



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF
RONALD JAMES AITKENS and ROY JUERGEN BEYER**

**STATEMENT OF ALLEGATIONS
(Subsections 127(1) and 127(10) of the *Securities Act*, RSO 1990 c S.5)**

1. Staff of the Enforcement Branch (**Staff**) of the Ontario Securities Commission (the **Commission**) elect to proceed using the expedited procedure for inter-jurisdictional proceedings as set out in Rule 11(3) of the Commission's *Rules of Procedure*.

A. OVERVIEW

2. In its Merits Decision dated February 15, 2018 (the **Findings**) a panel of the Alberta Securities Commission (the **ASC Panel**) found that Ronald James Aitkens (**Aitkens**), Roy Juergen Beyer (**Beyer**), Foundation Group Capital Trust (**the Trust**), 0865701 B.C. Ltd. (**0865701**) and Harvest Capital Management Inc. (**HCMI**) each breached s. 92(4.1) of the Alberta *Securities Act* (the **ASA**) by making materially misleading omissions in certain Trust offering memoranda. The ASC Panel found that Aitkens authorized, permitted or acquiesced in those breaches by the Trust, 0865701 and HCMI, and that Beyer authorized, permitted or acquiesced in those breaches by the Trust and 0865701.
3. The ASC Panel further found that Aitkens, Stoney View Crossing Inc. (**SV Crossing**) and Harbour View Landing Inc. (**HV Landing**) breached s. 93(b) of the ASA by perpetrating a fraud when they allowed these companies to misuse money raised from investors by diverting it to other entities with common ownership or management. The ASC Panel found that Aitkens was the central individual in the Trust Project, the SV Project and the HV Project (each described below) and found that Aitkens authorized, permitted or acquiesced in the breaches by SV Crossing and HV Landing.

4. Aitkens and Beyer (together, the **Respondents**) raised approximately \$33.6 million through the Trust offering memoranda (**OMs**). Approximately \$31.6 million was raised for a land development project in Calgary, Alberta (the **SV Project**) between October 1, 2007 and August 24, 2012, and approximately \$16.1 million for a land development project on Vancouver Island, British Columbia (the **HV Project**) between February 1, 2009 and October 31, 2012. The ASC Panel found that, of the total money raised between the projects, the transfers of \$3.66 million and \$2.9 million were fraudulent.
5. The Respondents are subject to an order made by the ASC dated October 2, 2019 (the **ASC Order**) that imposes sanctions, conditions, restrictions or requirements upon them. The conduct for which the Respondents were sanctioned occurred between December 2009 and November 2011 (the **Material Time**).
6. Staff are seeking an inter-jurisdictional enforcement order reciprocating the ASC Order pursuant to paragraph 5 of subsection 127(10) of the Ontario *Securities Act*, RSO 1990, c S.5 (the **Act**). Staff submit that a reciprocal order is in the public interest due to the apparent harm to Ontario investors in both the SV Project and the HV Project and Aitken's history of partnership with Ontario corporations for business ventures.

B. FACTS

Staff make the following allegations of fact:

(i) The Respondents

7. The Trust was established on November 20, 2009 with 0865701 as its trustee. The Trust was established to raise funds to engage in oil and gas exploration and development (the **Trust Project**). The Trust issued four offering memorandums (the **Trust OMs**) dated December 10, 2009 (**Trust OM1**), April 30, 2010 (**Trust OM2**), August 18, 2010 and May 12, 2011.
8. 0865701 was the trustee of the Trust. It was incorporated in British Columbia on November 6, 2009. Aitkens was a director and the president and secretary of 0865701. Beyer was a director and vice president. The ASC Panel concluded that Aitkens was the guiding mind of and controlled 0865701.

9. HCMI was the administrator of the Trust and the manager of the Business Trust (defined below). It was incorporated in Alberta on October 1, 2002 and placed in receivership on September 30, 2013. Throughout the Material Time, Aitkens was the president, the sole director and voting shareholder of HCMI. The ASC Panel concluded that Aitkens was the guiding mind of and controlled HCMI.
10. Foundation Capital Corporation (**Foundation Capital**) was incorporated in Alberta on June 15, 2005 and dissolved on December 2, 2014. Foundation Capital promoted and sold securities for the Trust. Aitkens was the sole director of Foundation Capital, was an officer of Foundation Capital, and owned at least 75% of its voting shares. Beyer was marketing director Foundation Capital from approximately November 2006 to July 2011. The ASC Panel was satisfied that Aitkens was the guiding mind of and controlled Foundation Capital.
11. SV Capital was incorporated in Alberta on July 24, 2008. Aitkens was the sole director and president of SV Capital. The ASC Panel concluded that Aitkens was the guiding mind and controlled SV Capital.
12. SV Crossing was incorporated in Alberta on July 24, 2008 and dissolved on January 2, 2015. Aitkens was the sole director and voting shareholder. The panel concluded that Aitkens was the guiding mind of and controlled SV Crossing. Securities of SV Capital (bonds) and SV Crossing (shares) were issued in connection with the SV Project.
13. HV Capital was incorporated in Alberta on January 13, 2009. Aitkens was the guiding mind of and controlled HV Capital. HV Landing was incorporated in Alberta on January 13, 2009 and dissolved on July 2, 2014. Similarly, Aitkens was the sole director and voting shareholder. The ASC Panel concluded that Aitkens was the guiding mind of and controlled HV Landing. Securities of HV Capital (bonds) and HV Landing (shares) used in connection with the HV Project.
14. Aitkens was the guiding mind of and controlled the decision-making entities involved with the Trust, including, 0865701, HCMI, HV Landing, SV Crossing and Foundation Capital, and the following additional entities:
 - Foundation Capital Investment Corporation (**Foundation Capital Investment**);

- Foundation Group Development Trust (the **Business Trust**);
- Foundation Resources GP Corporation (**Foundation Resources GP**);
- Foundation Resources Limited Partnership (**Foundation Resources LP**);
- Harvest Group Limited Partnership (**Harvest Group LP**);
- Stoney View Capital Inc. (**SV Capital**);
- 1379599 Alberta Ltd. (**1379599**);
- 1252064 Alberta Ltd. (**1252064**);
- Harbour View Capital Inc. (**HV Capital**); and
- 1357686 Alberta Ltd.

15. During the Material Time, Beyer was primarily involved in the marketing aspect of several entities. While the ASC Panel was not satisfied that Beyer was a guiding mind of any of the entities with which he was involved, he was a director and officer of various entities, including the trustee 0865701. Beyer therefore had a responsibility to ensure that Trust property was dealt with appropriately. Beyer was the director and vice-president of Foundation Capital Investment and Foundation Resources GP. Beyer was marketing director of Foundation Capital from November 2006 to July 2011 and director, president, and ultimate designated person of Foundation Securities Corporation (**Foundation Securities**).

(ii) The ASC Proceedings

16. The ASC Panel found that Aitkens, Beyer, the Trust, 0865701 and HCMI made materially misleading omissions in certain Trust OMs. The ASC Panel also found that Aitkens, SV Crossing and HV Landing perpetrated a fraud when they caused these companies to misuse money raised from investors by diverting it to other entities with common ownership or management.
17. The ASC Panel found that Aitkens was the central individual in the Trust Project, the SV Project and the HV Project.
18. The Respondents raised approximately \$33.6 million through Trust OM1 and Trust OM2. Approximately \$31.6 million was raised for the SV Project (between October 1, 2007 and August 24, 2012) and approximately \$16.1 million for the HV Project (between February 1, 2009 and October 31, 2012). The ASC Panel found that, of the total money raised between the projects, the transfers of \$3.66 million and \$2.9 million were fraudulent.

Undisclosed Neo Shares Profit

19. The Trust Project was a way for the Trust to raise money from investors and to acquire indirectly an interest in Neo Exploration Inc. (**Neo**) and other oil and gas interests. Those goals were met through several steps:
- The Trust held units of the Business Trust.
 - The Business Trust held units of Foundation Resources LP (the **Foundation Resources LP Units**) and was to acquire "other Investments" for the Trust.
 - Foundation Resources LP purchased shares in Neo (the **Neo Shares**) from Exen Resources Inc. (**Exen**) and Harvest Group LP.
20. Between approximately January 2010 and November 2011, the Trust issued securities to investors (the **Trust Securities**) using four Trust OMs. The ASC Panel found that there were materially misleading omissions in two OMs issued by the Trust, specifically Trust OM1 and Trust OM2. Those materially misleading omissions were the failures to disclose information about the cost to or profit made by Exen and Harvest Group LP when they sold Neo Shares to Foundation Resources LP. Specifically, Harvest Group LP and Exen acquired Neo Shares from Neo at a value of \$1.75 and sold them to the Trust (via Foundation Resources LP) for prices ranging from \$1.75 to \$3.25 (with the majority sold to the Trust by Harvest Group LP at \$3.25). Trust OMs 1 and 2 did not include information about the profit made by Harvest Group LP and Exen on their sales of Neo Shares to the Trust, nor the prices at which Harvest Group LP and Exen acquired Neo Shares.
21. Harvest Group LP's purchases of Neo Shares occurred through the exercise of the "Harvest Group Warrant" between February 5, 2010 and June 29, 2010. Its sales of Neo Shares to the Trust occurred between February 16, 2010 and July 27, 2010. Exen acquired Neo Shares on September 16, 2009 and sold Neo Shares to the Trust on April 26, 2010 for \$2.25 per Neo Share and on April 27, 2010 for \$3.25 per Neo Share (because the October 27, 2010 sale by Exen to the Trust was at the same \$1.75 value at which Exen acquired the Neo Shares, there was no Neo Shares Profit for that sale). Foundation Resources Inc. (**FRI**) also acquired Neo Shares and sold them to the Trust.

22. The ASC Panel concluded that the negotiation and execution of the Harvest Group Warrant was a significant arm's length transaction which took place at the same time as the issuance of Trust OM1. The Exen and FRI transactions were similarly significant and arm's length, although occurring earlier. Information about these transactions in Trust OMs 1 and 2 would have provided highly relevant data to a prospective reasonable investor in assessing the value of the Neo Shares and, consequently, in determining whether to buy Trust Securities at the price offered. At the time that Trust OMs 1 and 2 were issued, the independently assessed value of Neo's assets reflected in the Trust OMs was demonstrably less than Neo's internal valuation. Despite this, prospective investors in Trust OMs 1 and 2 were not told of the \$1.75 share price or of the internal valuation which that \$1.75 share price represented.
23. The ASC Panel found that Trust OMs 1 and 2 did not state facts which were required and would reasonably have been expected to have had a significant effect on the value of the Trust Securities sold pursuant to those Trust OMs.
24. The ASC Panel found that Trust OMs 1 and 2 contained materially misleading omissions relating to the Neo Shares Profit. The ASC Panel also found that Aitkens, Beyer, the Trust, 0865701 and HCMI (the **Trust Respondents**) made those materially misleading omissions, knew or ought to have known that they were materially misleading, and knew or ought to have known that such omissions would reasonably have been expected to have had a significant effect on the value of the Trust Securities. Accordingly, the Panel found that:
- The Trust Respondents breached s. 92(4.1) of the ASA;
 - Aitkens authorized, permitted or acquiesced in the s. 92(4.1) breaches by the Trust, 0865701 and HCMI; and
 - Beyer authorized, permitted or acquiesced in the s. 92(4.1) breaches by the Trust and 0865701.

SV Crossing and HV Landing

25. The ASC Panel found that some of the money raised from investors – which was to be used for purchasing and developing land for the SV Project and the HV Project – was instead used for other business purposes. Aitkens, SV Crossing and HV Landing were responsible for this

fraud, thus breaching what was then s. 93(b) of the ASA. Aitkens authorized, permitted or acquiesced in the breaches by SV Crossing and HV Landing.

26. The two main SV Project companies were SV Capital and SV Crossing, with SV Capital raising the majority of the money (\$31,616,388) and lending it to SV Crossing (the **SV Loan**). The SV Project contemplated that SV Crossing would use the money raised to purchase certain land in Calgary targeted for development (the **SV Land**).
27. The two main HV Project companies were HV Capital and HV Landing, with HV Capital raising the majority of the money (\$16,136,902) and lending it to HV Landing (the **HV Loan**). The HV Project contemplated that HV Landing would use the money raised to purchase certain land in British Columbia targeted for development (the **HV Land**).
28. The ASC Panel was satisfied that intercompany advances were made from SV Crossing to 1379599 between April 7, 2010 and March 25, 2011 totalling approximately \$3.56 million. These funds were “then diverted on a seemingly 'as needed basis' throughout the Aitkens realm”, rather than being used to develop the SV Project.
29. The ASC Panel found that SV Crossing advanced \$100,000 to 1252064 on April 22, 2009. Aitkens acknowledged “that if one company needed money for a debt or for a payment or something, then we would've transferred.”
30. Further, the ASC Panel found that HV Capital made advances totalling approximately \$2.9 million to the following entities between December 2010 to March 2012:
 - \$37,500 to Foundation Mortgage on May 16, 2011;
 - \$1,000,000 to 1357686 on December 7, 2010;
 - \$330,000 to HCMI in December 2010 and March 2012;
 - \$300,000 to “FM3” via HCMI on December 22, 2011;
 - \$1,234,401 to 1252064 (\$1,084,501 via HV Landing).
31. The ASC Panel found that investor's money raised under the SV OMs and HV OMs was used for purposes unrelated to working capital for the development of the SV Land and HV Land. The ASC Panel concluded that the SV OMs and HV OMs did not disclose to investors that their money would be used for purposes outside the scope of the use of proceeds disclosure in

those OMs. The ASC Panel was further satisfied that SV Crossing and the HV Entities were also responsible for the statements made in the SV and HV OMs, respectively, and for the transfers of money for purposes contrary to those statements.

32. Aitkens knew or ought to have known that the transfers from SV Crossing and the HV Entities resulted in deprivation to others by placing their pecuniary interests at risk because he knew that such funds were ultimately being used for other projects and purposes, rather than for the development of the SV Land and the HV Land. The ASC Panel concluded that Aitkens, SV Crossing and HV Landing breached s.93(b) of the ASA by perpetrating a fraud on investors. Aitkens also authorized, permitted or acquiesced in the breaches by SV Crossing and HV Landing.

(iii) ASC Findings - Conclusions

33. The ASC Panel found that Aitkens, Beyer, the Trust, 0865701 and HCMI each breached s. 92(4.1) of the ASA by making materially misleading omissions in two of the Trust's offering memoranda. Aitkens authorized, permitted or acquiesced in those breaches by the Trust, 0865701 and HCMI. Beyer authorized, permitted or acquiesced in those breaches by the Trust and 0865701.
34. The ASC Panel further found that Aitkens, SV Crossing and HV Landing also breached s. 93(b) of the Act by perpetrating a fraud on investors. Aitkens authorized, permitted or acquiesced in those breaches by SV Crossing and HV Landing.

(iv) The ASC Order

35. The ASC Order imposed the following sanctions, conditions, restrictions or requirements upon the Respondents:

Aitkens

- (a) under s. 198(1)(d) of the ASA, he must resign all positions he holds as a director or officer (or both) of any issuer, registrant, investment fund manager, recognized exchange, recognized self-regulatory organization, recognized clearing agency, recognized trade repository, designated rating organization or designated benchmark administrator;

- (b) with permanent effect:
1. under s. 198(1)(b), he must cease trading in or purchasing any security or derivative;
 2. under s. 198(1)(c), all of the exemptions contained in Alberta securities laws do not apply to him;
 3. under s. 198(1)(c.1), he is prohibited from engaging in investor relations activities;
 4. under s. 198(1)(e), he is prohibited from becoming or acting as a director or officer (or both) of:
 - i. any issuer or other person or company that is authorized to issue securities; or
 - ii. a registrant, investment fund manager, recognized exchange, recognized self-regulatory organization, recognized clearing agency, recognized trade repository, designated rating organization or designated benchmark administrator;
 5. under s. 198(1)(e.2), he is prohibited from becoming or acting as a registrant, investment fund manager or promoter; and
 6. under s. 198(1)(e.3), he is prohibited from acting in a management or consultative capacity in connection with activities in the securities market;
- (c) under s. 199, he must pay an administrative penalty of \$600,000; and
- (d) under s. 202, he must pay costs in the amount of \$180,000.

Beyers

- (e) under s. 198(1)(d) of the ASA, he must resign all positions he holds as a director or officer (or both) of any issuer, registrant, investment fund manager, recognized exchange, recognized self-regulatory organization, recognized clearing agency, recognized trade repository, designated rating organization or designated benchmark administrator;
- (f) for a period of 10 years from the date of this decision or until the administrative penalty set out below is paid in full, whichever is the later:
1. under s. 198(1)(b), he must cease trading in or purchasing any security or derivative;

2. under s. 198(1)(c), all of the exemptions contained in Alberta securities laws do not apply to him;
 3. under s. 198(1)(c.1), he is prohibited from engaging in investor relations activities;
 4. under s. 198(1)(e), he is prohibited from becoming or acting as a director or officer (or both) of:
 - i. any issuer or other person or company that is authorized to issue securities; or
 - ii. a registrant, investment fund manager, recognized exchange, recognized self-regulatory organization, recognized clearing agency, recognized trade repository, designated rating organization or designated benchmark administrator;
 5. under s. 198(1)(e.2), he is prohibited from becoming or acting as a registrant, investment fund manager or promoter; and
 6. under s. 198(1)(e.3), he is prohibited from acting in a management or consultative capacity in connection with activities in the securities market;
- (g) under s. 199, he must pay an administrative penalty of \$75,000; and
- (h) under s. 202, he must pay costs in the amount of \$20,000.

The Trust, 0865701, HCMI, SV Crossing and HV Landing

with permanent effect, that:

- (i) under s. 198(1)(a) of the ASA, all trading in or purchasing of securities or derivatives of the Trust, 0865701, HCMI, SV Crossing and HV Landing must cease;
- (j) under s. 198(1)(b), each of the Trust, 0865701, HCMI, SV Crossing and HV Landing must cease trading in or purchasing any security or derivative;
- (k) under s. 198(1)(c), all of the exemptions contained in Alberta securities laws do not apply to the Trust, 0865701, HCMI, SV Crossing and HV Landing;
- (l) under s. 198(1)(c.1), each of the Trust, 0865701, HCMI, SV Crossing and HV Landing is prohibited from engaging in investor relations activities;

- (m) under s. 198(1)(e.2), each of the Trust, 0865701, HCMI, SV Crossing and HV Landing is prohibited from becoming or acting as a registrant, investment fund manager or promoter; and
- (n) under s. 198(1)(e.3), each of the Trust, 0865701, HCMI, SV Crossing and HV Landing is prohibited from acting in a management or consultative capacity in connection with activities in the securities market.

C. JURISDICTION OF THE ONTARIO SECURITIES COMMISSION

- 36. The Respondents are subject to an order of the ASC imposing sanctions, conditions, restrictions or requirements upon them.
- 37. Pursuant to paragraph 4 of subsection 127(10) of the Act, an order made by a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, that imposes sanctions, conditions, restrictions or requirements on a person or company may form the basis for an order in the public interest made under subsection 127(1) of the Act.
- 38. Staff allege that it is in the public interest to make an order against the Respondents. In the Findings, the ASC Panel noted that there were references to Ontario investors for the SV Project and HV Project. The ASC Panel also noted that Aitkens had a history of partnering with an Ontario corporation for real estate business ventures.
- 39. Staff reserve the right to amend these allegations and to make such further and other allegations as Staff deem fit and the Commission may permit.

D. ORDER SOUGHT

- 40. Staff request that the Commission make the following inter-jurisdictional enforcement order, pursuant to paragraph 4 of subsection 127(10) of the Act:
 - a) against Aitkens that:
 - i. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Aitkens cease permanently;

- ii. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Aitkens cease permanently;
 - iii. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Aitkens permanently;
 - iv. pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Aitkens resign any positions he holds as a director or officer of an issuer or registrant;
 - v. pursuant to paragraph 8, 8.2 and 8.4 of subsection 127(1) of the Act, Aitkens is prohibited permanently from becoming or acting as a director or officer of any issuer or registrant; and
 - vi. pursuant to paragraph 8.5 of subsection 127(1) of the Act, from becoming or acting as a registrant or promoter.
- b) against Beyer that:
- i. pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Beyer resign any positions he holds as a director or officer of an issuer or registrant;
 - ii. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Beyer cease until October 2, 2029;
 - iii. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Beyer cease until October 2, 2029;
 - iv. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Beyer until October 2, 2029;
 - v. pursuant to paragraph 8, 8.2 and 8.4 of subsection 127(1) of the Act, Beyer is prohibited from becoming or acting as a director or officer of any issuer or registrant until October 2, 2029; and
 - vi. pursuant to paragraph 8.5 of subsection 127(1) of the Act, from becoming or acting as a registrant or promoter until October 2, 2029.

c) such other order or orders as the Commission considers appropriate.

41. Staff do not seek to reciprocate the ASC Order as it relates to 0865701, HCMI, SV Crossing or HV Landing, as this proceeding is outside of the two-year time frame specified by the *Alberta Business Corporations Act* and the *British Columbia Business Corporations Act* for bringing proceedings against dissolved corporations. 0865701 was dissolved on September 17, 2018. HCMI, SV Crossing and HV Landing were dissolved between April 2, 2014 and January 2, 2015.
42. In addition, as the trustee (0865701) and the administrator of the Trust (HCMI) have been dissolved, Staff do not seek to reciprocate the ASC Order as it relates to the Trust, as it is no longer an active operating business entity and neither the trustee nor administrator are active operating business entities.

DATED this 31st day of January, 2022.

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