CITATION: Banach v. Galaxy Digital Holdings Ltd**.,** 2026 ONSC 4534
COURT FILE NO.: CV-22-00691394-00CP
DATE: 20260827

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:	)	
RICHARD M. BANACH Plaintiff	)	*Soheil Karkhanechi, Paul J. Bates,* and *Mahdi M. Hussein*, for the Plaintiff
- and -	)	
GALAXY DIGITAL HOLDINGS LTD., MICHAEL NOVOGRATZ and ALEX IOFFE Defendants	)	*R. Seumas M. Woods* and *Ryan A. Morris*, for the Defendant
	)	**HEARD:** June 8-11, 2026

E.M. MORGAN J.

REASONS FOR DECISION

[1] The Plaintiff, an investor in the corporate Defendant ("Galaxy"), alleges secondary market misrepresentations and seeks leave to proceed under section 138.8 of the Ontario *Securities Act*, RSO 1990, c. S.5 ("*OSA*"). He is also a proposed representative Plaintiff on behalf of all other similarly situated investors and seeks to certify the action under section 5(1) of the *Class Proceedings Act, 1992*, SO 1992, c. 6 ("*CPA*").

I. Background to the claim

[2] Galaxy is an investment company that is headquartered in New York City and that trades on the Toronto Stock Exchange. At all material times it was heavily engaged in the digital asset

industry and in its own annual information forms held itself out as providing its shareholders with "exposure to the broader digital asset ecosystem". Its quarterly MD&As during the period relevant to this claim show that its income was for the most part derived from and dependent on movements in the value of the digital assets that it traded, and its balance sheets during the relevant period were dominated by digital asset holdings.

[3] Galaxy traded a number of different digital assets. Its CFO, the Defendant Alex Ioffe, has confirmed in his testimony that during the proposed class period the investments that represented its core assets and that were material to its results were Bitcoin, Ether, Luna and "Terra" – another name, or misnomer, for Luna. Galaxy described itself in a March 2022 press release as "actively manag[ing] our core digital asset holdings..." Accordingly, as stated in a November 1, 2021 BMO Analysts Report, forecasts of its financial results and stock price were "predominantly driven by spot prices for cryptocurrencies."

[4] Chief among these digital holdings was Luna, a key digital asset in Galaxy's investment portfolio and one which Galaxy's CEO, the Defendant Michael Novogratz, heavily promoted. In earnings calls and other promotional vehicles, Novogratz announced that Galaxy had placed a "bet" on Terra's – i.e. Luna's – management, and that it had developed a "symbiotic relationship" with it. It is, of course, the essence of symbiosis that when Luna's value thrived so did Galaxy's, and when Luna's value declined Galaxy's did as well.

[5] As a result of this symbiotic relationship, Galaxy was heavily identified with the fate of its Luna asset. In a Settlement Agreement with the New York Attorney General dated November 6, 2024 with respect to allegations of market manipulation, Novogratz conceded that he demonstrated his devotion to this digital asset by referring to himself in promotional contexts as a "Lunatic". He further acknowledged that, on behalf of Galaxy, he unreservedly urged investors "not to be discouraged by price volatility" but to continue to "keep the faith" even as Luna's value declined.

[6] Under Novogratz's stewardship, Galaxy eventually became identified with Luna in a way which considerably outsized Galaxy's Luna holdings. Novogratz was a rather boisterous promotor, and nowhere was this identification with Luna more graphically demonstrated than in Novogratz's well publicized self-adornment with a Luna-themed tattoo.

[7] In the public's and the market's eyes, Novogratz was Galaxy and in 2001-2002 when the events at issue here transpired, Galaxy was Luna. A photo demonstrating this close identification of Novogratz/Galaxy and Luna was posted on social media by Novogratz and is in the evidentiary record on this motion. Reproducing that photo here may be worth another thousand words in this introduction:

[8] Between May 7 and 12, 2022, the price of Luna collapsed and eventually fell to zero, wiping out some $40 billion in market value. The record also shows that on Friday, May 13, 2022, the day after the value of Luna plummeted, the price of Galaxy's shares dropped 42.9% from its previous closing price. Galaxy issued a press release announcing a quarter-to-date loss of $300 million. On Wednesday, May 18, 2022, Novogratz released a public letter to Galaxy shareholders and to the crypto investors' community at large, in which he expressed his "humility" and acknowledged that "both large and small investors saw profits and wealth vanish" as a result of Luna's collapse.

[9] The Plaintiff claims that these substantial losses all flowed from risks associated with Luna that were known to Galaxy and its officers, but that were never disclosed to the investors. The New York Attorney General's investigation concluded that "Galaxy's conduct, including its misrepresentations and omissions about Luna, while simultaneously selling Luna and failing to disclose its then-present intent to sell, constituted violations of [New York State securities laws]." That finding is not, of course, binding on this court. But it is noteworthy, not the least because it has had a motivating effect with respect to this claim. The Plaintiff alleges that Galaxy's conduct in relation to Luna was likewise contrary to Ontario securities laws and gives rise to an investors' claim under the *OSA*.

II. The alleged misrepresentations

[10] Preliminary to a review of Galaxy's disclosures and alleged misrepresentations and omissions with respect to its Luna investment, some brief discussion of digital assets more generally is called for. Without a basic understanding of the cryptocurrency environment in which Luna was created and within which Novogratz, Ioffe, and Galaxy operated, it would be difficult to discern the accuracy or completeness of any public pronouncements by Galaxy and its senior management in respect of its investment in Luna.

[11] The Plaintiff has put forward an expert report in the form of an affidavit by Professor Andreas Park, a professor of finance at the University of Toronto's Rotman School of Management. Professor Park is undisputedly one of Canada's leading scholars of cryptocurrencies and digital assets. His evidence in this motion is interesting in that it explains the technical aspects of digital assets in relatively accessible terms, and it is thorough and detailed almost to a fault in identifying the mechanisms that drive the value, and the volatility, of cryptocurrencies and related assets.

[12] That said, Professor Park's affidavit is also excessively opinionated and peppered with legal conclusions, including calling Luna a fraud and its South Korean creator a fraudster. The affidavit on the whole is highly critical of Galaxy and Novogratz; at times it seems to move beyond criticism to the point of being antagonistic, accusing them of consistently spreading falsehoods about Luna and their investment therein.

[13] Without commenting on whether any of this criticism is accurate – some of it may well be since Professor Park often quotes directly from social media and other promotional statements published by Galaxy and Novogratz – I find it hard to rely on an expert witness that is so evidently jaundiced against the opposing party. Expert evidence is required here to provide specialized knowledge of the workings of digital assets that is outside the court's normal experience: *R. v. Mohan*, [1994] 2 SCR 9. It is not needed for an analysis of the wrongs and rights of the parties as played out in their often flamboyant and easily comprehended promotional materials. The excessive and unnecessary focus on this material, and the judgmental quality of the critique, creates an impression of partisanship that is contrary to the objective and strictly analytic voice one expects from an expert witness.

[14] Accordingly, what follows is a brief description of digital assets culled from the uncontroversial, strictly technical portions of Professor Park's affidavit. In this respect the evidence is uncontested by the Defendants. It does the parties, and the court, a service by setting out the basic elements of the digital assets environment and elaborating more generically on some of the financial risks inherent in this area. I have otherwise disregarded the more judgmental and opinionated parts of Professor Park's affidavit.

[15] Generally speaking, a blockchain is a widely distributed database or ledger shared and constantly updated across a large network of computers. There are two types of assets, or cryptocurrencies, on blockchains: a cryptocurrency that is "native" to the particular blockchain – i.e. those that are foundational digital assets built directly into the blockchain's protocol that power the network, pay for transaction fees, etc. – and those that are created by "smart contracts" on top of an existing blockchain and that utilize the functionality of the blockchain but that need the native crypto coin to pay transaction fees.

[16] Luna was the native cryptocurrency of the Terra blockchain, which is a blockchain devised specifically for assets known as "stablecoins". Stablecoins are digital assets whose value is pegged to a hard asset such as the U.S. dollar. The premise of these vehicles is that they are exchangeable at par for the asset to which they are pegged. In addition to stablecoins pegged to traditional currency or a traditional financial instrument, there are also stablecoins backed by other more established cryptocurrencies such as Bitcoin. Professor Park goes on to explain that there is one further category of stablecoins that are backed by an autonomous algorithm and whose value

depends on a mechanism that links the stablecoin to the blockchain's native cryptocurrency, which acts as collateral for the stablecoin.

[17] The specific ways in which Terra's stablecoin, TerraUSD, was used, and its relationship to Luna as the native cryptocurrency of the Terra blockchain, is both complicated and somewhat circular. Professor Park's evidence on this relationship is concisely summarized by Plaintiff's counsel at paragraphs 21-22 of their factum:

> [21] A distinguishing feature of Terra was that the algorithmic stablecoin, TerraUSD, was incorporated into the network's design at inception. The built-in mechanism permitted users to exchange TerraUSD for one dollar's worth of Luna. This design created a circular dependency as demand for TerraUSD supported the price of Luna and the stability of TerraUSD's peg depended on confidence and liquidity in Luna.
>
> [22] Another unique feature of the Terra blockchain was the Anchor Protocol. Anchor was a decentralized lending platform built on the Terra blockchain that allowed TerraUS holders to 'lend' their TerraUSD in return for a promised annual yield of approximately 20% at a time when treasury yields in the United States were offering approximately 2%. The Anchor Protocol created demand for TerraUSD, which in turn pushed up the price of Luna. TerraUSD became the third largest stablecoin of any kind in the world.

[18] Counsel for the Plaintiff point out that stablecoins have risks that differ from other digital assets. At their core, their stability relies on the mechanism that pegs them to the outside asset – in TerraUSD's case, the U.S. dollar. Furthermore, algorithmic stablecoins carry specific risks of their own. Their stability depends on the algorithmic mechanisms that are created to maintain the peg. This makes them especially prone to market manipulation, attacks by speculators, and dramatic changes in user and investor sentiment.

[19] In addition to all of that, Professor Park points out that the design of the Luna/TerraUSD pair had built into it certain unique risk factors. The stability of the entire asset was based on the exchangeability of one TerraUSD for USD $1.00 worth of Luna. This structure created what Plaintiff's counsel call a "reflexive feedback loop". As they put it at paragraph 26 of their factum:

> [26] If TerraUSD lost its peg, restoring it required creating new Luna, which diluted Luna's value. As Luna's price fell, ever-larger quantities needed to be created, causing a downward spiral in its price further reducing liquidity, as fewer buyers were willing to participate in the market. This dynamic exposed Terra to the risk of a 'death spiral': a feedback loop that would cause Luna to hyperinflate towards worthlessness and collapse the system that maintained the peg.

[20] The evidence also shows that another unique risk of the Luna/TerraUSD stablecoin pair was its reliance on the Anchor Protocol – a mechanism built into the Terra blockchain that allowed TerraUSD holders to "lend" their TerraUSD in return for a promised annual yield of approximately 20% (at a time when treasury yields in the United States were offering approximately 2%.) the Anchor Protocol generated great demand and drove up the price of Luna, but it required a

continuous and unsustainable injection of new capital to maintain the expected level of yield. This risk was acknowledged by Novogratz and Galaxy in an internal memo dated October 27. 2020, in which Novogratz elaborated on the TerraUSD and Luna relationship and the algorithmic nature of the stablecoin pair. In the memo, Novogratz also emphasized the expectations for the Anchor Protocol in generating demand and driving up the price of Luna:

> Importantly, what this means is that increasing demand to mint Terra stablecoins will lead to Luna supply contractions, which should be supportive of Luna.

[21] Furthermore, the October 27, 2020 memo from Novogratz also identified highly specific risks associated with the Terra blockchain. This included the risk of a depegging of TerraUSD which would case a dramatic downward crash – a so-called "death spiral" – and a liquidity crisis for Luna. In Novogratz's words:

> Luna Supply Expansion Risk – Continues (sp) downward deviations from the peg will lead to supply expansion for Luna, and may lead to a downward spiral in Luna price. When Terra stablecoins trade below the peg, users can send 1 Terra stablecoin to the contract, and receive 1 Luna's worth of that stablecoin. If the newly minted Luna is immediately sold, and the stablecoin remains below the peg for a prolonged period, there may be continued selling pressure on Luna, alongside an expanding supply.
>
> Luna Liquidity Risk - The viability of the Terra stablecoin mechanism ultimately depends on there being sufficient liquidity in Luna. If users are not able to easily sell Luna received for stablecoin deposits the peg mechanism is at risk.

[22] The evidence in the record establishes that at no time, and, more specifically, at no time during the proposed class period of May 17, 2021 to May 6, 2022, did Galaxy disclose the risks, and the fundamental *in*stability, inherent to the algorithmic type of (misleadingly named) stablecoins. During this period Galaxy issued numerous disclosure documents and statements; the Plaintiffs allege that in all of those documents and statements there was no description of the operation or risks of the Terra blockchain or the relationship between Luna and TerraUSD, and no discussion or mention of the specific risks of the Luna/TerraUSD stablecoin pair such as the risks related to the Anchor Protocol or the risk of a "death spiral".

[23] For the sake of clarity and completeness, I have reproduced below a list of the Galaxy's disclosure materials during the proposed class period, as described in paragraph 1 (r) to (t) of the Fresh As Amended Statement of Claim. They are a combination of core and non-core documents, along with oral statements made on periodic earnings calls. The Plaintiff characterizes them all as misleading in terms of their omissions. He lists them in his pleading as follows:

> (r) "Misleading Core Documents" means Galaxy's:
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> i. AIF for the year ended December 31, 2021 (filed March 31, 2022 on SEDAR) ("2021 AIF");

ii. MD&A for the year ended December 31, 2021 and 2020 (filed March 31, 2022 on SEDAR) ("2021 MD&A");

iii. Consolidated financial statements for the years ended December 31, 2021, and 2020 (filed March 31, 2022 on SEDAR) ("2021 Annual Financial Statements");

iv. GDH LP Consolidated financial statements for the years ended December 31, 2021, and 2020 (filed March 31, 2022, on SEDAR) ("GDH LP 2021 Annual Financial Statements");

v. MD&A for the three and nine months ended September 30, 2021, and 2020 (filed November 15, 2021, on SEDAR) ("Q3/21 MD&A");

vi. Condensed consolidated interim financial statements for the three and nine months ended September 30, 2021, and 2020 (filed November 15, 2021 on SEDAR) ("Q3/21 Financial Statements");

vii. GDH LP Condensed consolidated interim financial statements for the three and nine months ended September 30, 2021 and 2020, (filed November 15, 2021 on SEDAR) ("GDH LP Q3/21 Financial Statements");

viii. MD&A for the three and six months ended June 30, 2021, and 2020 (filed August 16, 2021 on SEDAR) ("Q2/21 MD&A");

ix. Condensed consolidated interim financial statements for the three and six months ended June 30, 2021, and 2020 (filed August 16, 2021 on SEDAR) ("Q2/21 Financial Statements");

x. GDH LP Condensed consolidated interim financial statements forthe three and six months ended June 30, 2021, and 2020 (filed August 16, 2021 on SEDAR) ("GDH LP Q2/21 Financial Statements");

xi. Management Information Circular dated May 27, 2021 (filed May 28, 2021 on SEDAR);

xii. MD&A for the three months ended March 31, 2021, and 2020 (filed May 17, 2021 on SEDAR) ("Q1/21 MD&A");

xiii. Condensed consolidated interim financial statements for the three months ended March 31, 2021, and 2020 (filed May 17, 2021 on SEDAR) ("Q1/21 Financial Statements");

xiv. GDH LP Condensed consolidated interim financial statements for the three months ended March 31, 2021, and 2020 (filed May 17, 2021 on SEDAR) ("GDH LP Q1/21 Financial Statements");

xv. AIF for the fiscal year ended December 31, 2020 (filed March 29, 2021 on SEDAR) (“2020 AIF”);

xvi. MD&A for the years ended December 31, 2020, and 2019 (filed March 29, 2021 on SEDAR) (“2020 MD&A”);

xvii. Consolidated financial statements for the years ended December 31, 2020, and 2019 (filed March 29, 2021 on SEDAR) (“2020 Annual Financial Statements”);

xviii. GDH LP Consolidated financial statements for the years ended December 31, 2020, and 2019 (filed March 29, 2021 on SEDAR) (“GDH LP 2020 Annual Financial Statements”);

(s) “Misleading Non-Core Documents” means:

i. Registration Statement Under the Securities Act of 1933 (filed January 28, 2022, on SEDAR) (“SEC Registration Statement”);

ii. the news release dated March 31, 2022, entitled “Galaxy Digital Announces 2021 Financial Results” (“2021 Release");

iii. the news release dated November 15, 2021, entitled “Galaxy Digital Announces Third Quarter 2021 Financial Results” (“Q3/21 Release");

iv. the news release dated August 16, 2021, entitled “Galaxy Digital Announces Second Quarter 2021 Financial Results” (“Q2/21 Release");

v. the news release dated May 17, 2021, entitled “Galaxy Digital Announces First Quarter 2021 Financial Results” (“Q1/21 Release");

(t) “Misleading Oral Representations”

i. means the statements made on the March 31, 2022, earnings call with investors;

ii. means the statements made on the March 31, 2022, earnings call with investors;

ii. means the statements made on the November 15, 2021, earning call with investors;

iii. means the statements made on the August 16, 2021, earnings call with investors;

iv. means the statements made on the May 17, 2021, earnings call with investors.

[24] As can bee seen, during the relevant period Galaxy made numerous public statements and had ample opportunity to disclose any and all material financial risks to its investors. Indeed, it disclosed specific risks related to other digital assets if it believed the risk could potentially have a material impact on its stock price due to its impact on the digital asset industry broadly; for example, in its Annual Information Forms ("AIFs") during the proposed class period, Galaxy did disclose the unique risks associated with Non-Fungible Tokens and Bitcoin. But it is undisputed that while Galaxy disclosed the specific risks of its other digital asset holdings, it did not disclose the specific risks of Luna/TerraUSD.

[25] In cross-examination, Novogratz forthrightly conceded the point:

> Q. Okay. So I want to just sum up here, sir. Galaxy disclosed during the class period specific types of risk specific to various cryptocurrencies and digital assets, correct?
>
> A. Correct.
>
> Q. It did not disclose risk specific to the Terra blockchain or its associated digital assets?
>
> A. Correct.

[26] In Galaxy's 2020 AIF dated March 29, 2021, it expounded on its 'business logic" by stating that it included in its digital portfolio "stable money launched by corporations". It did so again in its March 31, 2022 earnings call, where it described the size of its stablecoin holdings. In its Form S-4 Registration Statement filed January 28, 2022, it described stablecoins generally as digital assets "designed to track the value of an off-chain asset, such as a fiat money or exchange traded commodity, most commonly U.S. dollars." This description was followed up in its 2021 AIF of March 31, 2022, where it disclosed, simplistically, that stablecoins carried the "stability of an underlying fiat currency".

[27] On the other hand, Galaxy did not regularly describe the different types of stablecoins or disclose which stablecoins it owned, such as the volatile algorithmic stablecoins. In fact, it excluded stablecoins altogether from its measure of "net exposure to digital assets" in its financial reporting. This exclusion was at odds with the very reason for publishing the "net exposure" report since, as Ioffe explained in cross-examination, this measure was meant to reveal to investors "how much Galaxy was exposed to the volatility of the prices of digital assets". But as Ioffe further explained it, these particularly risky digital holdings were excluded from the disclosure materials "because fiat-based stablecoins do not fluctuate in prices under normal circumstances. There are exceptions."

[28] This pattern appears to have repeated throughout the relevant period. In its Form S-4 Registration Statement filed January 28, 2022, its earnings call of March 31, 2022, and its earnings call of May 9, 2022, Galaxy excluded stablecoins from net exposure to digital assets because, as Ioffe said in cross-examination, they were not "expected to fluctuate in value" and not "subject to price volatility." In other words, Galaxy's repeated disclosures were designed to convey to

investors that stablecoins such as its holdings in the Luna/TerraUSD algorithmic stablecoin, were entirely stable and safe.

[29] Galaxy's most serious engagement with Luna began in October 2020, when it entered into an agreement with Terraform to purchase 18.5 million Luna. The investment was memorialized by Galaxy in a "Long Duration Trade Memo", and was structured to extend over the course of a 12-month vesting schedule. Under this arrangement, which Galaxy would purchase Luna at a discount to market and would receive 1/12th of its total Luna purchases each month.

[30] The Plaintiff's proposed class period begins in May 2021, which marks Galaxy's issuance of a Management Information Circular, an MD&A, and consolidated interim financial statements for the final quarter of 2020. In none of these documents, and at no further time during the class period, was the year-long Luna purchase arrangement disclosed to investors. Novogratz has deposed in a reply affidavit that, "While I agree that Galaxy did not disclose the specific terms of the Token Purchase Agreement as it was not material at the time, it did disclose the fact that Galaxy had made an investment in Luna."

[31] As counsel for the Plaintiff points out, not only did Galaxy not disclose the October 2020 continuing purchase agreement for Luna, it also failed to disclose in any transparent way the additional purchases of Luna that it made on the open market. Ioffe conceded in cross-examination that while Galaxy promoted its investment in Luna in a general, undetailed way, its did not include in any of its financial statements or other reporting documents a "continuity schedule" for its Luna holdings which would allow investors to understand the purchases and sales, and gains and losses, for its Luna or TerraUSD investments in any given period. Plaintiff's counsel also show that it was also not possible to know the size of Galaxy's holdings of these assets at the end of each quarterly period since it did not include this information in any public filings or other reports.

[32] Although not binding on this court, it is worth noting that the originator of Luna, Do Hyeong Kwan, has been found liable under U.S. anti-fraud securities laws by a civil jury in New York. He has also been criminally indicted in U.S. federal court for his creation of Luna among a "web of cryptocurrencies…designed to defraud the public while creating the illusion of commerce and exponential growth": Attorney General of New York, *In the matter of Galaxy Digital Holdings Ltd. et al.*, Assurance No. 25-011, March 27, 2025, at paras. 2-3, citing *SEC v. Terraform Labs Pte Ltd.*, No. 1:23-cv-01346-JSR (SDNY 2024); *United States v. Kwon*, S1 23 Cr. 151 (SDNY 2023).

[33] Plaintiff's counsel submit that Novogratz and Galaxy were lax in the due diligence that they ought to have performed in investigating this background before entering into the Luna purchase agreement. More specifically, in their factum they allege that before contracting for Luna and promoting to their investors, Novogratz and Galaxy and had "failed to confirm whether there was any real-world application for the [Luna/TerraUSD] blockchain."

[34] A deep look at Galaxy's internal correspondence reveals that Plaintiff's counsel's assessment is, if anything understated. As indicated above, Galaxy entered into a long term purchase agreement to acquire Luna in October 2020. Shortly thereafter, in November 2020, Novogratz and Galaxy began posting about Luna on social media, all of which was done, as stated in an October 27, 2020 memo circulated among Galaxy executives, because "Terra has an investor

awareness problem." The memo went on to propose that Luna's value could be increased "[b]y working with Terra on additional integrations and *leveraging Galaxy's voice*…" [emphasis added]. These promotional efforts had the desired effect, ultimately raising the market price of Luna from $0.31 in October 2020 to a high of $119.18 in April 2022.

[35] In his social media campaign, Novogratz dubbed Terra as an "amazing ecosystem" and urged investors to buy and hold Luna even as Galaxy itself was buying at a discount and rapidly selling off its Luna holdings. Plaintiff's counsel contend, and the evidence tends to support, that Galaxy's strategy was to use Novogratz's outsized media profile to hype up Luna and thereby artificially drive up its price while, without disclosing the fact, selling it soon after receiving each monthly amount. While Plaintiff's counsel observes that Galaxy did not do sufficient due diligence on Luna and the Terra blockchain before undertaking this aggressive promotional and buy/sell strategy, the evidence points to a posture far more severe than a lack of due diligence.

[36] In fact, Galaxy's executives did look carefully at Terra and Luna before the October 2020 engagement with it, and had determined among themselves that Luna's value was always a manipulated, artificially induced construct. In a text message dated September 3. 2020, following a call with Terra's CEO, Kwan, a number of Galaxy personnel made the following assessment of Luna: "This stuff is confusing. Trying to understand what is real vs just financial engineering that creates 'value' out of thin air."

[37] The internal Galaxy text message then went on to refer to Kwan's concept of how all quantitative values have been attributed to Luna from its inception:

> Also sort of seems like he [Kwan] acknowledges the ICO was bullshit.

[38] In other words, Galaxy had performed its due diligence and found that the basis for Luna's value was engineered and obtuse, but that it could be increased through social media and a hyped-up form of marketing. Not to put too fine a point on it, but Galaxy and Novogratz appear to have concluded that a "bullshit" digital asset could be inflated in value by adding yet a new layer of the same.

[39] Reading Novogratz's social media accounts and his public statements in the financial press, including his (incorrect) assertions on Bloomberg and Yahoo Finance blogs and podcasts that Luna had real-word uses and was tradable for real-world assets and value, one can discern that Novogratz spoke about Luna without any regard to the truth or falsity of the statements being made. That is because explaining Luna to the investing public was not the goal of Novogratz's communications; promoting it and inflating its price was the goal.[1]

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[1] Frankfurt, Harry G. *On Bullshit* (Princeton University Press, 2005); originally published in *The Philosophical Quarterly* (1986), vol. 36/144, at pp. 81–100: "For the bullshitter…[h]is eye is not on the facts at all, as the eyes of the honest man and of the liar are, except insofar as they may be pertinent to his interest in getting away with what he says. He does not care whether the things he says describe reality correctly. He just picks them out, or makes them up, to suit his purpose."

[40] The following is a chart prepared by Plaintiff's counsel that tracks all of the material omissions and misrepresentations that Galaxy is alleged to have perpetrated during the proposed class period:

Document	Date	Class Period Disclosure	Disclosures re	Required to be Disclosed	Sample Disclosure Required
Q1 MD&A for quarter ending on March 31, 2021	May 17, 2021	None	▪ "designed to track the value of an off-chain asset, such as a fiat money or exchange traded commodity, most commonly U.S. dollars." ▪ "stability of an underlying fiat currency" ▪ not "expected to fluctuate in value" ▪ not "subject to price volatility" ▪ "typically maintain a one-to-one correlation to fiat currencies"	▪ Algo. stable-coin nature and risks ▪ Specific risks of a "death spiral" ▪ Specific risk associated with the Anchor Protocol	**Exposure to Luna and TerraUSD.** Galaxy has exposure to Luna, the native cryptocurrency of the Terra blockchain. Luna is economically and mechanically linked to TerraUSD, an algorithmic stablecoin designed to trade at or near US$1. TerraUSD is not a fiat-backed stablecoin supported by cash, treasuries, or other off-chain reserves. Instead, the Terra protocol seeks to maintain TerraUSD's peg through an algorithmic mint-and-burn arbitrage mechanism under which users may exchange TerraUSD for US$1 worth of Luna and exchange Luna for TerraUSD. As a result, Luna and TerraUSD are interdependent: demand for TerraUSD can support the price of Luna, while TerraUSD's peg depends on continuing market confidence in, and liquidity for, Luna. Accordingly, Galaxy's Luna position is not merely an exposure to a stand-alone digital asset; it is also exposure to the risks of the TerraUSD stablecoin, the Terra
Q2 MD&A for quarter ending on June 30, 2021	Aug 16, 2021	None			
Q3 MD&A for quarter ending September 30, 2021	Nov 15, 2021	None			

Document	Date	Class Period Disclosure	Disclosures re	Required to be Disclosed	Sample Disclosure Required
Annual MD&A for year ending December 31, 2021	Mar 31, 2022	None	▪ Novogratz promotional activities regarding Luna		blockchain, and algorithmic stablecoin systems generally. **Risks of the Luna/TerraUSD stablecoin pair.** The Luna/TerraUSD stablecoin pair carries risks that are different from, and incremental to, the general risks of cryptocurrencies and digital assets. If TerraUSD trades below its US$1 peg, restoring the peg may require the creation of additional Luna. That supply expansion may dilute Luna's value and create a reflexive feedback loop: a falling TerraUSD price can lead to increased Luna issuance, selling pressure on Luna, reduced liquidity for Luna, further declines in Luna's price, and additional pressure on TerraUSD's peg. This dynamic could result in a "death spiral" in which Luna rapidly loses substantially all of its value and the TerraUSD peg fails. The viability of the mechanism also depends on there being sufficient liquidity and demand, including demand associated with the Anchor Protocol, which has offered high yields to TerraUSD depositors. If that demand is unsustainable or declines, it could precipitate the aforementioned "death spiral". If any of these events were to occur, it could

Document	Date	Class Period Disclosure	Disclosures re	Required to be Disclosed	Sample Disclosure Required
					adversely affect Galaxy's ability to generate profits, the value of its Luna position, its reputation, and expose the company to legal and regulatory risks, each of which would adversely impact the market price of our Ordinary Shares.

Other Misleading Omissions

Document	Release Date	Class Period Disclosure	Required but omitted	Sample Disclosure Required
Q1 MD&A for quarter ending on March 31, 2021	May 17, 2021	None	▪ Continuity schedule for Luna holdings ▪ Contract with Terraform to acquire Luna monthly ▪ Investment strategy for Luna	In October of 2020, Galaxy entered into an agreement with Terraform labs to acquire Luna on a monthly basis. Pursuant to this agreement we have agreed to buy 18 million units of Luna, to be received on a monthly basis. The agreement expires in October of 2021. As of the end of this quarter, we own [ ] units of Luna. During the quarter we purchased [ ] Luna at an average price of [ ]. During the quarter we sold [ ] Luna at an average price of [ ]. During the quarter we also received [ ] Luna pursuant to the contract with Terraform which were purchased at a price of [ ]. Galaxy's investment strategy with respect to its investment in

Document	Release Date	Class Period Disclosure	Required but omitted	Sample Disclosure Required
				Luna is to use its CEO's media presence to promote the Terra blockchain in order to drive up the price of Luna. While doing so, the company may sell Luna without disclosing an intent to do so. This will expose the company to legal, regulatory, and reputational risks.

[41] Plaintiff's damages expert, Professor Daniel B. Thornton, emeritus professor of finance at Queens University, opines that the omission of the above information would cause investors to overvalue Galaxy's shares. His uncontroverted opinion is that had continuity schedules been provided in Galaxy's financial materials as required by International Accounting Standards ("IAS") and by the Canadian Securities Administrators' *Staff Notice* of March 11, 2021, investors would have understood that it was consistently selling its Luna holdings and that no future profits from Luna would be available.

[42] In that scenario, investors would have entirely discounted from future valuation the profits realized from the sale of Luna. But since there was no continuity schedule disclosed by Galaxy, investors would have surmised that the ever-steady profits would remain on course when, in fact, they would end in the first quarter of 2022 with the conclusion of the Long Duration purchase agreement.

[43] I note that there is some debate among the experts as to the applicability of IAS and of the *Staff Notice*. Defendants' financial expert, accountant Bijan Toufighi, expressing the view that compliance with these standards is not strictly required or relevant. That said, Professor Thornton notes in his Reply Report that Galaxy's AIFs for fiscal 2020 and 2021 contain the following assurance to readers:

> In March 2021, the Canadian Securities Administrators published CSA *Staff Notice* 51-363 Observations on Disclosure by Crypto Assets Reporting Issuers, in which they provided an outline of several disclosure observations and guidance based on the first annual filings by reporting issuers (other than investment funds) that engage materially with crypto assets via mining and/or the holding/trading of those assets. ***GDH LP intends to comply with any such applicable guidance*** [emphasis added by Professor Thornton].

[44] The issue here is not so much whether compliance is regulatorily mandated, but rather whether the assumptions and expectations that investors bring to bear on financial disclosure materials have been met. As Professor Thornton explains, in the absence of continuity schedules investors would have valued the profits derived from Luna at a Price-to-Earnings multiple

significantly higher than one. He therefore opines that the schedules' absence significantly impacted on investors' perceptions and caused the market to overvalue, and investors to overpay for Galaxy's shares during the proposed class period.

III. The public corrections

[45] Between May 7 and May 12, 2022, Luna/TerraUSD entered the kind of 'death spiral' to which its version of algorithmic stablecoin was always susceptible. Its market collapsed, with its value falling to nearly $0. The following, drawn from evidence provided by Novogratz, along with Plaintiff's economics expert Michael Beilin and Defendant's economics expert Robert Patton (and news accounts and other sources appended to the expert reports), describes the collapse and the public correction statements made by Galaxy in light of the collapse.

[46] On Saturday, May 7, 2022, reports began to circulate that over $2 billion of The TerraUSD stablecoin had been taken out of the Anchor Protocol and sold in the market. The stablecoin was supposed to be pegged one-to-one to the US dollar. As Novogratz explains it in his affidavit, the sudden, large, sales of the TerraUSD stablecoin resulted in its losing its peg to the US dollar and instead trading at less than $1 US per stablecoin. Investors then began to sell their stablecoins which, in turn, led to the creation of more and more Luna tokens, which in turn led to the price of those tokens plummeting.

[47] On May 9, 2022, the first trading day following the weekend in which Luna/TerraUSD was depegged from the US dollar, Galaxy released its financial results for the quarterly period ending March 31, 2022. The MD&A of that date disclosed that trading in Luna was material to its results for the quarter. In remarks that had been prepared for an earnings call that accompanied the release, Ioffe reported that Galaxy held $440 million of stablecoins which, he asserted, "is akin to cash."

[48] That, in turn, gave way to a questioner asking about the depegging, to which Novogratz responded by explaining the different types of stablecoins and expounding on the features and risks of algorithmic stablecoins. In cross-examination, Novogratz conceded that he had not previously provided any such explanation to investors, and that he had likewise never warned or explained that the Luna/TerraUSD stablecoin carried with it the risk of a depegging from the US dollar and financial collapse. He also explained that previous disclosure that Galaxy held only a small amount of Luna would have accelerated the collapse of Luna/Terra USD given the company's and his personal association with Luna.

[49] On the same day as the earnings call, the value of TerraUSD fell as much as 20 cents below the U.S. dollar; that, in turn, caused the price of Luna to fall by more than 50% in one day. By the end of trading on May 9, 2022, the price of Galaxy's stock had dropped by 26% from the previous trading day.

[50] By Thursday, May 12, 2022, the price of Luna had fallen to zero. Michael Beilin reports that, in tandem with Luna's collapse, by the end of trading on May 12th the price of Galaxy's shares on the TSX had dropped 42.9% from its closing price prior to the depegging over the weekend. The following day, Friday, May 13, 2022, Galaxy announced in a press release that it suffered a

quarter-to-date loss of $300 million and stated that it wished to provide "visibility regarding its capital and liquidity position…"

[51] The following week, on Wednesday, May 18, 2022, Novogratz released a public letter to Galaxy shareholders expressing his "humility" over the fall of an asset that he had personally promoted. In his statement, he acknowledged that "both large and small investors saw profits and wealth vanish" as a result of Luna's collapse.

[52] In disclosure documents issued subsequent to the Luna collapse – and subsequent to the proposed class period – Galaxy revised its information to investors regarding stablecoins, algorithmic stablecoins, and Luna/TerraUSD. These revised disclosures have been summarized by Plaintiff's counsel in the following chart. Overall, they illustrate the omissions of material facts and risk factors in Galaxy's disclosures in core and non-core documents and in other public statements during the class period.

Class Period Disclosure	**Revised Disclosure**
Several factors may affect the price of digital assets, particularly cryptocurrencies, including, but not limited to: … - Activities of stablecoin issuers, the ability of stablecoin issuers to substitute underlying assets to back the stablecoins or the decline in those underlying assets and future actions relating to the regulatory or accounting treatment of stablecoins. *Source: 2021 AIF, dated March 31, 2022, page 92* <u>Digital Assets</u> As of December 31, 2021, the Partnership had a material net holding in Bitcoin of approximately $463.8 million (December 31, 2020 - $443.6 million), Ether of approximately $391.3 million (December 31, 2020: $65.8 million), and Terra of approximately $407.6 million (December 31, 2020: $0), excluding non-controlling interests. The increase in the value of holdings was primarily driven by the increase in price.	Several factors may affect the price of digital assets, particularly cryptocurrencies, including, but not limited to: …. - Activities of stablecoin issuers, the ability of stablecoin issuers to substitute underlying assets to back the stablecoins or the decline in value of those underlying assets, the emergence of undercollateralized algorithmic stablecoins, and future actions relating to the regulatory or accounting treatment of stablecoins. … There are also volatility risks related to fiat-backed stablecoins, which are designed to track the price of an underlying asset, such as fiat currency. The stability of a fiat-backed stablecoin results from the underlying assets backing the stablecoin that are held by the stablecoin's issuer in segregated or omnibus accounts, among other factors such as the stablecoin's convertibility into other assets, and the ability of a holder to redeem the stablecoin from its issuer for underlying collateral. The issuers of certain stablecoins

Class Period Disclosure	Revised Disclosure
Source: YE 2021 MD&A, dated March 31, 2022, Page 28 Net digital assets represents the net amount of our digital assets holdings at the end of each period, by adding all digital assets categorized as assets on the statement of financial position (digital assets, digital assets on loan, assets posted as collateral and digital assets receivable) less all digital assets categorized as liabilities on the statement of financial position and assets that do not belong to Galaxy (digital assets sold short, digital assets borrowed, collateral payable, and noncontrolling interest). We exclude stablecoins from net digital assets and net digital assets at fair value, to present only those digital assets subject to price volatility. Stablecoins are indexed to fiat currencies (primarily the U.S. dollar) and are therefore not expected to fluctuate in value, in our reporting currency (which is U.S. dollars). These assets and liabilities represent individual balances disclosed within our condensed consolidated statements of financial position under U.S. GAAP. *Source: S4 Registration Statement, as filed on SEDAR, dated January 28, 2022, Page 215*	retain broad discretion to determine the composition and amounts of assets held in the issuers' accounts backing those stablecoins, and to substitute assets other than the fiat currency that is initially deposited. The composition of backing assets varies considerably across popular stablecoins, with some stablecoins backed entirely by off- chain assets including cash or short-term, highly liquid assets, and others backed by assets significantly less liquid than cash or cash equivalents. For example, Circle, which issues USDC, and Paxos, which issues BUSD and USDP, hold cash and short-term cash equivalents to back such stablecoins. Meanwhile, Tether, which issues USDT, publishes a report on a quarterly basis which includes a breakdown of the consolidated total assets comprising its reserves backing USDT as of a given reporting date, and according to such reports, its reserves have included commercial paper and certificates of deposit, cash and bank deposits, reverse repo notes, money market funds, treasury bills, secured loans, corporate bonds, funds and precious metals, and other investments (including digital tokens), and Tether reserves the right to redeem USDT by making in-kind redemptions of any assets held some stablecoins backed entirely by off- chain assets including cash or short-term, highly liquid assets, and others backed by assets significantly less liquid than cash or cash equivalents. For example, Circle, which issues USDC, and Paxos, which issues BUSD and USDP, hold cash and short-term cash equivalents to back such stablecoins. Meanwhile, Tether, which issues USDT, publishes a report on a quarterly basis which includes a breakdown of the consolidated total assets comprising its reserves backing USDT as of a given reporting date, and according to such reports, its reserves have included commercial paper and certificates of deposit, cash and bank deposits, reverse repo notes,

Class Period Disclosure	Revised Disclosure
	money market funds, treasury bills, secured loans, corporate bonds, funds and precious metals, and other investments (including digital tokens), and Tether reserves the right to redeem USDT by making in-kind redemptions of any assets held in its reserves. As a result of the discretion afforded to certain stablecoin issuers to determine the composition and amounts of assets held in the issuers' accounts backing those stablecoins, there is a risk that an issuer may be unable to liquidate enough backing assets if it were to face mass redemptions of its stablecoin, which could cause the price of the stablecoin to deviate from the price of the underlying fiat currency or other asset that it is designed to track. If a stablecoin issuer were to fail to honor its redemption obligations, this could undermine public confidence in stablecoins and in digital assets more broadly, which could have a widespread impact on the cryptoeconomy, causing the prices of other stablecoins and digital assets to become more volatile. The emergence of a new form of stablecoin, referred to as algorithmic stablecoins, poses additional risks. Rather than being explicitly backed by assets or fully collateralized, algorithmic stablecoins are designed to maintain price parity with an underlying asset through market forces via smart contracts to increase/decrease supply, for example via an algorithmic relationship with a cryptocurrency backing the stablecoin. However, there is a risk that a particular algorithmic stablecoin can lose its peg with the asset that it is designed to maintain parity with, notwithstanding the algorithmic relationship between the stablecoin and its backing cryptocurrency. For example, in May 2022, TerraUSD (UST), which is designed to maintain one-to-one parity with the U.S. dollar via an algorithmic relationship with Terra's native cryptocurrency, LUNA, lost its peg with the

Class Period Disclosure	Revised Disclosure
	U.S. dollar following a series of events including several large-volume UST withdrawals from certain of the DeFi protocols built on the Terra protocol, swaps of UST for other stablecoins resulting in a significant supply imbalance on third party digital asset trading platforms, short sales of BTC and LUNA, and general market- wide weakness. Despite the efforts of participants within the Terra community to stabilize UST, which included deploying significant amounts of capital to alleviate selling pressures around UST and the issuance of large volumes of LUNA, as the price of UST rapidly declined, their efforts—as well as the on-chain redemption mechanism—were insufficient in slowing the selling pressure on UST, causing UST to trade below $0.20. In addition, the resulting increase in supply of LUNA, together with the loss of confidence in the Terra platform and corresponding sell-off of LUNA, caused the price of LUNA to fall by 99.9% over the span of several days. This series of events undermined public confidence in other stablecoins, with many other cryptocurrencies and digital assets also suffering price declines, and ultimately leading to the bankruptcies of several digital asset industry players throughout 2022. While UST is the most prominent and recent example of an algorithmic stablecoin failure, there have been several other failed attempts to create algorithmic stablecoins in the past, some with similar or different designs to UST, including Basis Cash, Empty Set Dollar, and TITAN (Iron Finance). *Source: 2022 AIF, dated March 28, 2023, page 113*

<table>
<tr><th>Class Period Disclosure</th><th>Revised Disclosure</th></tr>
<tr><td rowspan="2"></td><td>
Gross digital asset holdings by fair value (Q4 2024 MD&A, p. 25)
<table>
<tr><th></th><th>December 31, 2024</th><th></th><th>December 31, 2023</th><th></th></tr>
<tr><th>(in thousands of dollars)</th><th>Value</th><th>Percentage</th><th>Value</th><th>Percentage</th></tr>
<tr><td>Bitcoin[(1)]</td><td>$ 1,578,553</td><td>53.3%</td><td>$ 589,011</td><td>52.6%</td></tr>
<tr><td>Ether[(1)]</td><td>453,503</td><td>15.3%</td><td>174,978</td><td>15.6%</td></tr>
<tr><td>USDC</td><td>343,341</td><td>11.6%</td><td>74,624</td><td>6.7%</td></tr>
<tr><td>USDT</td><td>137,661</td><td>4.6%</td><td>104,539</td><td>9.3%</td></tr>
<tr><td>SOL(1)</td><td>85,543</td><td>2.9%</td><td>27,265</td><td>2.4%</td></tr>
<tr><td>UNI</td><td>68,922</td><td>2.3%</td><td>508</td><td>0.0%</td></tr>
<tr><td>TIA</td><td>34,116</td><td>1.2%</td><td>68,494</td><td>6.1%</td></tr>
<tr><td>All other</td><td>262,554</td><td>8.9%</td><td>80,524</td><td>7.2%</td></tr>
<tr><td>Digital assets, current and noncurrent</td><td>$ 2,964,193</td><td>100.0%</td><td>$ 1,119,943</td><td>100.0%</td></tr>
</table>
[(1)] Includes associated tokens such as wBTC, wETH, stETH, and wSOL.

Source: Q4 2024 MD&A, cited in para 48 of the First Thornton Report.
</td></tr>
<tr><td>Counsel note: References to “net digital assets” excluding stablecoins have been dropped and the company no longer describes stablecoins as not subject to price volatility.

Source: S4 Registration Statement, as filed on SEDAR, dated February 9, 2023</td></tr>
</table>

[53] In these new disclosures, Galaxy describes the nature of stablecoins in substantial detail. It eliminates its previous comments that stablecoins have the stability of an underlying fiat currency, and instead explains that all stablecoins have “volatility risks.” It describes Luna/TerraUSD as an algorithmic stablecoin and notes that this type of algorithmic stablecoin can lose its peg to the U.S. dollar. It also describes the risk of a death spiral such as that encountered by Luna/TerraUSD. In addition, following Luna’s collapse, Galaxy no longer excludes stablecoins from its net exposure to digital assets statement.

[54] Defendants’ counsel argue that not only can events that post-date the class period not be used to reflect back on the class period, but that the collapse of Luna/TerraUSD was like an earthquake that shook the market and changed the risk and disclosure landscape. But frankly, that

seems to say that disclosure of risk can be avoided on the basis of 'what you don't know won't hurt you', and only changes when the investors eventually feel the pain.

[55] The LunaTerraUSD death spiral and related market events of May 2022 were certainly dramatic in the way that they manifested the magnitude of losses that investors can potentially incur with cryptocurrencies. But they also visibly revealed the riskiness and instability of algorithmic stablecoins that had existed all along. The risk was known to Galaxy and its management from the inception of their investment in Luna. It is not the inherent risks that changed with Luna's destruction; it is only the investors' fortunes changed. The Plaintiff's point is that Galaxy's *ex post facto* explanations simply demonstrate what its investors should have been told all along.

IV. Leave to proceed

[56] Under section 138.8 of the *OSA*, the Plaintiff can obtain leave if he satisfies the court that, a) the action has been brought in good faith, and b) there is a reasonable possibility that the Plaintiff will succeed at trial. The test has been characterized as a screening test in which the Plaintiff need not prove his case but rather must adduce a record that contain some credible evidence to support the claim. The Supreme Court of Canada explained this in *Theratechnologies Inc. v. 121851 Canada Inc*., [2015] 2 SCR 106, at para. 39 with respect to the parallel securities legislation in Quebec:

> [T]he authorization stage under s. 225.4 [of the Quebec *Securities Act*] should not be treated as a mini-trial. A full analysis of the evidence is unnecessary. If the goal of the screening mechanism is to prevent costly strike suits and litigation with little chance of success, it follows that the evidentiary requirements should not be so onerous as to essentially replicate the demands of a trial. To impose such a requirement would undermine the objective of the screening mechanism, which is to protect reporting issuers from unsubstantiated strike suits and costly unmeritorious litigation. What *is* required is sufficient evidence to persuade the court that there is a reasonable possibility that the action will be resolved in the claimant's favour.

[57] Section 138.8 therefore reflects "an attempt to strike a balance between preventing unmeritorious litigation and strike suits and, at the same time, ensuring that investors have a meaningful remedy when issuers breach disclosure obligations": *Ibid.*, at para. 34. The Plaintiff need not 'win' the case at this stage: *Dziedziejko v. Canopy Growth*, 2025 ONSC 6766, at para. 33. His burden is merely to establish that there was a misrepresentation by the Defendants and that the misrepresentation was material": *1654776 Ontario Limited v. Stewart*, 2013 ONCA 184, at para. 64.

[58] Similarly, on a motion for leave the Court need not attempt to reconcile or resolve all contentious issues. In fact, to do so would be to convert the motion into a mini-trial and to thereby fall into error: *Drywall Acoustic Lathing and Insulation (Pension Fund, Local 675) v. Barrick Gold Corporation*, 2024 ONCA 105, at para. 38.

[59] The two branches of the section 138.8 test – whether there is a reasonable prospect of success on the Plaintiff's misrepresentation claim, and whether the action has been bought in good faith – will be addressed in sequence below.

b) Good faith

[60] The Plaintiff, Richard Banach, has brought this claim on his own behalf and is proposed as representative Plaintiff on behalf of all investors in Galaxy shares during the proposed class period. He is not a securities or cryptocurrency industry professional, but rather is a retail investor who, during the class period, purchased 11,076 shares of Galaxy through an online brokerage account.

[61] Banach has sworn an affidavit in which he explains, among other things, his personal reasons for commencing the action. In resorting to litigation, he makes express reference to two of the recognized goals of class actions: see *AIC Limited v. Fischer*, [2013] 3 SCR 949 , at para. 16. He deposes that in seeking the court's adjudication, he hopes to promote access to justice for all class members and to bring about behaviour modification in respect of what he sees as the Defendants' wrongdoing.

[62] The evidence establishes that although he is not specifically schooled in investment or finance, Banach is an educated person with a college degree in avionics. He appears capable of understanding the issues in the case, instructing counsel, and representing the interests of the class members. He has undertaken to fulfill the responsibilities required of a representative plaintiff. He has worked with counsel to deliver an appropriate litigation plan and, again working well with counsel, has secured funding for the proceeding through the Class Proceedings Fund.

[63] The controversial issue with respect to Banach's role in this case is not his capabilities or his relationship to the claim or to the class; it is with respect to his character. He acknowledges pleading guilty to a criminal offence some 18 years ago and to have more recently received a regulatory notice from U.S. authorities regarding his operation of an apparently unlicensed or unauthorized radio station. The regulatory action in respect of the radio operation does not raise any concern as it is a civil matter that is unrelated to anything relevant to the present claim. But the criminal conviction gives me pause, as the offence – mortgage fraud – is a financial transgression that on its face impugns his honesty and integrity.

[64] I note that although the Defendants raise the issue of Banach's old criminal conviction, they do not exactly say that he has proceeded in bad faith or that the action itself has been brought in anything other than good faith. There is no evidence in the record suggesting that the action is in the nature of U.S.-style strike suits – the primary concern that underlies the court's gatekeeping and balancing functions under section 138.8 of the *OSA*: *Theratechnologies*, *supra*, at para. 34. Nor is there any evidence suggesting that the proceeding has been brought out of any motivation other than an aspiration that shareholders' rights be adjudicated and vindicated.

[65] As Plaintiff's counsel submitted in oral argument, Banach, as proposed representative Plaintiff, is not put forward as a witness to the *res gestae*, and so his credibility in respect of the any transactions in issue is not at stake. He is a *bona fide* retail investor, who bought and sold Galaxy shares at the times relevant to the claim. He has retained experienced counsel and reputable

experts, and is supported by the Class Proceedings Fund to work with counsel and, perhaps eventually, approve any settlement.

[66] I am cognizant of the fact that a challenge to a proposed representative Plaintiff must overcome a high hurdle, and that "[v]ery few *OSA* leave motions fail to clear the good faith requirement": *Mask v Silvercorp Metals Inc.*, 2015 ONSC 5348, at para. 33. Banach's mortgage fraud case was nearly two decades ago, and nothing in the record before me suggests that he has acted, or will act, improperly in respect of this action. I conclude that he has brought this claim in good faith and that his transgressions are, although serious, long behind him and have not resurfaced here.

[67] Under the circumstances, he is a qualified and acceptable Plaintiff to bring this action. Given this finding, section 138.8(1)(a) of the *OSA* that "the action is being brought in good faith" is satisfied.

b) **Misrepresentations**

[68] . It would be impossible to convincingly, or even coherently, argue that Galaxy's public statements contained no misleading omissions and/or active misrepresentations. The chart reproduced in Part II above is replete with such impugned omissions and statements in both core and non-core documents.

[69] The misstatements begin with the MD&A for the quarter ending on March 31, 2021, issued May 17, 2021, where, for example, Galaxy's investment in stablecoins is described as a digital asset "designed to track the value of an off-chain asset, such as a fiat money or exchange traded commodity, most commonly U.S. dollars". It is entirely omitted that the specific stablecoin in issue – the Luna/TerraUSD – is not a fiat-backed stablecoin supported by cash, treasuries, or the like, but rather is an algorithmic mechanism under which users may exchange TerraUSD for US$1 worth of Luna such that TerraUSD's peg to the US dollar depends on continuing market confidence in, and liquidity for, Luna.

[70] This type of misleading half-truth continues with the annual MD&A for the year ending December 31, 2021, issued March 31, 2022, where the value of stablecoins, including LunaTerra/USD, are netted out of Galaxy's total digital holdings because they "typically maintain a one-to-one correlation to fiat currencies". Again, it is omitted that if TerraUSD trades below its USD $1 peg, restoring the peg may require the creation of additional Luna which will, in turn, dilute Luna's value and create a reflexive feedback loop in which a falling TerraUSD price can lead to selling pressure on Luna and further declines in Luna's price adding additional pressure on TerraUSD's peg.

[71] The Court of Appeal observed in *Rahimi v. South Gobi Resources Ltd.* (2017), 137 OR (3d) 241, at para. 80, that, "Continuous disclosure is at the heart of securities regulation and must be scrupulously accurate and fair. There is no room for prevarication or double-talk." There is no rule of 'buyer beware' in securities law; a reporting issuer such as Galaxy whose shares trade on the secondary market is under continuous disclosure obligations requiring regular, meaningful disclosure to investors: *Kerr v. Danier Leather Inc.*, [2007] 3 SCR 331, at para 32; *Lundin Mining Corp. v. Markowich*, 2025 SCC 39, para 40.

[72] The Ontario Securities Commission's National Instrument 51-102 ("NI 51-102"), combined with the *Staff Notice* of March 11, 2021 discussed above, imposed the following set of obligations on Galaxy:

> (a) disclose 'material information that may not be fully reflected in the financial statements' [NI 51-102F1, Part 1 (a)];
>
> (b) disclose 'specific information about [its] crypto assets' [Staff Notice, p. 7];
>
> (c) disclose 'the nature of the different types of cryptocurrencies" it held [Staff Notice, p. 8];
>
> (d) present its portfolio 'with sufficient disaggregation and transparency to allow an investor to understand the key characteristics of the portfolio composition including the associated risk and drivers of any change in fair value' [Staff Notice, 51-349];
>
> (e) disclose 'a continuity schedule for each type of cryptocurrency' [Staff Notice, p. 9];
>
> (f) disclose contracts which had become material to its business; [NI 51-102F2, section 15.1.]; and
>
> (g) refrain from 'promotional activities that provide unbalanced or unsubstantiated material claims about the issuer's business' [Staff Notice, p. 6].

[73] As reviewed in Part II above, none of the requisite disclosures were made by Galaxy with respect to its trading and holdings of Luna during the 2021-2022 period relevant to this claim. To summarize, the various core and non-core documents did not adequately supplement the information provided in Galaxy's annual financial reports, insufficient specifics (including amounts held and sold) were disclosed for investors to properly understand the Luna dealings, the different types of stablecoins were not explained or disclosed, and Galaxy's cryptocurrency portfolio was not disaggregated and made transparent in a way that allowed investors to understand the place of Luna within it or to assess the risks of the Luna/TerraUSD. Further, no continuity schedule for Luna was produced, and the amount of Luna being bought and sold was not disclosed in a way that would reveal its materiality.

[74] As outlined earlier in these reasons, there is sufficient evidence in the record to make for a reasonable prospect of success in respect of a number of the Plaintiff's claims: e.g. that Galaxy misled investors about the nature and risks of stablecoins, algorithmic stablecoins, and the Luna/TerraUSD stablecoin pair; that Galaxy misled investors about the specifics of its exposure to Luna/TerraUSD; that Galaxy misled investors about its buy/sell strategy with respect to Luna/TerraUSD; that Galaxy misled investors about its compliance with the Staff Notice.

[75] In addition to all of that, the Plaintiff submits, and the record contains sufficient evidence to support the allegation, that Galaxy misled investors about its compliance with International Accounting Standards ("IAS") and International Financial Reporting Standards "IFRS"). The *OSA*

and regulations thereunder require that the company's quarterly and annual financial statements comply with IFRS. After reviewing Galaxy's financial statements issued during the proposed class period, Professor Thornton opined, *inter alia*, that:

> I find that Galaxy complied with specific accounting standards relating to its activities in cryptocurrencies – i.e. IAS 1,7 and21; IFRS 13 and15 – … but failed to comply with the IFRS Conceptual Framework and with the Staff Notice which indicate that Galaxy should also have provided continuity schedules for all material categories of cryptocurrencies.

[76] Furthermore, the *OSA* required Novogratz as CEO and Ioffe as CFO to certify the truth, accuracy, and completeness of Galaxy's financial disclosures, along with the effectiveness of its Internal Control over Financial Reporting ("ICFR") and its Disclosure Controls and Procedures ("DC&P"). In the certifications issued during the proposed class period, Novogratz, Ioffe, and Galaxy certified to investors that their disclosures did "not contain any untrue statement of a material fact or omit any material fact that was required to be disclosed." In light of the evidence of misstatements and omissions outlined above, there is certainly a reasonable prospect that a trial court will conclude that these certifications amounted to misrepresentations in respect of Galaxy's ICFR and DC&P, and that Galaxy's investors were misled regarding their ability to rely on the internal financial and accounting control mechanisms that the company had in place.

[77] Finally, the evidence leaves little doubt that Novogratz, on his own account and on behalf of Galaxy, engaged in unbalanced promotional activities with respect to Galaxy's investment in Luna. His exaggerated pronouncements on social media, his professed dedication to Luna's "investor awareness problem", his bravado about Luna culminating with his tattoo and its widely circulated image, and even his expression of humility following Luna's collapse, speak to a level of excessive and hollow promotional activity that obscures true disclosure.

[78] The Defendants do not, of course, agree with or concede the accuracy of this assessment. That said, the conclusion that Galaxy's disclosure materials and overall presentation of its dealings with respect to Luna were misleading is hard to deny.

[79] What the Defendants do say is that Luna was not material to Galaxy during the proposed class period – or, at least, up until the disclosures of March 2022 with respect to the final quarter of 2021. As stated in NI 51-102F1, the requirement of full and transparent disclosure applies to material information, not to information that pertains to an immaterial part of the company's business. It is the Defendants' position that throughout 2021 – i.e. the majority of the proposed class period – Galaxy's dealings with Luna were below the materiality threshold.

[80] As a general matter, section 1(1) of the *OSA* defines a misrepresentation as "(a) an untrue statement of a material fact or (b) an omission to state a material fact…" It is the market, not any one person or company's business judgment, that is the focus of the materiality analysis: *Kerr v. Danier Leather Inc.*, [2007] 3 SCR 331, at para. 54. That includes the materiality of omissions, which are analyzed in accordance with "[w]hether omitted information constitutes a material fact depends in part on the nature of the information, and how it would be considered by a reasonable investor": *Wong v. Pretium Resources Inc.*, 2022 ONCA 549, at para. 91.

[81] Accordingly, the question of materiality must always be addressed objectively: *Sharbern Holding Inc. v. Vancouver Airport Centre Ltd.*, [2011] 2 SCR 175, at para. 61. Section 1(1) of the *OSA* defines "material fact" as "a fact that would reasonably be expected to have a significant effect on the market price or value of the securities". Whether any aspect of a corporation's business or activity is material and subject to mandatory disclosure is therefore determined by asking "whether there is a substantial likelihood that the disclosure of the information would have been viewed by the reasonable investor as having significantly altered the total mix of information made available: *Wong*, *supra*, at para. 91.

[82] Evidence of concurrent or subsequent conduct or events can, in the right circumstances, be relevant to the materiality assessment: *Ibid.*, at para. 60. Thus, for example, information disclosed in a subsequent financial statement or MD&A might signal its prior materiality; likewise, information first disclosed in a public correction might signify its materiality all along. In addition, "common sense must prevail in assessing the broader factual context, or the 'total mix' [of information available]": *Cornish v. Ontario Securities Commission*, 2013 ONSC 1310, at para 52.

[83] The Supreme Court of Canada held in *Danier Leather*, at para. 18, that the share price of a publicly traded corporation immediately dropping upon disclosure of information "demonstrate[s] the 'materiality' of this information". Accordingly, if, as here, the corrective disclosure has a non-*de minimis* effect on the market price of securities, that is strong evidence suggesting that the test for materiality may have been satisfied: *Dziedziejko*, *supra*, at paras. 81-82.

[84] Counsel for the Defendants submit that Luna was not a large portion of Galaxy's business during the proposed class period. They have produced the following chart summarizing Luna's relative value over that period of time:

LUNA'S RELATIVE VALUE TO GDH LP [GALAXY] OVER TIME

Date	Luna Total Value	Value of Luna as a Percentage of Digital Assets	Value of Luna as a Percentage of Total Assets
December 31, 2020 (YE 2020)	$7.8 million	0.89% (Total Digital Assets of $870.1 million)	0.49% (Total Assets of $1.562 billion)
March 31, 2021 (Q1/2021)	$109.1 million	4.99% (Total Digital Assets of $2.183 billion)	3.43% (Total Assets of $3.1794 billion)

Date	Luna Total Value	Value of Luna as a Percentage of Digital Assets	Value of Luna as a Percentage of Total Assets
June 30, 2021 (Q2/2021)	$35.6 million	2.12% (Total Digital Assets of $2.2839 billion)	1.13% (Total Assets of $3.1563 billion)
September 30, 2021 (Q3/2021)	$224.7 million	9.7% (Total Digital Assets of $2.3183 billion)	5.6% (Total Assets of $3.9867 billion)
December 31, 2021 (YE/2021)	$407.6 million	16.4% (Total Digital Assets of $2.4924 billion)	7.9% (Total Assets of $5.0965 billion)
March 31, 2022 (Q1/2022)	0	0 (Total Digital Assets of $2.3515 billion)	0 (Total Assets of $5.2703 billion)

[85] Defendants' counsel point out that, aside from the last few months of 2021 and the first few months of 2022, Luna was a relatively small portion of Galaxy's total portfolio. They argue that although there may have been non-disclosure of various facts and risks about Luna all along, the only non-disclosure of material information was for the periods ending December 31, 2021 and March 31, 2022. That would include the Q4/2021 Financial Statements and Q4/2021 MD&As issued March 31, 2022, the Galaxy S-4 filed January 28, 2022, the 2021 AIF issued March 31, 2022, and the Q1/2022 Financial Statements and Q1/2022 MD&As issued May 9, 2022. Defendants contend that none of Galaxy's other disclosure is relevant because during the balance of the proposed class period, Luna was not a material holding for Galaxy.

[86] Counsel for the Defendants also submit that, for Galaxy, Luna was never meant to be held for the long term; rather, it was intended as a one-time investment that rose dramatically in value and paid off remarkably well. They state that while its rise in value made it an important asset for Galaxy in the last quarter of 2021 and the first quarter of 2022, it was always meant to be sold and was, in fact, sold by the time the company reported its 2022 Q1 results. In fact, they remind the Court that by the time Galaxy issued the 2021 AIF in March 2022, Galaxy did not hold any of the Luna tokens it had acquired under the October 2020 purchase agreement.

[87] All of what the Defendants say in this respect is accurate. But, with the greatest of respect, it is also for the most part beside the point in that it focuses on the trees rather than on the forest. Facts giving rise to a material risk are material facts, and the risk of Luna failing was material to

Galaxy regardless of the size of any one of the facts making up that risk. The test of materiality is, therefore, as stated on the Ontario Securities Commission's Form 51-102F2 (Consolidated Annual Information Form), clause (E): "Would a reasonable investor's decision whether or not to buy, sell or hold securities in your company likely be influenced or changed if the information in question was omitted or misstated? If so, the information is likely material."

[88] In other words, the disclosure requirements are not measured on percentages alone. "One should not lose sight of the forest for the trees by assessing the materiality of individual facts piecemeal when the broader factual context suggests a risk faced by an issuer. Some facts may be material on their own, while others may only be material in the context of other facts": *Cornish*, *supra*, at para. 52.

[89] Galaxy identified itself so closely with Luna that the two were nearly indistinguishable from each other regardless of what the numbers on any particular month might say. Novogratz not only branded his left shoulder with Luna; he branded his entire investment company with the Luna association. Indeed, he did so to such an extent that when the market value of Luna collapsed, the market price of Galaxy also went into a steep decline. And this decline persisted despite the fact that the company had finally revealed that it had been selling its Luna holdings and by the time Luna entered its 'death spiral' Galaxy had no Luna left in its account.

[90] The specific percentage of Luna to the rest of Galaxy's business was not what drove the market for Galaxy shares. Galaxy had built its brand, and supported its share price, on an intense social media and marketing campaign for Luna. The interlinked, simultaneous fall of both the Luna/TerraUSD stablecoin and Galaxy shares provides evidence that supports the Plaintiff's view.

[91] To single out Luna as representing a small portion of Galaxy is to lose perspective on the market's response to Galaxy. It is akin to singling out donuts as representing a small portion of the sales revenue for the international investment company that owns Tim Hortons. I reference this as a hypothetical analogy only, but a simple internet search reveals that donuts represent only a single digit percentage of Tim Horton's owner's total revenue; and yet, one can imagine the owner's financial doom if Timmy's were to suffer a 'death spiral' from a toxic dose of maple glaze. The public, and the market. overwhelmingly associates the company with the impugned product/brand.

[92] In cross-examination, both Novogratz and Ioffe acknowledged that materiality in the context of corporate disclosure means information that meets the market impact test – i.e. materiality is met where the market has been impacted by the disclosure of the misstatement or omission. Ioffe, as Galaxy's CFO, was particularly aware of the need to disclose information that would be, as he put it, "reasonably expected to have a significant influence on a reasonable investor's decision to buy."

[93] Based on this definition, Ioffe acknowledged that any time Luna was mentioned in a financial disclosure document it was because for the period of time covered by that document Luna was material to the income statement or the balance sheet. In his affidavit he specifies that "Luna" and "Terra" were mentioned in Galaxy's MD&As for the first, third, and fourth quarters of 2021, and in its MD&As for the full year of 2021 and the first quarter of 2022. And yet he did not turn his mind to, and the company never disclosed until after Luna's collapse in May 2022, the risks inherent to the Luna/TerraUSD algorithmic stablecoin. Until then, Ioffe described the risks of the

investment with which the company was most strongly identified essentially as legal technicalities; and since these specific risks never made their way into the relevant disclosure materials, Galaxy apparently determined that they could be ignored.

> Q. Well, taking my characterization that it was subject to a risk of a death spiral, would such a disclosure about your second largest holding and a material holding and a digital asset that was material to your net income during 2021 have been impactful in the stock price?
>
> A. So we disclosed that we held the digital asset Luna, the one in question here. We had a whole section of risks associated with digital assets. That was more privy – that was more a position that the legal folks dealt with, and so they would be the ones to address the various risks.

[94] As indicated earlier in these reasons, in the May 9, 2022 earnings call, Novogratz was remorseful and conspicuously humbled by the collapse of Luna and the plunge in Galaxy's share price. He expounded on the risks associated with algorithmic stablecoins such as Luna/TeraUSD, and gave examples, all for the first time, of algorithmic stablecoin failures from prior to the collapse of Luna/TerraUSD. Defendants' counsel dismiss this as *ex post facto* musings on the volatility of cryptocurrencies in general, and they submit that after-the-fact disclosure cannot be used to signal materiality as the courts have said that this invites backward reasoning rather than forward-looking assessments of risk.

[95] I agree that backward looking risk assessment is to be avoided. "[T]he evidence must be such that it establishes the actual misrepresentation rather than the consequences of an alleged misrepresentation. The Court of Appeal has made the point that backward reasoning – i.e. presuming a material misrepresentation on the basis of evidence of a drop in share price – does not meet the test for leave": *MM Fund v. Americas Gold and Silver Corp*., 2022 ONSC 6515, at para. 22, citing *Wong*, *supra*, at para. 107.

[96] That said, Plaintiff's counsel's characterization of the post-collapse statements by Novogratz are not extrapolations from after-the-fact events in the market. They are descriptions of Novogratz's literal words that effectively acknowledge what should have been disclosed all along. Plaintiff's counsel labels them "revised disclosures" because they are explicitly revised disclosures by Novogratz about the risks of algorithmic stablecoins – i.e. revised information about Galaxy's flagship investment that likely would have had a significant impact on a reasonable investor's decision to buy Galaxy shares.

[97] Defendants' counsel nevertheless contend in their factum that, "Those references do not mean that the specific risks of Luna and TerraUSD were material." Given that Novogratz's statements came on the heels of Luna/TerraUSD's collapse and the simultaneous collapse of Galaxy's share price, it is hard to see how those risks could not be understood as material.

[98] Novogratz's post-collapse commentary to investors, the media, and to the market at large is understandable as no more and no less than an announcement of a revised, albeit too late for many investors, risk assessment on behalf of Galaxy. As Plaintiff's counsel observe, they are in

fact public corrections of prior misrepresentations/omissions, as required under section 138.3 of the *OSA*.

[99] In *Drywall Acoustic Lathing and Insulation, Local 675 Pension Fund v. Barrick Gold Corporation*, 2021 ONCA 104, at para 22, the Court of Appeal instructed that in identifying a public correction, the Plaintiff must show:

> (i) There must be some linkage or connection between the alleged misrepresentation and the alleged public correction;
>
> (ii) The public correction must share the same subject matter and, in some way, relate back to the misrepresentation; and
>
> (iii) The public correction must be reasonably capable of revealing to the market the existence of an untrue statement of material fact or an omission to state a material fact.

[100] The Plaintiff submits that news of the collapse of Luna/TerraUSD revealed the misrepresentations in Galaxy' core and non-core disclosure material throughout the proposed class period. It showed that, contrary to Galaxy's disclosures with its impugned omissions, stablecoins were subject to volatility risk, were not securely pegged to a real world currency, and could widely fluctuate in value. It also made apparent the previously undisclosed risk – and serious misnomer – of stablecoins of the algorithmic variety. It also disclosed the previously unexplained fact that Luna was paired with TerraUSD in an algorithmic stablecoin system that faced specific risks as a result of its design.

[101] As indicated above, Plaintiff's counsel characterizes Novogratz's comments on the quarterly earnings call with investors on May 9, 2022, made in the immediate wake of the collapse, as further correcting previous misrepresentations. As counsel for the Plaintiff state, there is a self-evident connection between the alleged misrepresentations and these statements seen as public corrections. They exposed to the market that Galaxy's disclosures during the proposed class period contained material misrepresentations and omissions about its dealings in Luna/TerraUSD.

[102] In sum, there is ample evidence in the record supporting the claim that the Defendants made misrepresentations, both actively and by omission, of material facts, and that these were followed by a form of public corrections. Accordingly, the requirement under section 138.8(1)(b) that "there is a reasonable possibility that the action will be resolved at trial in favour of the plaintiff" is satisfied.

V. Certification

[103] The analysis below follows the five-step test for certification of a proposed class action set out in section 5(1) of the *CPA*.

a) Section 5(1)(a) – cause of action

[104] Generally speaking, where leave to proceed under the *OSA* has been granted, the cause of action criterion under s. 5(1)(a) has also been satisfied: *Green v. Canadian Imperial Bank of Commerce*, 2014 ONCA 90, at para 91. Since the Plaintiff's claim meets the test in section 138.3(1)(b) of the *OSA* that it has a reasonable prospect of success, it also meets the test of containing a reasonable cause of action for secondary market misrepresentation.

b) Section 5(1)(b) – identifiable class

[105] The proposed class to be represented by the Plaintiff is comprised of all persons who purchased Galaxy's stock during the class period of May 17, 2021 to May 6, 2022.

[106] The class period ties directly to the substance of the claim in that it commences on the date of the first alleged misrepresentation and ends on the last day of trading before the public correction. The class is not unnecessarily broad or over-inclusive and is defined by objective criteria. The definition of the class is a commonplace one in securities class actions.

[107] The claim satisfies the test for an identifiable class under section 5(1)(b) of the *CPA*.

c) Section 5(1)(c) – common issues

[108] The Plaintiff proposes the following common issues:

> (a) Did the Continuous Disclosure Material contain misrepresentations within the meaning of the *Securities Act* and the Securities Legislation? If so, who made these representations, when, and how?
>
> (b) Do the misrepresentations in the Continuous Disclosure Material give rise to liability on behalf of the Class for damages against the Defendants pursuant to section 138.3 of Part XXIII.1 of the *Securities Act* and the Securities Legislation? If so, for which Defendants?
>
> (c) What is the method of calculating the damages payable to the class members in respect of Part XXIII.1 of the *Securities Act* and the Securities Legislation?

[109] The Supreme Court of Canada has stated that "a question will be considered common if it can serve to advance the resolution of every class member's claim: *Vivendi Canada Inc. v. Dell'Aniello*, [2014] 1 SCR 3, at para. 46. Securities class actions such as this one fit easily within the commonality analysis. The class members share the most traditional definition of common interests in that "success for one is success for all": *Frey v. BCE Inc.*, 2011 SKCA 136, at para. 60.

[110] The proposed questions satisfy the common issues requirement in section 5(1)(c) of the *CPA*.

d) Section 5(1)(d) – preferable procedure

[111] The analysis under this subsection asks "whether or not the class proceeding [would be] a fair, efficient and manageable method of advancing the claim", and, in addition, "whether a class proceeding would be preferable 'in the sense of preferable to other procedures'": *Hollick v. Toronto (City)*, [2001] 3 SCR 158, at para. 28. A class action is almost always preferable in investors' secondary market misrepresentation claims under the *OSA*, since the only real alternative would be thousands of smaller and unmanageable claims.

[112] The common issues certainly predominate over the individual ones here, as the focus of the action is on the Defendants' conduct toward the investment community at large. Further, any individual assessments of investment losses or damages can be accomplished, if required, following a common issues trial.

[113] A class action is the preferable procedure for this action. The requirement under section 5(1)(d) of the *CPA* is satisfied.

e) Section 5(1)(e) – proper representative Plaintiff

[114] As discussed at length in part IV(a) above, the Plaintiff has brought this action in good faith on behalf of a class of investors in Galaxy like himself. He has the ability to adequately represent the class and to instruct counsel on their behalf. There is no evidence that he has any conflict with the class or any of its members. He has produced a workable litigation plan.

[115] The Plaintiff is a proper representative Plaintiff, in satisfaction of the criteria set out in section 5(1)(e) of the *CPA*.

VI. Disposition.

[116] Leave to proceed is granted for this action under s. 138.8 of the *OSA* and the action is certified as a class proceeding under s. 5(1) of the *CPA*.

[117] The Plaintiff is approved as representative Plaintiff, and Plaintiff's counsel are appointed as class counsel.

[118] The class is defined as set out in paragraph 105 above, and the common issues are approved as set out in paragraph 108 above.

[119] The parties may make written submissions on costs. I would ask Plaintiffs' counsel to email my assistant with brief submissions within two weeks of today, and for Defendants' counsel to email my assistant with equally brief submissions within two weeks thereafter.

Released: August 26, 2026

Morgan J.

CITATION: Banach v. Galaxy Digital Holdings Ltd., 2026 ONSC 4534
COURT FILE NO.: CV-22-00691394-00CP
DATE: 20260827

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

RICHARD M. BANACH

Plaintiff

- and -

GALAXY DIGITAL HOLDINGS LTD., MICHAEL NOVOGRATZ and ALEX IOFFE

Defendants

REASONS FOR DECISION

E.M. Morgan J.

Released: August 27, 2026