

**BETWEEN:**

**ONTARIO SECURITIES COMMISSION**

**(Applicant)**

**-and-**

**COLIN HEATHERINGTON**

**(Respondent)**

**APPLICATION FOR ENFORCEMENT PROCEEDING**

(Subsections 127(1) and 127(4.0.1) 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, Colin Heatherington (**Heatherington**), reciprocating an order of the United States District Court of the Central District of California (the **District Court**). This order is sought without providing the Respondent an opportunity to be heard pursuant to s. 127(4.0.1) of the Ontario *Securities Act*, RSO 1990, c S.5 (the **Act**).

2. In 2024, Heatherington pleaded guilty to and was criminally convicted of conspiracy to commit securities fraud and wire fraud in violation of Title 18 of the United States Code §§ 1349, 1343 and 1348. Heatherington's conviction was based on admissions that, from 2004 through June 2008, he and his co-conspirators engaged in a scheme to defraud the securities markets and investors in eight hedge funds based in Mallorca, Spain.

3. Following his conviction, Heatherington was sentenced by the District Court to 42 months in custody, a 2-year supervised release upon release from imprisonment, and restitution in the total amount of USD \$215,851,031, jointly and severally with one of his co-conspirators.

4. The Tribunal has jurisdiction to make orders in the public interest on an *ex parte* basis under ss. 127(1) and paragraph 3 of 127(4.0.1) of the Act where, as here, a person

or company has been convicted of an offence arising from a transaction, business, or course of conduct related to securities or derivatives.

5. The order sought 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 securities misconduct, including market manipulation.

## **B. GROUNDS**

### **i. District Court Proceedings**

6. On October 8, 2013, the United States Attorney's Office for the Central District of California (the **USAO**) filed a Criminal Complaint in the District Court against Heatherington, alleging that he conspired to and did commit securities and wire fraud in violation of Title 18 of the United States Code (**18 USC**) §§ 1349, 1343 and 1348. An Amended Criminal Complaint was filed on January 27, 2014, which detailed the 12 counts constituting the alleged offenses.

7. Pursuant to a First Superseding Indictment dated December 2, 2015, Heatherington was charged as follows:

- (a) Count 1: in violation of 18 USC § 1349, conspiracy to commit securities and wire fraud contrary to 18 USC §§ 1348 and 1343, respectively (the **Conspiracy Charge**);
- (b) Counts 2 to 9: in violation of 18 USC §§ 1348, 2, securities fraud in connection with the securities of 8 different issuers;
- (c) Count 30: in violation of 18 USC § 1956(h), money laundering conspiracy; and
- (d) Counts 31 to 33: in violation of 18 USC §§ 1957, 2(b), unlawful monetary transactions.

8. On January 5, 2024, Heatherington entered into a plea agreement with the USAO (the **Plea Agreement**), wherein he agreed to plead guilty to the Conspiracy Charge. As part of the Plea Agreement, Heatherington admitted to facts contained in a Statement of

Facts in Support of Plea Agreement (the **Statement of Facts**), which was subsequently read into the court record.

9. Heatherington pleaded guilty to and was convicted of the Conspiracy Charge on February 1, 2024.

10. On July 2, 2024, the Honourable Justice John A. Kronstadt of the District Court sentenced Heatherington as follows:

- (a) 42 months in custody;
- (b) Upon release from imprisonment, a 2-year supervised release with certain terms and conditions;
- (c) Restitution in the amount of USD \$215,851,031, jointly and severally with co-conspirator Todd Michael Ficeto; and
- (d) Special assessment of USD \$100.

11. The remaining counts were dismissed.

**ii. Admitted Misconduct**

12. The Commission relies on the following admissions in the Statement of Facts:

*Scheme to Defraud*

- (a) In or around 2004 to June 2008, Heatherington, together with co-conspirators Florian Homm (**Homm**), Todd Ficeto (**Ficeto**) and Heatherington's brother, Craig Heatherington, engaged in a scheme to defraud the securities markets and investors in various hedge funds (the **Absolute Funds** or the **Funds**), based in Mallorca, Spain.
- (b) Homm was the founder and Chief Investment Officer of Absolute Capital Management Holdings (**ACMH**), a hedge fund management company. Homm managed the Absolute Funds from Mallorca, Spain, through ACMH, which ultimately was registered on the Alternative Investment Market of the London Stock Exchange.

- (c) The Absolute Funds comprised the following eight hedge funds: Absolute East West Fund Master Fund Limited, Absolute Activist Value Master Fund Limited, Absolute Large Cap Master Fund Limited, Absolute Germany Fund Limited, Absolute India Fund Limited, the Return Europe Fund, the Catalyst Fund, and the Octane Fund.
- (d) As Chief Investment Officer of the Funds, Homm had primary control over all investment decisions. Heatherington was a securities trader at ACMH and worked closely with Homm from ACMH's offices in Mallorca. As a trader, Heatherington had authority to execute trades on behalf of the Absolute Funds in the United States-based securities markets. ACMH charged each fund a monthly management and performance fee, based on the fund's net asset value (**NAV**). The NAV was a critical indicator of the Funds' performance and profitability and dictated the management and performance fees that were generated by the Funds, and thus payable to the Funds' principals, including Homm.
- (e) With the assistance of Ficeto and other co-conspirators, Heatherington caused the Absolute Funds to purchase billions of shares in United States-based penny stocks and then caused those penny stocks to be used to manipulate the NAV of the Absolute Funds through manipulative stock trading activity.

#### *The Stock Manipulation Conspiracy*

- (f) Homm, Ficeto and Heatherington used the Absolute Funds to acquire shares in the penny stock companies through various investment and financial deals. After acquiring the penny stock companies' shares, Heatherington and his co-conspirators engaged in manipulative trading practices to inflate the value of those shares, which in turn artificially increased the NAVs of the Absolute Funds and, consequently, the performance and management fees paid by the funds, resulting in massive profits to Homm and ACMH's principals at the ultimate expense of the Absolute Funds and the Funds' investors. When the scheme unraveled, the

stock prices of the penny stock companies plunged and the Absolute Funds lost millions of dollars;

- (g) In furtherance of the scheme, Heatherington caused millions of shares to be issued to CIC Global Capital Limited (**CIC Global**), a company beneficially owned by Heatherington and his brother, Craig, who Heatherington recruited to work at ACMH. At Homm's direction, Heatherington then directed trades involving the penny stock shares to be made in the United States securities markets through Hunter World Markets, a broker-dealer in Beverly Hills, California that was co-owned by Homm and Ficeto, at prices that Heatherington and his co-conspirators would dictate and illegally control. During the relevant period, Heatherington and his co-conspirators overwhelmingly controlled the trading activity in many of the penny stocks.

*The Manipulative Trading Activity*

- (h) The penny stock trades that Heatherington conducted on behalf of the Absolute Funds often took the form of manipulative "cross trades" (the sale of stock from one Absolute Fund to another) and other manipulative trading techniques, such as "marking the close" (a practice that is prohibited when it involves artificially setting closing prices), backdated trades, and cancelled trades. These manipulative trades were used to fraudulently inflate the stock prices of the penny stock companies, which in turn artificially inflated the NAV of the Absolute Funds -- a prohibited practice known as "portfolio pumping." The co-conspirators generally engaged in portfolio pumping at the end of the month, in order to increase the value of the penny stock companies and therefore increase the Absolute Funds' NAV, which enabled Homm to falsely advertise higher returns, reap higher fees, and attract --and defraud -- new and unsuspecting victim-investors.
- (i) Heatherington sent trade orders for the penny stocks to Hunter World Markets by telephone, email, and by an instant message (**IM**) system. At the direction of Heatherington and Ficeto, Hunter World Markets used a Microsoft Windows IM system (the **secret IM system**) to discuss the penny

stock trades. Heatherington and Ficeto implemented the secret IM system because it was not automatically archived. Use of the secret IM system enabled the co-conspirators to hide conversations about manipulative trades in the penny stocks from regulators and Hunter World Markets' own compliance officer;

### Self-Dealing Trades

- (j) Heatherington, Homm, and Ficeto also made millions of dollars through self-dealing trades by selling their own shares of the artificially inflated penny stocks to the Absolute Funds. Through the manipulative trading activity outlined above, the co-conspirators would move the price of the penny stocks so they could trade their own shares at a profit. During this same period, Heatherington and his brother used CIC Global to manage investments for their own benefit and to engage in self-dealing, in a manner contrary to ACMH's explicit policy. They then hid their self-dealing via CIC Global from certain individuals at ACMH. Heatherington and Craig opened a brokerage account at Hunter World Markets for CIC Global to receive shares of the penny stock companies through placement agreements from Ficeto, to sell shares at inflated prices to the Absolute Funds, and to receive the proceeds of such self-dealing trades.
- (k) As a result of the fraudulent scheme, Heatherington and his co-conspirators caused actual losses of approximately \$215,851,031.

### **iii. Jurisdiction of the Tribunal**

13. Pursuant to paragraph 3 of s. 127(4.0.1) of the Act, if a person or company has been convicted in any jurisdiction of an offence arising from a transaction, business, or course of conduct related to securities or derivatives, the Tribunal may make any of the orders described in paragraphs 1 to 8.5 of s. 127(1) of the Act against a respondent without giving the respondent an opportunity to be heard.

14. Heatherington has been convicted in the United States of America of a criminal offence arising from a transaction, business, or course of conduct related to securities.

15. Heatherington is a Canadian citizen. He has resided in British Columbia, Canada throughout various periods of his life, including as recently as February 2008 to August 2021.

16. Subsection 127(4.0.4) allows the Tribunal to make an order under s. 127(4.0.1) even if the circumstances arose before s. 127(4.0.1) came into force.

17. It is in the public interest to make the requested orders against the Respondent to protect investors and safeguard the integrity of Ontario's capital markets.

### **C. ORDER SOUGHT**

18. The Commission requests that the Tribunal make the following order against Heatherington:

(a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Heatherington shall cease permanently, except that this order does not preclude Heatherington from trading in securities or derivatives in a registered retirement savings plan, registered education savings plan, any registered retirement income funds, and/or tax-free savings account (as defined in the Income Tax Act (Canada)) in which he has a beneficial ownership, provided that he carries out any permitted trading through a registered dealer, which dealer must be given a copy of this Order;

(b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, Heatherington be permanently prohibited from acquiring any securities, except that this order does not preclude Heatherington from acquiring securities or derivatives in a registered retirement savings plan, registered education savings plan, any registered retirement income funds, and/or tax-free savings account (as defined in the Income Tax Act (Canada)) in which he has a beneficial

- ownership, provided that he carries out any permitted acquisitions through a registered dealer, which dealer must be given a copy of this Order;
- (c) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Heatherington permanently;
- (d) pursuant to paragraphs 7, 8.1, and 8.3 of subsection 127(1) of the Act, Heatherington shall resign any position that he holds as a director or officer of any issuer or registrant;
- (e) pursuant to paragraphs 8, 8.2, and 8.4 of subsection 127(1) of the Act, Heatherington is permanently prohibited from becoming or acting as a director or officer of any issuer or registrant;
- (f) pursuant to paragraph 8.5 of subsection 127(1) of the Act, Heatherington is permanently prohibited from becoming or acting as a registrant or a promoter;
- and
- (g) such other order or orders as the Tribunal considers appropriate.

March 31, 2026

**ONTARIO SECURITIES COMMISSION**

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