

**BETWEEN:**

**ONTARIO SECURITIES COMMISSION**

**Applicant**

**-and-**

**BRIAN ARTHUR KITTS**

**Respondent**

**APPLICATION FOR ENFORCEMENT PROCEEDING**

(Subsections 127(1) and 127(4.0.2) of the *Securities Act*, RSO 1990, c S.5)

**A. OVERVIEW**

1. The Applicant, the Ontario Securities Commission (the **Commission**), requests that the Capital Markets Tribunal (the **Tribunal**) make an order in the public interest against the Respondent reciprocating an order made by the Alberta Securities Commission (the **ASC**), without providing the Respondent an opportunity to be heard.
2. The ASC found that the Respondent, Brian Arthur Kitts (**Kitts**), and his company, Vesta Capcorp Inc. (**Vesta**), engaged in a course of conduct relating to securities that they knew perpetrated a fraud on investors, contrary to Alberta securities legislation. Namely, the ASC found that Kitts and Vesta raised money from investors through the issuance of promissory notes, which were securities, that promised to pay principal and “profit sharing”. However, they misrepresented to prospective investors that funds invested with Vesta would be used to provide short-term financing to real estate industry participants, when in reality, Kitts and Vesta diverted funds to unidentified businesses, misappropriated funds to the personal use of Kitts and his spouse, and used funds to repay principal and imaginary profits to existing investors.
3. The sanctions imposed by the ASC against the Respondent included permanent trading, director and officer, and other market participation bans.

4. The Tribunal has jurisdiction to make an order in the public interest under ss. 127(1) and 127(4.0.2) of the *Securities Act*, RSO 1990, c S.5 (the **Act**), reciprocating an order made by a securities regulatory authority of another province that imposes sanctions, conditions, restrictions or requirements on a person or company.

5. The order requested herein is in the public interest. It is necessary to restrain potential future misconduct by the Respondent that exposes Ontario investors to unacceptable risks and to deter others from engaging in fraudulent conduct, including the misappropriation of investor funds and the operation of a Ponzi scheme.

## **B. GROUNDS**

### **The ASC Proceeding**

6. On June 3, 2019, the ASC panel released its written decision following a 7-day merits hearing. Kitts sporadically participated in the hearing by telephone, did not present any evidence in his defence, and, after the hearing of evidence, failed to provide written submissions or make oral submissions.

7. In its merits decision, the ASC panel held that the promissory notes issued by Vesta were “securities” within the meaning of s. 1(ggg) of the Alberta *Securities Act*, RSA 2000, c S-4 (the **Alberta Act**), and that Kitts and Vesta engaged in a course of conduct relating to securities that they knew perpetrated a fraud on investors, contrary to section 93(b) of the Alberta Act.<sup>1</sup>

8. Following issuance of the merits decision, the ASC proceeding moved into a second phase to determine what orders ought to be made against Kitts and Vesta. Neither Kitts nor Vesta submitted any evidence or written submissions.

9. On November 12, 2019, the ASC panel released its sanctions decision. The ASC panel imposed the following sanctions against Kitts:

---

<sup>1</sup> Now, section 93(1)(b) of the Alberta Act.

- (a) pursuant to ss. 198(1)(b) and (c) of the Alberta Act, Kitts must permanently cease trading in or purchasing securities or derivatives, and all of the exemptions contained in Alberta securities laws do not apply to Kitts;
- (b) pursuant to ss. 198(1)(d) and (e) of the Alberta Act,
  - (i) Kitts must resign all positions he holds as a director or officer 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; and
  - (ii) Kitts is permanently prohibited from becoming or acting as a director or officer of any issuer or other person or company that is authorized to issue securities, or of a registrant, investment fund manager, recognized exchange, recognized self-regulatory organization, recognized clearing agency, recognized trade repository, designated rating organization or designated benchmark administrator;
- (c) pursuant to s. 198(1)(c.1), (e.1), (e.2) and (e.3) of the Alberta Act, Kitts is permanently prohibited from engaging in investor relations activities, from advising in securities or derivatives, from becoming or acting as a registrant, investment fund manager or promoter, and from acting in a management or consultative capacity in connection with activities in the securities market;
- (d) pursuant to s. 198(1)(i) of the Alberta Act, Kitts must pay, jointly and severally with Vesta, to the ASC the amount of \$1,960,457 obtained as a result of non-compliance with Alberta securities laws;
- (e) pursuant to s. 199 of the Alberta Act, Kitts must pay, jointly and severally with Vesta, to the ASC an administrative penalty in the amount of \$600,000; and
- (f) pursuant to s. 202 of the Alberta Act, Kitts must pay, jointly and severally with Vesta, costs to the ASC in the amount of \$150,000.

## **The ASC's Findings**

10. The Commission relies on the following findings made by the ASC panel in its merits and sanctions decisions (together, the **ASC Decision**):

### **Background**

11. Vesta was a federally incorporated company throughout the relevant time period from February 20, 2014 through to June 30, 2015 (the **Relevant Period**). Vesta was registered in Alberta as an extra-provincial corporation in September 2014, but was struck from Alberta's corporate registry on March 2, 2017.

12. The Respondent, Kitts, was the sole director, president, secretary, and guiding mind of Vesta. He appeared to sign all documents on behalf of Vesta, including promissory notes issued to investors, and he had sole signing authority for Vesta's Canadian dollar and US dollar bank accounts.

13. During the Relevant Period, Vesta raised approximately CAD \$4.3 million and USD \$850,000 from approximately 38 confirmed investors. Vesta also received more than CAD \$1.26 million and USD \$87,000 from an additional 27 sources identified as "Possible Investors."

### **Vesta's Capital-Raising Activities**

14. Vesta raised money from investors by issuing short-term promissory notes (the **Notes**), each with a term typically ranging from 15 to 90 days and promising to repay the principal sum along with either "fees and profit sharing" or "profit sharing" at a 20% monthly rate of return.

15. Notes were generally funded in one of the following ways:

- (a) New capital;
- (b) "Roll over" funds – the principal amounts and/or the supposed "profits" from a maturing Note;
- (c) Referral fees or commissions owed by Vesta to referral agents or existing investors for introducing others to the company; or

(d) Any combination of the above.

16. Through referral agents, emails, telephone conversations, in-person meetings, and PowerPoint presentations, Kitts represented to prospective investors that their funds would be used by Vesta to provide short-term financing to individuals or entities in the real estate industry, and that they would receive their principal and profit-sharing once Vesta's real estate client repaid the money on the close of a pending real estate transaction. Investors were led to believe that funds from each Note would go to a specific project, that there was a "guaranteed exit strategy" and that Vesta had an operating history of no defaults to investors and average returns of 15% per month.

### **Misappropriation of Funds**

17. In reality, Vesta was not running any legitimate business. It was not financing real estate developments or sales transactions in a manner consistent with representations to investors, nor was it receiving money from real estate industry participants.

18. Instead, Vesta investor funds were diverted to unidentified businesses that were not within the reasonable expectation of Vesta investors, misappropriated for the personal use of Kitts and his spouse, and used to repay principal and imaginary profits to existing investors in a manner consistent with a Ponzi scheme. In particular, during the Relevant Period:

- (a) Vesta transferred CAD \$162,760 and USD \$226,278 to "Clutch Sportz LLC", and CAD \$46,113 and USD \$485,495 to "Cock Diesel, LLC", a company in which Kitts had a concealed ownership interest;
- (b) At least CAD \$900,000 were diverted for the personal use of Kitts and his spouse; and
- (c) Approximately CAD \$2.8 million and USD \$450,102 were paid to Vesta investors, and approximately CAD \$700,000 and USD \$15,075 were paid to "possible investors".

19. By May 2015, Vesta was unable to make payments to most investors within the promised timeframes.

20. In response to payment requests from investors with maturing Notes, Kitts often represented that he had (unilaterally) reinvested their principal and/or purported profits into new Notes, either because the funds were not being used or to cover a shortage in a “float” that he used to “fund new opportunities”.

21. Ultimately, Vesta investors experienced significant financial losses.

#### **Kitts’ Pattern of Securities Misconduct**

22. Kitts had a pattern of recidivist securities misconduct.

23. During the Relevant Period, Kitts had pled no contest to criminal charges relating to securities fraud and theft in the State of Utah, and he had been sanctioned by the Utah Securities Commission for securities-related infractions. He has since been sentenced to imprisonment on four counts of securities fraud and theft.

24. Kitts absconded and thereafter continued his fraudulent capital-market activity in Alberta in the face of regulatory sanctions and criminal proceedings elsewhere, thus flouting Alberta securities laws.

#### **ASC Merits and Sanctions Conclusions**

25. The ASC held that the Notes documented receipt of principal amounts paid by a Vesta investor in exchange for Vesta’s promise to repay that principal amount and to pay “profit sharing” to the investor at a future date. Thus, the Notes constituted either “evidence of indebtedness” or an “agreement under which money received will be paid” and were therefore “securities” within the meaning of s. 1(ggg) of the Alberta Act.

26. The ASC also held that Kitts and Vesta engaged in a course of conduct relating to securities that they knew perpetrated a fraud, contrary to s. 93(b) of the Alberta Act, and that Kitts authorized and permitted Vesta’s misconduct:

- (a) Kitts and Vesta’s actions during the Relevant Period constituted prohibited acts – deceit, falsehood or other fraudulent means – that placed investors’ pecuniary interests at risk; and
- (b) Kitts, and by extension Vesta, had subjective knowledge that investors’ pecuniary interests were placed at risk through their prohibited acts. Kitts

orchestrated the scheme, knew that the investment opportunities he presented were fictitious, and misappropriated investor funds for unauthorized uses.

27. Kitts posed a pronounced risk to the public and was deserving of significant sanctions that will prevent him from future participation in the capital market. The ASC therefore imposed permanent market access bans and significant monetary sanctions against Kitts.

### **Jurisdiction of the Tribunal**

28. The Notes offered by Kitts and Vesta are securities under the Act.

29. Pursuant to paragraph 2 of subsection 127(4.0.2) of the Act, the Tribunal may make any of the orders described in paragraphs 1 to 8.5 of subsection 127(1) of the Act against the Respondent, without giving the Respondent an opportunity to be heard, where the Respondent is subject to an order made by a securities regulatory authority of another province or territory in Canada, imposing sanctions, conditions, restrictions or requirements.

30. The ASC, which is a “securities regulatory authority of another province or territory in Canada”, as defined in subsection 127(10) of the Act, issued an order imposing sanctions against the Respondent within the meaning of s. 127(4.0.2).

31. Section 127(4.0.4) of the Act expressly allows the Tribunal to make an order under s.127(4.0.2) even though the ASC Decision predates the coming into force of s. 127(4.0.2).

32. It is in the public interest to make the requested order. Kitts poses a risk to Ontario investors. The requested order is necessary to protect the investing public and safeguard the integrity of Ontario’s capital markets.

### **C. ORDER SOUGHT**

33. The Commission requests that the Tribunal make the following order against Kitts:

- a. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by the Respondent shall cease permanently;
- b. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the Respondent is permanently prohibited from acquiring any securities;
- c. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to the Respondent permanently;
- d. pursuant to paragraphs 7, 8.1, and 8.3 of subsection 127(1) of the Act, the Respondent shall resign any positions that he holds as a director or officer of any issuer, registrant, or investment fund manager;
- e. pursuant to paragraphs 8, 8.2, and 8.4 of subsection 127(1) of the Act, the Respondent is permanently prohibited from becoming or acting as a director or officer of any issuer, registrant, or investment fund manager;
- f. pursuant to paragraph 8.5 of subsection 127(1) of the Act, The Respondent is permanently prohibited from becoming or acting as a registrant, an investment fund manager or a promoter; and
- g. such other order or orders as the Tribunal considers appropriate.

September 18, 2025

**ONTARIO SECURITIES COMMISSION**

20 Queen Street West, 22nd Floor  
Toronto, ON  
M5H 3S8

**Christine Gorgi**

Litigation Counsel  
Enforcement Division  
LSO# 85216P

Tel: (416) 263-7717

Email: [cgorgi@osc.gov.on.ca](mailto:cgorgi@osc.gov.on.ca)