period from October 1, 2021 to June 29, 2022;
* A sum of $100,000 that was allegedly invested by one of the two investors who entered into an investment contract was deposited in a personal account of Vanessa Larivière.[[58]](#footnote-58) The evidence shows that this sum was reportedly used to make various Interac transfers, some to private individuals, including Vanessa Larivière's father. This money was also used to pay Vanessa Larivière’s personal expenses and to reimburse another investor who had also entered into an investment contract.

1. The apparent appropriations of funds paid by investors justify immediate intervention by the Tribunal.
2. Without immediate intervention by the Tribunal, there is a risk that the funds already collected as a result of the aforementioned apparent breaches will be squandered. It is therefore necessary to ensure that the assets resulting from the alleged activities are preserved until the Authority’s investigation has been completed.
3. The Tribunal considers that it is justified to intervene without a prior hearing given the breaches allegedly committed by Vanessa Larivière and Eva Rose Beauté.
4. In the case of Eva Rose Capital, the Tribunal considers that there is a risk that this recently constituted company will be used by Vanessa Larivière and Eva Rose Beauté to continue their activities in contravention of the *Securities Act* and the *Derivatives Act*, given the fact that the declared activities of this new company include “distribution” and “investment”.[[59]](#footnote-59)
5. In the Tribunal’s opinion, clear and convincing evidence establishes the urgency and the risk of irreparable harm to the investing public and the integrity of financial markets.

**Question 3: If so, what preventive, protective and conservatory measures should the Tribunal take in the public interest?**

1. The Tribunal is of the opinion that it is in the public interest to issue the orders sought by the Authority.
2. In this instance, the orders sought by the Authority are protective, preventive and conservatory in nature.
3. They are intended to protect the public while the Authority’s investigation continues. They are also intended to protect persons who may be solicited by the respondents or may have entered into investment contracts or instruments evidencing a loan of money as a result of said solicitation activities.
4. These orders also aim to safeguard market integrity and maintain public confidence in these markets.
5. The orders sought include prohibiting the respondents from engaging in any activity as advisers or dealers under the *Securities Act* and the *Derivatives Act*, and prohibiting them from engaging, directly or indirectly, in any transaction involving securities or derivatives.
6. The orders are intended to stop solicitation and distribution activities with and the provision of advice to the investing public, as they allegedly contravene the *Securities Act* and the *Derivatives Act,* and to preserve the integrity of financial markets.
7. The purpose of the orders is also to ensure that assets that may arise from the alleged activities can be preserved.
8. Section 249 of the *Securities Act* provides that the Authority may apply to the Tribunal for a decision to order a person who is or is about to be under investigation not to dispose of the funds, securities or other assets in their possession. Similarly, the Tribunal may order said person to refrain from withdrawing funds, securities or other assets from any other person having them on deposit, under control or in safekeeping.
9. The Tribunal may also issue an order in respect of third parties who may have in their possession or safekeeping assets or sums of money belonging to or due to a person who is or is about to be under investigation. Thus, the Tribunal may order any person not to dispose of funds, securities or other assets that they have on deposit, under control or in safekeeping.
10. Such an order is effective from the time the person concerned is notified and, unless otherwise provided, remains binding for a 12-month period; it may be revoked or otherwise amended by the Tribunal during that period.[[60]](#footnote-60)
11. The freeze orders sought are intended to order the respondents not to dispose of any funds, securities or other assets in their possession or placed with third parties and to order the impleaded financial institutions not to dispose of any funds, securities or other assets in their safekeeping on behalf of the respondents.
12. The purpose of these freeze orders is to prevent, during the Authority’s investigation, the squandering of the respondents' assets that were allegedly obtained from the public during breaches of the *Securities Act*.
13. Sections 119 and 120 of the *Derivatives Act* allow the Tribunal to make orders similarto those provided for in sections 249 and 250 of the *Securities Act*.
14. Pursuant to section 265 of the *Securities Act*, the Tribunal may order any person to cease any activity in respect of a transaction in securities, which includes the distribution of securities and dealer activity.
15. Pursuant to section 266 of the *Securities Act*, the Tribunal may order any person to cease acting as an adviser or as an investment fund manager.
16. Sections 131 and 132 of the *Derivatives Act* allow the Tribunal to make orders similar to those provided for in sections 265 and 266 of the *Securities Act.* Thus, the Tribunal may order a person to cease any activity in respect of a transaction on a derivative, any activity related to a derivatives offer or trade, and any activity related to acting as an adviser.
17. Furthermore, the evidence adduced by the Authority shows that Vanessa Larivière's LinkedIn page allegedly indicates that she is a financial security adviser at RBC and a mutual fund adviser at Investors Group.[[61]](#footnote-61) In addition, Vanessa Larivière's Facebook page apparently reports that she is a mutual fund adviser at IG Wealth Management.[[62]](#footnote-62)
18. According to the evidence adduced by the Authority, Vanessa Larivière is not registered in any capacity with the Authority.[[63]](#footnote-63) The Tribunal considers that the order sought by the Authority to order Vanessa Larivière to modify and/or update and/or rectify, within five (5) days of the pending decision, the information on her LinkedIn and Facebook pages so that they reflect reality, must be pronounced immediately. Section 97, para. 2 (3° and 7) of the *Act respecting the regulation of the financial sector* allows the Tribunal to make such orders in the public interest.
19. At the hearing held on July 28, 2022, the Authority’s counsel asked the Tribunal to add to the Authority’s request findings on freeze orders against Eva Rose Capital. The Tribunal granted this amendment request by the Authority.
20. Consequently, after giving due consideration to the evidence and arguments adduced by the Authority at the *ex parte* hearing held on July 26, 27 and 28, 2022, the Tribunal finds that it is in the public interest to issue all of the orders sought by the Authority.

**FOR THESE REASONS**, given the evidence adduced by the Authority that this decision must be rendered in an urgent situation or to prevent irreparable harm, and that immediate action without first hearing the respondents and impleading parties is justified to protect the public interest, the Financial Markets Administrative Tribunal, pursuant to sections 93, 97, para. 2 (3° and 7), 115.1 and 115.15.3 of the *Act respecting the regulation of the financial sector*, sections 249, 250, 265 and 266 of the *Securities Act*, and sections 119, 120, 131 and 132 of the *Derivatives Act*:

**ALLOWS**, in the public interest, the amended request of the Autorité des marchés financiers;

**PROHIBITS** Vanessa Larivière from engaging in any activity, directly or indirectly, in respect of a transaction involving securities covered by the *Securities Act*;

**PROHIBITS** Vanessa Larivière from engaging in any activity, directly or indirectly, in respect of a transaction involving any derivative covered by the *Derivatives Act*;

**PROHIBITS** Vanessa Larivière from engaging in any activity related, directly or indirectly, to a derivatives offer or trade;

**PROHIBITS** Vanessa Larivière from acting as an adviser as defined in section 5 of the *Securities Act*;

**PROHIBITS** Vanessa Larivière from acting as an adviser as defined in section 3 of the *Derivatives Act*;

**ORDERS** Vanessa Larivière to modify and/or update and/or rectify, within five (5) days of this decision, the information on her LinkedIn and Facebook pages so that they reflect reality, as well as on any other network of the same nature;

**ORDERS** Vanessa Larivière not to dispose, directly or indirectly, of any funds, securities or other assets in her possession;

**ORDERS** Vanessa Larivière not to withdraw, directly or indirectly, any funds, securities or other assets from the holding of any other person having them on deposit, under control or in safekeeping for her, including the impleaded parties;

**ORDERS** the impleaded party, Toronto Dominion Bank, having a place of business at 66 Wellington Street West, 15th floor, Toronto, Ontario, M5K 1A2 and having a branch at 8330 Boul. Taschereau, Suite 400, Brossard, Quebec, J4X 1C2, as well as at 9780 Boul. Leduc, Suite 5, Brossard, Quebec, J4Y 0B3, not to dispose, directly or indirectly, of any funds, securities or other assets that it has on deposit, under control or in safekeeping for Vanessa Larivière, including but not limited to, in the account bearing number [...], or in any safe deposit box in the name of Vanessa Larivière;

**ORDERS** the impleaded party, Bank of Montreal, having its head office at 129 Rue Saint-Jacques, Montréal, Quebec, H2Y 1L6, and having a branch at 119 Rue Saint-Jacques, Montréal, Quebec, H2Y 1L6, not to dispose, directly or indirectly, of any funds, securities or other assets that it has on deposit, under control or in safekeeping for Vanessa Larivière, including but not limited to, in the account bearing number [...], or in any safe deposit box in the name of Vanessa Larivière;

**ORDERS** the impleaded party, FP Markets LLC,having a place of business at First St. Vincent Bank Ltd Building, 1st floor, James Street, Kingstown, St. Vincent and the Grenadines, not to dispose, directly or indirectly, of funds, securities or other property that it has on deposit, under control or in safekeeping for Vanessa Larivière, including but not limited to, in accounts bearing numbers [...], [...], [...];

**PROHIBITS** Eva Rose Beauté Inc. from engaging in any activity, directly or indirectly, in respect of a transaction involving securities covered by the *Securities Act*;

**PROHIBITS** Eva Rose Beauté Inc. from engaging in any activity, directly or indirectly, in respect of a transaction involving any derivative covered by the *Derivatives Act*;

**PROHIBITS** Eva Rose Beauté Inc. from acting as an adviser as defined in section 5 of the *Securities Act*;

**PROHIBITS** Eva Rose Beauté Inc. from acting as an adviser as defined in section 3 of the *Derivatives Act*;

**PROHIBITS** Eva Rose Beauté Inc. from engaging in any activity, directly or indirectly, in respect of a derivatives offer or trade;

**ORDERS** Eva Rose Beauté Inc. not to dispose, directly or indirectly, of any funds, securities or other assets in its possession;

**ORDERS** Eva Rose Beauté Inc. not to withdraw any funds, securities or other assets from the holding of any other person having them on deposit, under control or in safekeeping for it, including the impleaded parties;

**ORDERS** the impleaded party, Toronto Dominion Bank, having a place of business at 66 Wellington Street West, 15th floor, Toronto, Ontario, M5K 1A2 and having a branch at 8330 Boul. Taschereau, Suite 400, Brossard, Quebec, J4X 1C2, as well as at 9780 Boul. Leduc, Suite 5, Brossard, Quebec, J4Y 0B3, not to dispose, directly or indirectly, of any funds, securities or other assets that it has on deposit, under control or in safekeeping for Eva Rose Beauté Inc., including in the account bearing number [...], or in any safe deposit box in the name of Eva Rose Beauté Inc.;

**PROHIBITS** Eva Rose Capital Inc. from engaging in any activity, directly or indirectly, in respect of a transaction involving securities covered by the *Securities Act*;

**PROHIBITS** Eva Rose Capital Inc. from engaging in any activity, directly or indirectly, in respect of any transaction involving any derivative covered by the *Derivatives Act*;

**PROHIBITS** Eva Rose Capital Inc. from engaging in any activity related directly or indirectly to a derivatives offer or trade;

**PROHIBITS** Eva Rose Capital Inc. from acting as an adviser as defined in section 5 of the *Securities Act*;

**PROHIBITS** Eva Rose Capital Inc. from acting as an adviser as defined in section 3 of the *Derivatives Act*;

**ORDERS** Eva Rose Capital Inc. not to dispose, directly or indirectly, of any funds, securities or other assets in its possession;

**ORDERS** Eva Rose Capital Inc. not to withdraw any funds, securities or other assets from the holding of any other person having them on deposit, under control or in safekeeping for it;

**AUTHORIZES** the Authority to serve notice of the decision on this amended request to FP Markets LLC, at the following email address, supportteam@fpmarkets.com, and/or compliancedesk@fpmarkets.com;

**DECLARES** that, in view of the urgent situation, or to prevent irreparable harm, this decision takes effect without a prior hearing, subject to giving the parties the opportunity to file a notice of contestation of this decision within 15 days, pursuant to sections 93 and 115.1 of the *Act respecting the regulation of the financial sector*;

**ORDERS** the Autorité des marchés financiers to notify the parties of this decision.

Pursuant to section 115.1, para 3 of the *Act respecting the regulation of the financial sector*, the parties have 15 days to file a notice of contestation of this decision with the Tribunal. A form is available on the Tribunal’s website for this purpose.

Every party has the right to be represented by counsel. However, legal persons and entities without legal personality are required to be represented by counsel in a hearing before the Tribunal.

Pursuant to section 250 of the *Securities Act* and section 120 of the *Derivatives Act*, the freeze orders take effect on **July 29, 2022**, and remain in effect for a period of 12 months ending on **July** **28, 2023**, unless amended or repealed before the expiration of that term. The other conclusions are effective as of the date of the decision, unless otherwise specified, and will remain in effect until amended or repealed.

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|  | | **Mtre. Nicole Martineau**  **Administrative Judge** |
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|  | | | | |
| Mtre.Isabelle Bouvier, Mtre. Marie-Michelle Côté and Hamza Abouabdelmajid, articling student | | | | |
| (Legal Services, Autorité des marchés financiers) | | | | |
| For the Autorité des marchés financiers | | | | |
|  | | | | |
|  | | | | |
| Hearing dates: | | July 26, 27 and 28, 2022 | | |

1. Hearing held without the presence of the respondents and impleaded parties, in accordance with section 115.1 para. 2 of the *Act respecting the regulation of the financial sector*, *CQLR*, c. E-6.1. [↑](#footnote-ref-1)
2. CQLR, c. V-1.1. [↑](#footnote-ref-2)
3. CQLR, c. I-14.01. [↑](#footnote-ref-3)
4. CQLR, c. E-6.1. [↑](#footnote-ref-4)
5. CQLR, c. D-9.2. [↑](#footnote-ref-5)
6. Exhibit D-1. [↑](#footnote-ref-6)
7. Exhibit D-2. [↑](#footnote-ref-7)
8. Exhibit D-3. [↑](#footnote-ref-8)
9. Exhibit D-4. [↑](#footnote-ref-9)
10. CQLR, c. S-31.1. [↑](#footnote-ref-10)
11. Exhibit D-5. [↑](#footnote-ref-11)
12. Exhibit D-5. [↑](#footnote-ref-12)
13. Exhibit D-5. [↑](#footnote-ref-13)
14. Exhibit D-6. [↑](#footnote-ref-14)
15. R.S.C., 1985, c. C-44. [↑](#footnote-ref-15)
16. Exhibit D-71. [↑](#footnote-ref-16)
17. Exhibit D-71. [↑](#footnote-ref-17)
18. During her testimony on July 28, 2022, the Authority’s investigator mentioned having received verbal confirmation that Eva Rose Capital appears not to be registered in any capacity with the Authority and that, according to the Authority’s public register, this company is not registered with the Authority. [↑](#footnote-ref-18)
19. CQLR, c. E-6.1, r. 1. [↑](#footnote-ref-19)
20. Exhibits D-21 and D-61. [↑](#footnote-ref-20)
21. Exhibit D-21. [↑](#footnote-ref-21)
22. Eva Rose Capital was not constituted when this agreement was signed, Exhibit D-21. [↑](#footnote-ref-22)
23. Exhibits D-7 and D-8. [↑](#footnote-ref-23)
24. Exhibit D-68. [↑](#footnote-ref-24)
25. Exhibit D-49. [↑](#footnote-ref-25)
26. *Act respecting the regulation of the financial sector*, s. 115.1, para. 2. [↑](#footnote-ref-26)
27. *Act respecting the regulation of the financial sector*, s. 115.1. [↑](#footnote-ref-27)
28. *Securities Act*, s. 1. [↑](#footnote-ref-28)
29. *Securities Act*, s. 1, para. 2 [↑](#footnote-ref-29)
30. *Securities Act*, section 11. [↑](#footnote-ref-30)
31. *Securities Act*, section 13. [↑](#footnote-ref-31)
32. *Securities Act,* section 148. [↑](#footnote-ref-32)
33. *Securities Act,* section 5. [↑](#footnote-ref-33)
34. Exhibit D-2. [↑](#footnote-ref-34)
35. Exhibit D-69. [↑](#footnote-ref-35)
36. Exhibit D-5. [↑](#footnote-ref-36)
37. Exhibit D-6. [↑](#footnote-ref-37)
38. Exhibit D-70. [↑](#footnote-ref-38)
39. Exhibits D-21 and D-61. [↑](#footnote-ref-39)
40. Exhibits D-7, D-10, D-12 and D-14 to D-16. [↑](#footnote-ref-40)
41. Exhibit D-61. [↑](#footnote-ref-41)
42. Exhibits D-50, D-51, D-52 and D-62. [↑](#footnote-ref-42)
43. Exhibit D-7. [↑](#footnote-ref-43)
44. Exhibit D-68. [↑](#footnote-ref-44)
45. Exhibits D-19, D-20, D-25 to D-27, D-29 to D-31, D-35 to D-37, D-40 to D-42, D-54, D-55, D-57 and D-58. [↑](#footnote-ref-45)
46. There is no evidence of the third investor being repaid. [↑](#footnote-ref-46)
47. 2020 QCTMF 32. [↑](#footnote-ref-47)
48. Exhibit D-49. [↑](#footnote-ref-48)
49. Exhibit D-71. [↑](#footnote-ref-49)
50. During her testimony on July 28, 2022, the Authority’s investigator mentioned having received verbal confirmation that Eva Rose Capital appears not to be registered in any capacity with the Authority and that, according to the Authority’s public register, this company is not registered with the Authority. [↑](#footnote-ref-50)
51. Exhibit D-71. [↑](#footnote-ref-51)
52. *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, 2001 SCC 37, [2001] 2 SCR 132; *Re Canadian Tire Corp*., (1987), Vol. XVIII, No. 14, BCVMQ, A1, 1987 LNONOSC 47, aff’d (1987), 59 O.R. (2d) 79. [↑](#footnote-ref-52)
53. Section 5 of the *Securities Act* defines the concept of "distribution". [↑](#footnote-ref-53)
54. Exhibits D-69 and D-70. [↑](#footnote-ref-54)
55. Exhibits D-21 and D-61. [↑](#footnote-ref-55)
56. Exhibit D-68. [↑](#footnote-ref-56)
57. Exhibits D-7 and D-8. [↑](#footnote-ref-57)
58. Exhibit D-7. [↑](#footnote-ref-58)
59. Exhibit D-71. [↑](#footnote-ref-59)
60. *Securities Act*, section 250 [↑](#footnote-ref-60)
61. Exhibit D-3. [↑](#footnote-ref-61)
62. Exhibit D-4. [↑](#footnote-ref-62)
63. Exhibit D-2. [↑](#footnote-ref-63)