SUPERIOR COURT OF JUSTICE

COUNSEL SLIP

COURT FILE NO.: **CV-20-00638930-00CL** **DATE:** **7 July 2022**

NO. ON LIST: **03**

TITLE OF PROCEEDING: **CANNTRUST HOLDINGS INC. et al v. Merrill Lynch Canada Inc. et al**

BEFORE JUSTICE: **PENNY**

PARTICIPANT INFORMATION

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For Other, Self-Represented:

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ENDORSEMENT OF JUSTICE PENNY:

CannTrust Holdings Inc. seeks an order extending the time to call its next annual general meeting of shareholders from July 13 to November 30, 2022. This extension is necessary because its auditor, MNP LLP, cannot prepare audited financial statements in time for the initially proposed July 13, 2022 date.

CannTrust is required under corporate law to prepare and place financial statements and other information before the shareholders at each AGM. In order for the financial statements to be mailed to the shareholders of CannTrust sufficiently in advance of an AGM to be held on July 13, 2022, they would have needed to have been completed by late May 2022. While CannTrust has worked with MNP since March 2022 to complete the required financial statements by this time, MNP advised that it was not possible due a number of externally imposed challenges.

CannTrust is governed by the OBCA. The OBCA does not expressly contain a provision allowing a corporation to obtain an extension to the deadline for calling an AGM. The CBCA was amended in 2001 to close this perceived functional gap by providing that a corporation can apply to court for an extension. This perceived functional gap has also been closed in the corporate statutes in British Columbia, Alberta and five other provinces and territories, which each now provide that a corporation may apply for an extension.

Ontario courts have, in any event, exercised their inherent jurisdiction to grant relief to fill functional gaps in corporate legislation in numerous cases. Indeed, in this very case, this Court has already issued orders which suspended the calling of AGMs and then, once the stay is lifted, rescheduling the next AGM. Section 11 of the of the CCAA provides broad jurisdiction to make any order considered appropriate in the circumstances. Accordingly, I am satisfied that this Court has the jurisdiction to extend the time for CannTrust to call its AGM provided that I determine that it would be just and equitable to do so.

In determining whether it is just and equitable to extend the deadline for CannTrust to call its AGM, this Court can look to the principles developed by other courts considering extension requests under the express authority in the CBCA and other provincial statutes. Extensions of up to six months have been granted in other cases due to the company being unable to complete its financial statements and other disclosure in advance of the AGM deadline.

In the CBCA context, the courts have held that it is appropriate to "consider the interests of the company balanced against any meaningful risk of harm to the shareholders arising from the granting of an extension". In my view, the benefits of the requested extension to CannTrust, its shareholders and other stakeholders strongly outweigh any risks arising from the extension. CannTrust has undertaken to continue to provide interim financial information, as it has done throughout the CCAA proceedings, and to comply with its non-financial obligations, such as notices of material change and the like. Further protection arises from the fact that CannTrust is still under a cease trade order, eliminating the risk of any strategic advantage being taken of the delay.

Further, there is no appropriate alternative here. CannTrust is simply unable to hold an OBCA-compliant AGM on July 13. MNP has been working diligently since March 2022 but was unable to provide the required audited financial statements in time to call the July 13 AGM. The evidence establishes that this is no one's fault but arises from the unique circumstances of CannTrust's emergence from CCAA proceedings. If the requested extension is not granted and CannTrust Holdings is required to call an AGM by July 13, 2022, potentially devastating effects on CannTrust and its stakeholders may result.

For these reasons, an order shall issue extending the time for CannTrust to call its AGM to November 30, 2022.

Penny J.