



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF THE *SECURITIES ACT*,
R.S.O. 1990, c. S.5, AS AMENDED**

- AND -

**IN THE MATTER OF CROWN HILL CAPITAL CORPORATION AND
WAYNE LAWRENCE PUSHKA**

ORDER

(Sections 127 and 127.1 of the *Securities Act*)

WHEREAS on July 7, 2011, a Notice of Hearing was issued by the Ontario Securities Commission (the “Commission”) pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “Act”) in respect of Crown Hill Capital Corporation (“CHCC”) and Wayne Lawrence Pushka (“Pushka”) (collectively, the “Respondents”);

AND WHEREAS a Statement of Allegations in this matter was issued by Staff on the same day;

AND WHEREAS the hearing on the merits of this matter took place over 14 hearing days from May 9, 2012 to September 18, 2012;

AND WHEREAS by decision and reasons dated August 23, 2013 (the “Merits Decision”), the Commission found that:

- (a) CHCC acted contrary to and breached its fiduciary duty under subsection 116(a) of the Act in making certain amendments to the MACCs Declaration of Trust;
- (b) CHCC acted contrary to and breached its fiduciary duty under subsection 116(a) of the Act by (i) making certain changes to the rights of CHDF unitholders by means of the merger of CHDF with MACCs; and (ii) failing to appropriately address the conflicts of interest arising in connection with that merger;

- (c) CHCC acted contrary to and breached its fiduciary duty under subsection 116(a) of the Act by (i) causing CHF to make the Fairway Loan; and (ii) causing CHF to enter into the Citadel Acquisition and by proposing the Reorganization;
- (d) the June 09 Circular was materially misleading and failed to provide sufficient information to permit a reasonable CHF unitholder to make an informed judgment whether to vote to approve the Reorganization, contrary to Ontario securities law;
- (e) the indirect acquisition by CHF of the rights to the Citadel Management Agreements was contrary to and breached Section 5.2(1) of the CHF Declaration of Trust; accordingly, by causing CHF to enter into the Citadel Acquisition, CHCC acted contrary to and breached its fiduciary duty to CHF, contrary to subsection 116(a) of the Act;
- (f) during the relevant time, CHCC failed to have written policies and procedures to address matters such as the Fairway Loan and the Reorganization, contrary to section 2.2 of National Instrument 81-107;
- (g) during the relevant time, Pushka was, among his various roles, President and Chief Executive Officer and a director of CHCC and he authorized, permitted or acquiesced in all of the actions, decisions and transactions made or approved by CHCC that were the subject matter of this proceeding; as a result, where the Commission concluded that CHCC did not comply with Ontario securities law, Pushka was deemed pursuant to section 129.2 of the Act to also have not complied with such law; and
- (h) by reason of the findings in clauses (a) to (g) above, the Commission also found that each of CHCC and Pushka acted contrary to the public interest;

AND WHEREAS on February 24 and 28, 2014, a hearing was held before the Commission to consider pursuant to sections 127 and 127.1 of the Act whether it was in the public interest to make an order imposing sanctions on, and the payment of costs of the investigation and hearing by, the Respondents;

AND WHEREAS in coming to its conclusions on sanctions, the Commission considered the submissions of the parties, the evidence submitted and the other factors and circumstances that the Commission considered relevant as discussed in its reasons for decision on sanctions and costs dated the date of this Order;

AND WHEREAS the capitalized terms used in this Order, other than terms expressly defined in this Order, are used as defined in the Merits Decision;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this Order;

IT IS HEREBY ORDERED THAT:

- (a) pursuant to paragraph 2 of subsection 127(1) of the Act, each of CHCC and Pushka cease trading in any securities or derivatives until such time as CHCC and Pushka have paid all of the amounts of disgorgement, administrative penalties and costs ordered to be paid to the Commission under this Order;
- (b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, each of CHCC and Pushka be prohibited from acquiring any securities until such time as CHCC and Pushka have paid all of the amounts of disgorgement, administrative penalties and costs ordered to be paid to the Commission under this Order;
- (c) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions in Ontario securities law not apply to CHCC and Pushka until such time as CHCC and Pushka have paid all of the amounts of disgorgement, administrative penalties and costs ordered to be paid to the Commission under this Order;
- (d) pursuant to paragraph 6 of subsection 127(1) of the Act, Pushka be reprimanded;
- (e) pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Pushka resign any positions he holds as an officer or director of any reporting issuer, registrant or investment fund manager;
- (f) pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Pushka be prohibited from becoming a director or officer of any reporting issuer, registrant or investment fund manager for a period of ten years from the date of this Order, and thereafter until such time as CHCC and Pushka have paid all of the amounts of disgorgement, administrative penalties and costs ordered to be paid under this Order;
- (g) pursuant to paragraph 8.5 of subsection 127(1) of the Act, each of CHCC and Pushka be prohibited from becoming or acting as a registrant, an investment fund manager or a promoter for a period of ten years from the date of this Order, and thereafter until such time as CHCC and Pushka have paid all of the amounts of disgorgement, administrative penalties and costs ordered to be paid pursuant to this Order;
- (h) pursuant to paragraph 9 of subsection 127(1) of the Act, CHCC and Pushka jointly and severally pay to the Commission an administrative penalty of \$1,875,000;
- (i) pursuant to paragraph 10 of subsection 127(1) of the Act, CHCC and Pushka jointly and severally disgorge to the Commission amounts obtained by them as a result of their non-compliance with Ontario securities law of \$18,237,047;

- (j) pursuant to subsection 127.1(1) and (2) of the Act, CHCC and Pushka jointly and severally pay \$300,000 of the costs incurred by the Commission in connection with the investigation and hearing of this matter; and
- (k) the amounts referred to in paragraphs (h) and (i) above of this Order shall be designated for allocation or use by the Commission pursuant to subsection 3.4(2)(b)(i) and (ii) of the Act.

DATED at Toronto this 8th day of August, 2014.

“James E. A. Turner”

James E. A. Turner

“Christopher Portner”

Christopher Portner

“Judith N. Robertson”

Judith N. Robertson