



Ontario
Securities
Commission
3S8

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 JAMES BARNETT (ALSO KNOWN AS JOHN DAVID)

**STATEMENT OF ALLEGATIONS
OF STAFF OF THE ONTARIO SECURITIES COMMISSION**

Staff of the Ontario Securities Commission (“Staff”) make the following allegations:

A. Background

1. During the period between 2002 and October 12, 2012, Barnett was a *de facto* officer of MineralFields Management Inc. (“MFMI”), Limited Market Dealer Inc. (“LMDI”) and Pathway Investment Counsel Inc. (“Pathway”) which comprised a group of companies, the MineralFields Group.
2. The MineralFields Group was involved in the distribution and management of flow-through limited partnerships. These limited partnerships invested primarily in flow-through shares of junior Canadian resource issuers through private placement issues.
3. MFMI was registered in the category of investment fund manager. It acted as the investment fund manager for flow-through limited partnerships the units of which were sold to investors through prospectuses and offering memoranda under the branding of “MineralFields”, “Pathway”, and “EnergyFields LPs” (the “MineralFields LPs”).
4. LMDI was registered as a dealer in the category of exempt market dealer. LMDI sourced private placement issues of resource companies for the MineralFields LPs to invest in, and received a finder’s fee (in cash and/or warrants) from these resource issuers for its services as an agent/finder. LMDI was also involved in negotiating the terms of the private placement issues on

behalf of the MineralFields LPs with management of the resource issuers in connection with the purchase of securities by the MineralFields LPs.

5. Pathway was registered as an adviser in the category of portfolio manager. It was retained by MFMI to provide portfolio management services to the MineralFields LPs.

6. Between April 28, 2011 and August 31, 2011, Staff conducted reviews of MFMI, LMDI and Pathway (the “Compliance Reviews”) for the period between April 1, 2010 and March 31, 2011 (the “Review Period”). During the course of the Compliance Reviews, certain matters came to the attention of Staff respecting Barnett.

7. The Compliance Reviews conducted by Staff revealed that Barnett breached Ontario securities law and acted contrary to the public interest. In particular:

B. Omissions to the Commission

8. During the Compliance Reviews, it was revealed that commencing in 2002 and continuing until 2011, there was a consistent failure to disclose in regulatory filings with the Commission that Barnett had beneficial interest in 49.99% of the non-voting shares of MFMI and LMDI since inception of these firms in 2002 and 2004, respectively, until after the Compliance Reviews. Barnett had an understanding with the individual who eventually became the Ultimate Designated Person (the “UDP”) of the firms of the MineralFields Group that Barnett would have a 49.9% interest and the UDP would have a 50.1% interest in the companies from the date each company was incorporated. Between 2002 and 2011:

- (a) a document dated March 25, 2002 and signed by the UDP was filed with the Commission certifying that the UDP owned 100% of the shares of LMDI;
- (b) in 2005, a limited market dealer survey questionnaire was signed by the UDP as president of LMDI and submitted to the Commission. It stated that the UDP was the sole director, officer and shareholder of LMDI;
- (c) during a compliance field review conducted by Staff in November 2005 of LMDI, Staff were told by LMDI’s Chief Compliance Officer (“CCO”) that the UDP was the sole shareholder of LMDI;

- (d) in 2010, the Commission was provided with an ownership chart of MFMI signed by the UDP which stated that the UDP “owns 100% of the shares of MineralFields Fund Management Inc.”; and
- (e) during the compliance reviews of the MineralFields Group that commenced with the compliance review of MFMI on April 28, 2011, Staff sent a books and records request that included a request “for a copy of the Registrant’s current organization chart and employee list with telephone numbers.” In response to this request, Staff received from the CCO and Chief Financial Officer of LMDI an organizational chart showing that the UDP (directly and through his companies) as the 100% owner of MFMI and LMDI.

9. Barnett was not registered under the Act in any capacity and was not disclosed as a “permitted individual” within the meaning of National Instrument 33-109-*Registration Information*.

10. Barnett’s failure to disclose his ownership of non-voting shares constituted conduct contrary to the public interest.

C. Barnett engaged in trading and advising without registration

11. During the Review Period and until August 2011, Barnett engaged in registerable activities on behalf of LMDI and Pathway without registration. His activities included:

- (a) soliciting private placement deals from resource issuers for investment by the flow-through MineralFields LPs managed by MFMI;
- (b) negotiating deal terms with resource issuers regarding such private placement issues;
- (c) making investment recommendations on behalf of and/or to Pathway;
- (d) determining the subscription price and subscription amount based on the recommendation made by LMDI’s in-house mining analysis. Barnett did not act based on instructions from Pathway’s registered advising representative. Instead, Barnett made the investment decisions; and

- (e) sending out engagement letters to resource issuers which were signed by himself or the UDP, although even where the UDP's "signature" appears on the engagement letters, the UDP did not actually sign the engagement letters as Barnett simply sent the letters out in the UDP's name. The engagement letters include the relevant subscription amount and were sent out before Pathway's registered adviser approved the investments.

12. By engaging in the trading and advising activity without being registered, Barnett acted contrary to Ontario securities law.

13. Staff allege that by engaging in the conduct described above, Barnett acted contrary to the public interest and contrary to Ontario securities law.

14. Staff reserve the right to make such other allegations as Staff may advise and the Commission may permit.

Dated at Toronto, this March 21, 2014