

IN THE MATTER OF ABERDEEN INTERNATIONAL INC.

**APPLICATION OF
EPIX RESOURCE FINANCE CORPORATION**
(In connection with a proceeding under Rule 17 and
Under Subsection 127(1) of the Securities Act, RSO 1990, c S.5)

A. ORDERS SOUGHT

The Applicant, Epix Resource Finance Corporation (“Epix”), requests that the Ontario Securities Commission make the following orders:

1. an order, if required, granting the Applicant standing to bring this application pursuant to section 127 of the *Securities Act*, RSO 1990, c. S. 5 (“the Act”);
2. an order pursuant to paragraph 4 of subsection 127(1) of the Act that Aberdeen International Inc. (“Aberdeen”):
 - (a) review and revise its practices, procedures and structures to comply with all of its obligations as a non-redeemable investment fund as that term is defined in ss. 1(1) of the Act including, without limitation, *National Instrument 81-102 - Investment Funds* (“NI 81-102”), *National Instrument 81-106 - Investment Fund Continuous Disclosure* (“NI 81-106”) and *National Instrument 81-107 – Independent Review Committee for Investment Funds* (“NI 81-107”);

- (b) appoint an independent review committee (the “IRC”) as required by NI 81-107 and instruct the IRC to review and report to the Commission and security holders on all conflict of interest matters respecting Aberdeen from January 1, 2017 until the date of this Order and to make any necessary or appropriate recommendations respecting such conflict of interest matters;
- 3. an order pursuant to paragraph 5 of ss. 127(1) of the Act that Aberdeen:
 - a. amend and restate the continuous disclosure documents required to be filed pursuant to NI 81-106; and
 - b. review and revise its disclosure to comply, on a prospective basis, with the requirements of NI 81-106;
 - 4. an order that none of the exemptions contained in Ontario securities law applies to any distribution of Aberdeen securities or trades in Aberdeen securities by any insider until such time as Aberdeen has complied with paragraphs 2 and 3 above; and
 - 5. such further and other relief as counsel may advise and the public interest may warrant.

B. GROUNDS

(a) The Parties

i. Aberdeen

- 6. Aberdeen is incorporated pursuant to the laws of Ontario and is a reporting issuer in the Provinces of Ontario, Alberta, British Columbia and the Yukon Territory. Aberdeen’s common shares are listed on the TSX Venture Exchange under the symbol “AAB”.
- 7. As described in Aberdeen’s most recent Management Discussion and Analysis (“MD&A”) for the period ended April 30, 2020, Aberdeen does not carry on any active business. To

the contrary, Aberdeen describes itself as an “investment entity” within the meaning of International Financial Reporting Standards (“IFRS”) 10.

8. Aberdeen’s investment philosophy is to acquire equity participation in small capitalization public and private companies in the metals and mining sector. As at April 30, 2020, Aberdeen’s portfolio contained investments in thirty-two companies. Aberdeen estimates the aggregate fair market value of its investments to be approximately \$24 million.
9. Aberdeen holds minority interests in all but one of its investee companies, the latter comprising only approximately 2% of its net asset value.
10. Stan Bharti is Aberdeen’s Executive Chair. Mr. Bharti has been a director of Aberdeen since 2005 and beneficially held 19.9% of Aberdeen’s common shares (as at April 30, 2020). As described below, Mr. Bharti is also an officer, director or shareholder (directly or indirectly), of many of the companies in which Aberdeen invests. Other directors and officers of Aberdeen are similarly situated. In fact, all of Aberdeen’s portfolio companies involve related parties as directors, officers and/or shareholders.
11. Mr. Bharti is also the Executive Chairman of Forbes & Manhattan Inc. (“F&M”). F&M is owned by a family member of Mr. Bharti. F&M describes itself as a private merchant bank with a focus on the resource, agriculture, technology and telecommunications sectors.
12. F&M provides management and administrative services to Aberdeen, as well as to many companies in Aberdeen’s investment portfolio. According to Aberdeen’s management information circular filed on July 9, 2019, Aberdeen pays management fees to F&M in the amount of \$300,000 annually. In the event of a change of control (as the term is defined in Aberdeen’s disclosure), Aberdeen is obliged to pay F&M approximately \$4.8 million.

13. As described in greater detail below, the relationships between Aberdeen’s directors and officers, F&M and Aberdeen’s portfolio companies commonly give rise to related party transactions involving conflicts of interest. In fact, Aberdeen discloses that “in practice, a significant percentage of companies in which Aberdeen invests are companies in which Mr. Stan Bharti holds a key role, and consequently, the investment practices and policies of the Company are subject to potential conflicts of interest.”¹

ii. Epix

14. Epix is an Aberdeen shareholder holding approximately 1,000,000 common shares. Epix is controlled, directly or indirectly, by Michael Sheridan.
15. Mr. Sheridan, as a beneficiary of the estate of Patrick Sheridan and a shareholder of Sheridan Platinum Group, is currently responding on behalf of the estate to litigation pursued by Forbes Royalty Corporation (“Forbes Royalty”), one of Mr. Bharti’s companies (the “FRC Litigation”). As one of many related party transactions, Aberdeen has advanced a loan (essentially a line of credit) to Forbes Royalty for the purpose of funding this litigation.
16. Although Mr. Sheridan (and, indirectly, Epix) has an interest in the outcome of the FRC Litigation, this Application is much broader in scope, has been brought in good faith and gives rise to an important ongoing issue concerning Aberdeen that engages the Commission’s public interest jurisdiction. As a significant shareholder of Aberdeen, Epix is, and has been, directly affected by Aberdeen’s past disclosure and governance practices and will continue to be, particularly as Aberdeen’s disclosures, governance and related

¹ Aberdeen Annual Information Form for the financial year ended January 31, 2020 at p. 8.

party transactions have not been made or carried out in compliance sections 111 and 112 of the Act and NI 81-102, NI 81-106 and NI 81-107.

(b) Aberdeen is a Non-Redeemable Investment Fund

17. The gravamen of this Application is that Aberdeen is a “non-redeemable investment fund” as that term is defined in ss. 1(1) of the Act and in NI 81-106. A non-redeemable investment fund is defined as an issuer:

- (a) whose primary purpose is to invest money provided by its security holders,
- (b) that does not invest,
 - (i) for the purpose of exercising or seeking to exercise control of an issuer, other than an issuer that is a mutual fund or a non-redeemable investment fund or
 - (ii) for the purpose of being actively involved in the management of any issuer in which it invests, other than an issuer that is a mutual fund or a non-redeemable investment fund, and
- (c) is not a mutual fund.

18. This definition is, to a significant degree, co-extensive with the definition of an “investment entity” under IFRS 10. IFRS 10 defines an investment entity as an entity that:

- (a) obtains funds from one or more investors for the purpose of providing those investor(s) with professional investment management services;
- (b) commits to its investor(s) that its business purpose is to invest funds solely for returns from capital appreciation, investment income or both; and
- (c) measures and evaluates the performance of substantially all of its investments on a fair value basis.

19. In its disclosure documents, Aberdeen characterizes itself as an “investment entity” to take advantage of fair value accounting rules available for investment entities under IFRS but wrongly denies that it is an investment fund for the purposes of securities law.

20. Issuers are not entitled to choose whether they fall within the definition of a non-redeemable investment fund which is consequent upon the nature of the issuer's business and operations --- to invest money provided by its security holders in a portfolio of securities issued by private and public entities and not for the *purpose* of managing or exercising control over investee companies.
21. Because Aberdeen is a non-redeemable investment fund, it is subject to the amendments to NI 81-102, NI 81-106 and NI 81-107 that came into force as part of the Canadian Securities Administrators' Modernization of Investment Fund Product Regulation Project (the "Modernization Project"). These amendments implemented core investment restrictions and operational and disclosure requirements for publicly offered non-redeemable investment funds.
22. Aberdeen has failed to implement practices, procedures and structures to comply with applicable law and provide securityholders with disclosures and other protections available to investors in investment fund securities, particularly as they pertain to related party transactions and conflicts of interest.
23. Aberdeen's business model involves investing in private and public companies connected to Mr. Bharti and/or other Aberdeen insiders. This is summarized in Aberdeen's Annual Information Form for the year ended January 31, 2020):

Aberdeen's primary investment objective is to realize exceptional earnings by investing in pre-IPO and/or early stage public resource companies with undeveloped or undervalued high-quality resources. Aberdeen's investments are carried out in accordance with an opportunistic and disciplined process to maximize returns while minimizing risk, taking advantage of investment opportunities identified from the industry contacts of the Board, the officers of the Company and the members of the Investment Committee. In practice, a significant percentage of companies in which Aberdeen invests are companies in which Mr. Stan Bharti

holds a key role, and consequently, the investment practices and policies of the Company are subject to potential conflicts of interest... (Emphasis added.)

24. Aberdeen does not invest for the *purpose* of exercising control in any material portfolio company or managing any operating business regardless of the size of its investment in portfolio companies --- which is why it falls within the definition of a “non-redeemable investment fund” as described above.
25. By contrast, Aberdeen invests for the purpose of facilitating its *directors and officers* and other related parties acting in *other* capacities to exercise control and operate and direct the businesses of certain Aberdeen portfolio companies, but not on Aberdeen’s behalf or necessarily in its interest. Particulars of these activities, including these directors’ and officers’ compensation, their ownership interest and the financial performance of private investee companies are opaque to Aberdeen shareholders and the market generally.
26. At its core, Aberdeen’s investment strategy is to invest money provided by its security holders to bolster the control positions of Aberdeen insiders and related parties in Aberdeen portfolio companies such that it is, in effect, structured as a non-compliant publicly traded non-redeemable investment fund.
27. As further described below, consistent with its classification as an “investment entity”, Aberdeen reports the value of its public and privately held investment assets at fair value in reliance on IFRS 9, 10 and IAS 2 rather than reporting results on a consolidated basis with investee subsidiaries as would be typical of a reporting issuer in the corporate finance, as opposed to the investment fund, stream.
28. Because Aberdeen has determined itself to be an “Investment Entity” in accordance with IFRS 10, the financial condition of Aberdeen’s private investee companies as well as the

compensation arrangements between these entities and Aberdeen insiders are, by and large, absent from its disclosures.

29. Because Aberdeen does not recognize itself as a non-redeemable investment fund, it deems the numerous related party transactions between insiders and its public investee companies to be permissible when they ought not to be.

(c) Related Party Transactions Involving Conflicts of Interest

30. As stated above, Aberdeen acknowledges that a “significant amount” of the investments that it makes are to related parties and subject to potential conflicts of interest.

31. Strikingly, *all* of Aberdeen’s investments are in companies in which Mr. Bharti or other members of management or the board have a direct or indirect personal financial interest and/or hold board seats or management positions.

32. The affairs of Aberdeen and other issuers connected to Mr. Bharti frequently pursue the same strategy relying extensively on related party investments for the benefit of management and the board. This strategy is entirely inconsistent with the policy considerations underlying the regulation of public investment funds in Canada, which are designed to apply stringent restrictions on conflicts of interest on the part of investment fund managers.

33. The strategy can be summarized as follows:

- (a) Mr. Bharti and a core group of directors and management, such as Aberdeen’s Chief Financial Officer, Ryan Ptolemy, assume key positions with issuers in the Bharti group’s investment portfolio, often receiving management fees or other compensation in material amounts;

- (b) the portfolio companies often enter into a management services arrangement with F&M on terms favourable to F&M having regard to the small market capitalization of these companies;
 - (c) the portfolio companies often make strategic investments, by way of private placement or loans, in other F&M-managed issuers or issuers otherwise connected to the Bharti group;
 - (d) periodically, related-party transactions for the purchase or sale of assets are consummated between companies in the Bharti group;
 - (e) funds may be raised from shareholders through initial public offerings or private placements to inject new capital into the system;
 - (f) reporting issuers in the Bharti group, including Aberdeen and Sulliden Mining Capital Inc. (which is structured in a similar manner to Aberdeen) appear to record fair value of their portfolio having regard to the price of the intra-portfolio company transactions; and
 - (g) Aberdeen and many of the companies in the Bharti group have the same registered address and use the same auditor – McGovern Hurley LLP.
34. At least to some degree, Aberdeen publicly discloses related-party transactions. In the circumstances, however, mere disclosure of the related-party transactions and potential conflicts of interest, in many cases without full or meaningful detail, is insufficient to adequately protect Aberdeen shareholders or provide oversight over Aberdeen's board of directors and management.
35. The following is an excerpt of Aberdeen's disclosure of the investments, and management and/or director and officer positions held by Aberdeen insiders or former insiders in Aberdeen portfolio companies as at April 30, 2020.² As stated, this list comprises *each and every* investment in the Aberdeen portfolio.

²Aberdeen Management Discussion & Analysis for the period ended April 30, 2020 at p. 20.

Investment	Nature of relationship	Estimated Fair value	% of FV
African Gold Group, Inc.	Director and officer (Stan Bharti) and officer (Ryan Ptolemy)	\$ 702,136	2.9%
African Thunder Platinum Limited*	Former director (George Faught), 10% security holder (Aberdeen)	3,782,293	15.5%
Apio Africa Ltd.	Director (Stan Bharti)	35,172	0.1%
Amazon Potash Corporation*	Director (Stan Bharti), former director (George Faught)	-	0.0%
Blue Sky Energy Inc.	10% security holder (Aberdeen)	623,502	2.6%
Brazil Potash Corp.*	Director (Stan Bharti), officer (Ryan Ptolemy)	13,105,869	53.9%
Earthrenew Inc.	Officer (Ryan Ptolemy)	657,987	2.7%
Fura Gems Inc.	Officer (Ryan Ptolemy), Director and 10% security holder (Stan Bharti)	1,287,574	5.3%
International Cobalt Inc.*	10% security holder (Aberdeen)	462,023	1.9%
Jourdan Resources Inc.	10% security holder (Aberdeen)	83,333	0.3%
Magnolia Colombia Limited	Director (Maurice Colsen)	120,000	0.5%
Panthera Resources PLC	Former director (David Stein)	31,901	0.1%
Q-Gold Resources Ltd.	Director (Maurice Colsen), 10% security holders (Aberdeen, Stan Bharti)	632,000	2.6%
QuestCap Inc.	Former director and officer (Stan Bharti)	1,337,715	5.5%
Sulliden Mining Capital Inc.	Director and officer (Stan Bharti), 10% security holder (Aberdeen)	273,584	1.1%
Temujin Mining Corp.*	Director (Stan Bharti)	-	0.0%
Yukoterre Resources Inc.	Director (Maurice Colsen)	78,400	0.3%
Total of 15 other investments		1,150,325	4.7%
Total Investments - April 30, 2020		\$ 24,363,814	100.0%

* Private company

36. Aberdeen does not disclose the significant compensation paid, directly or indirectly, to its directors and officers for their roles in the portfolio companies. The following table summarizes the base compensation received by Aberdeen's directors and officers from other publicly available sources that would not normally be accessible to the typical retail investor. This table excludes details of potentially lucrative bonuses and stock-based compensation. This is far from a complete list because any compensation received from most private portfolio companies is entirely undisclosed to the public, as is the compensation they receive indirectly through F&M:

Stan Bharti	African Gold Group Inc.	US\$300,000 per annum (through F&M) <i>*\$200,000 bonus paid in 2019</i>
	Apio Africa Ltd.	Information not available
	Amazon Potash Corp.	Information not available
	Brazil Potash Corp.	US\$180,000 per annum
	Euro Sun Mining Inc.	\$360,000 per annum
	Fura Gems Inc.	Information not available
	Q-Gold Resources Inc.	Information not available
	Questcap Inc.	US\$300,000 per annum (through F&M)
	Sulliden Mining Capital Inc.	\$324,000 per annum (through F&M) <i>*100,000 bonus paid in 2019</i>
	Temujin Mining Corp.	Information not available
	Total	At least \$1,700,000 per annum
Ryan Ptolemy	African Gold Group Inc.	\$5,000 per month
	Brazil Potash Corp.	US\$5,000 per month
	Earthrenew Inc.	\$3,000 per month
	Fura Gems Inc.	\$1,500 per month
		Total
George Faught	African Thunder Platinum Limited	Information not available
	Amazon Potash Corporation	Information not available
Maurice Colson	Magnolia Columbia Limited	~\$24,000 per annum
	Q-Gold Resources Ltd.	Information not available
	Yukoterre Resources Inc.	Information not available
	Total	at least \$14,500 per annum
David Stein	Panthera Resources PLC	\$14,505 in 2019

37. Aberdeen also fails to disclose that the following portfolio companies are also managed by F&M and pay F&M in aggregate more than \$2,000,000 per annum in management fees (based on publicly available information):

(a) African Gold Group Inc.;

- (b) Blue Sky Energy Inc.;
 - (c) Brazil Potash Corp.;
 - (d) Euro Sun Mining Inc.;
 - (e) Earthrenew Inc.;
 - (f) Fura Gems Inc.;
 - (g) Magnolia Colombia Limited;
 - (h) QMX Gold Corporation;
 - (i) QuestCap Inc.; and
 - (j) Sulliden Mining Capital Inc.
38. None of this activity is permissible for a publicly traded investment fund. The policy considerations underlying investment fund regulation dictate that investment fund managers, as fiduciaries managing passive investments for the benefit of their security holders, must not benefit personally from their connection to investee companies.
39. The same policy considerations underlie IFRS 10, which generally only permits issuers to use fair value accounting if they invest money provided by shareholders for the purpose of seeking capital gains and dividends and not to operate the businesses of portfolio companies thereby allowing them to secure management compensation for themselves from these investee entities.
- (d) Conclusion**
40. As referenced above, conflicts are endemic to Aberdeen as they are to other entities within Mr. Bharti's sphere of influence.

41. The relief sought on this Application will, on a prospective basis, bring Aberdeen into compliance with Ontario securities law for the benefit of its security holders as the public interest mandates in the circumstances of this case.

42. It is fitting and consistent with Ontario securities law and the policy objectives of investment fund regulation that future related party transactions and conflict of interest matters of Aberdeen be subject to the regulatory framework established to govern circumstances where reporting issuers manage passive investments on behalf of security holders.

C. EVIDENCE

The Applicant intends to rely on the following evidence at the hearing:

43. The Applicant intends to rely on affidavit evidence to be delivered in advance of the hearing together with the public disclosure records of Aberdeen and other related or connected issuers.

DATED this 24st day of August, 2020

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