



Ontario  
Securities  
Commission

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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  
KRIS SUNDELL**

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

Staff of the Ontario Securities Commission (“Staff”) allege:

**I. OVERVIEW**

1. On February 20, 2014, Kris Sundell (“Sundell”) entered into a Settlement Agreement and Undertaking with the Alberta Securities Commission (“ASC”) (the “Settlement Agreement”).
2. Pursuant to the Settlement Agreement, Sundell agreed to certain undertakings and to be made subject to sanctions, conditions, restrictions or requirements within the province of Alberta.
3. Staff are seeking an inter-jurisdictional enforcement order reciprocating the Settlement Agreement, pursuant to paragraph 5 of subsection 127(10) of the Ontario *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “Act”).
4. The conduct for which Sundell was sanctioned took place between January 1, 2011 and June 30, 2011 (the “Material Time”).

5. During the Material Time, Sundell was a resident of Calgary, Alberta. Sundell, a former investment advisor, admitted to engaging in a course of conduct during the Material Time related to securities of Teras Resources Inc. (“Teras”) that he knew or reasonably ought to have known resulted in a false and misleading appearance of trading activity in, and an artificial price for, Teras securities.

## **II. THE ASC PROCEEDINGS**

### **Agreed Facts**

6. In the Settlement Agreement, Sundell agreed with the following facts:

#### *Parties*

- a. Sundell is a 38 year old resident of Calgary, Alberta. From approximately 2001 to 2006, he was employed as an investment advisor at a national investment broker with offices in Calgary. It was during this period that he first met a fellow employee and investment advisor named Peter Leger (“Leger”).
- b. In September 2008, Sundell incorporated Strategic Capital International Inc. (“Strategic”). He was its sole director, shareholder, and representative. Sundell described Strategic as being involved in market expansion and financings.

#### *Circumstances*

- c. In 2009, Sundell and Leger ran into one another, and they had discussions concerning a possible business relationship. In March 2010, a consulting agreement was entered into between Strategic and Teras. At all material times, Leger was the president and CEO of Teras, a publically traded company. Pursuant to the agreement, Strategic was to start an “awareness” campaign, to increase public interest in Teras through telephone calls and emails.
- d. From 2009 to early 2011, Sundell, through Strategic, assisted Teras with private placements, receiving finder’s fees and, in some cases, shares, warrants or options for Teras shares. Strategic also received consulting fees from Teras.

- e. During this period, Sundell opened a self-directed trading account for Strategic with Scotia Capital Inc. (respectively, “Account” and “Scotia”). Sundell had sole trading authority and executed all orders in the Account.
- f. From January 1, 2011, to June 30, 2011 (“Period”), Sundell traded shares of Teras in the Account. The Account only ever held and traded Teras shares. Details of the trading in the Account during the Period included the following:
  - i. On 17 days, the Account both purchased and sold shares on the same day. On these days, most of the sales were executed prior to the purchases, and at sale prices lower than the subsequent purchase price;
  - ii. 58,500 Teras shares were purchased, accounting for less than one percent of all purchases during the Period;
  - iii. 97 buy trades were made, 96 of which were of one or two board lots (respectively, 500 or 1000 shares – the smallest block of shares that could be purchased in a transaction);
  - iv. 60 of the 97 buys were upticks (that is, at a price higher than the previous trade), representing 24% of all upticks in the shares traded during the Period;
  - v. 54 of the 60 upticks were purchases of a single board lot (500 shares);
  - vi. 19 of the 60 upticks were also high closes (i.e., the last tick setting trade, made on an uptick, and executed during the last half hour of the trading day);
  - vii. The 19 high closes represented 61.3% of the total high close trades during the Period;
  - viii. 11 of the 19 high closes were the only trades in the Account that day;

- ix. All of the high close trades were actively pursued – each buy order was entered at the best ask price at the time and resulted in immediate execution; and
  - x. Numerous of the high closes were made with less than two minutes left in the trading day.
- g. Sundell received some direction from Leger with respect to Sundell’s trading in Teras shares in the Account. On occasion, Leger would call Sundell late in the trading day and tell him it would be great for the Teras stock to close high that day, or words to that effect. Sundell also made high close trades without direction, believing that was expected of him by Leger, and wanting to protect his investment in Teras.
- h. In early May 2011, Scotia contacted Sundell with concerns that he had engaged in high closes in the Account. He was informed of Uniform Market Integrity Rule 2 (2.2) and asked to modify his trading. Following two more high closes on May 26 and 27, 2011, Sundell was asked to exit Scotia.
- i. In June 2011, Scotia sent a “Gatekeeper Report” concerning Sundell’s trading to the Investment Industry Regulatory Organization of Canada. On June 30, 2011, Sundell made arrangements to close the Account and move the Teras shares to another brokerage.

#### *Breaches*

- j. Sundell admits he breached subsections 93(a)(i) and (a)(ii) of the *Alberta Securities Act*, R.S.A. 2000, c. S-4 by engaging in a course of conduct relating to Teras securities that he knew or reasonably ought to have known resulted in a false and misleading appearance of trading activity and in an artificial price. He also admits that his trading activity in the Account was conduct contrary to the public interest.

**The Settlement Agreement and Undertakings**

7. Pursuant to the Settlement Agreement, Sundell agreed to certain undertakings and to be made subject to sanctions, conditions, restrictions or requirements within the province of Alberta:
  - a. Sundell pay to the ASC the amount of \$40,000 in settlement;
  - b. Sundell pay to the ASC the amount of \$5,000 towards investigation and legal costs; and
  - c. Sundell cease trading in or purchasing securities for a period of five years.

**III. JURISDICTION OF THE ONTARIO SECURITIES COMMISSION**

8. In the Settlement Agreement, Sundell agreed to be made subject to sanctions, conditions, restrictions or requirements within the province of Alberta.
9. Pursuant to paragraph 5 of subsection 127(10) of the Act, an agreement with a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, to be made subject to sanctions, conditions, restrictions or requirements on the person or company may form the basis for an order in the public interest made under subsection 127(1) of the Act.
10. Staff allege that it is in the public interest to make an order against Sundell.
11. 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.
12. Staff request that this application be heard by way of a written hearing pursuant to Rules 2.6 and 11 of the *Ontario Securities Commission Rules of Procedure*.

**DATED** at Toronto, this 21<sup>st</sup> day of July, 2014.