

## ALBERTA SECURITIES COMMISSION

Citation: **Re Mottahed, 2025 ABASC 7**

File No.: **ENF-013016**

Date: **20250122**

### NOTICE OF HEARING

**To:** **Shahin Mottahed and Colin Garfield Wagner (Respondents)**

**Notice:** The Alberta Securities Commission (the **Commission**) will convene at 2:00 p.m. on Wednesday, March 12, 2025, or as otherwise directed (the **Set Date Hearing**), at Calgary, Alberta, to set a date or dates for the conduct of a hearing regarding the allegations in this Notice (the **Merits Hearing**). At the Merits Hearing, the Commission will consider whether the allegations have been proven. If so, the Commission will subsequently consider whether it is in the public interest to make orders against you under sections 198, 199, and 202 of the *Securities Act*, RSA 2000, c. S-4, as amended (the **Act**).

**Location:** Alberta Securities Commission, 5<sup>th</sup> Floor, 250 – 5 Street S.W., Calgary, Alberta.

**Procedure:**

1. You may obtain disclosure and further information about particulars of the allegations in this Notice from Amanda Goodwin, c/o Alberta Securities Commission, 600, 250 - 5 Street SW, Calgary, Alberta, T2P 0R4, telephone: 403.355.4315, email: amanda.goodwin@asc.ca.
2. You may be represented by legal counsel or represent yourself. You or your legal counsel may make representations at the Set Date Hearing as part of the process for scheduling the Merits Hearing and the hearing management sessions that will take place between the Set Date Hearing and the Merits Hearing. At the Merits Hearing, you or your legal counsel may make representations and introduce relevant evidence regarding the allegations in this Notice.
3. If you or your legal counsel fail to attend the Set Date Hearing, the scheduling of the Merits Hearing and the hearing management sessions may proceed in your absence without further notice, and the Merits Hearing itself may proceed in your absence without further notice, following which orders may be made against you.

*See attached sections 29, 92, 93, 198, 199, 202 and 221.1 of the Act, and Commission Rule 15-501 – Rules of Practice and Procedure for Commission Proceedings.*

**Reciprocation:** Take notice that orders or settlements made by the Commission may form the basis for parallel orders in other jurisdictions in Canada. The securities laws of some other Canadian jurisdictions may allow orders made in this matter to take effect in those other jurisdictions automatically, without further notice to you. If an order is made or a settlement agreement is reached in relation to this Notice, you should contact the securities regulator of any other jurisdiction in which you may intend to engage in any securities related activities.

## **Allegations**

### *Parties and relevant corporations*

1. Target Capital Inc. (**Target**), now called Westgate Energy Inc., was incorporated in Alberta in 1993 and is a reporting issuer in Alberta. At the relevant time, Target's shares traded on the TSX Venture Exchange and Canadian Securities Exchange under the symbol "TCI." Its fiscal year ended March 31<sup>st</sup>.
2. Shahin "Sonny" Mottahed (**Mottahed**) is a Calgary resident. Mottahed became chairman, president and chief executive officer (**CEO**) of Target in November 2017 in connection with a reorganization and recapitalization financing.
3. Colin Garfield Wagner (**Wagner**) is a Calgary resident. Wagner became chief financial officer (**CFO**) of Target in August 2019.
4. Mottahed and Wagner (the **Respondents**) were responsible for preparing Target's periodic disclosure filings and news releases, presenting them to Target's board of directors for approval, and ensuring they were filed with the Commission.
5. The Respondents were the signing authorities for Target's bank account.
6. As at October 7, 2019, Target had approximately \$3.2 million in assets, including approximately \$2.2 million in cash, largely derived from the recapitalization financing.
7. Performance CBD Brands Corp. (**Performance**) was incorporated in Alberta as a numbered corporation in 2017 and changed its name to Performance in July 2019. Between October 7, 2019 and February 9, 2021 (the **Relevant Period**), Performance was a private start up venture carrying on business through a subsidiary in the United States.
8. During the Relevant Period, Mottahed was the sole director, CEO and majority shareholder of Performance, and Wagner was its CFO. The Respondents were the signing authorities for Performance's bank accounts.

### *Circumstances*

9. During the Relevant Period, Mottahed and Wagner used Target's cash to make payments to or on behalf of Performance by:

- 9.1 paying invoices from third party vendors on Performance's behalf; and
- 9.2 transferring funds directly from Target's bank account to Performance's bank account;

(the **Transfers**).

- 10. During the Relevant Period, the net total of the Transfers reached nearly \$2.3 million.
- 11. The Transfers were undocumented, unsecured and made without the knowledge or approval of Target's board of directors.
- 12. During the Relevant Period, Target did not disclose the Transfers, and did not accurately disclose Target's cash position, in its public filings.

*Fraudulent course of conduct*

- 13. During the Relevant Period, the Respondents:
  - 13.1 diverted funds from Target to Performance by carrying out undocumented, unsecured and unauthorized Transfers that had no economic benefit for Target;
  - 13.2 concealed the Transfers from Target's board of directors; and
  - 13.3 concealed the Transfers from investors and the market by causing Target to issue periodic disclosure and news releases that were misleading or untrue;

(the **Prohibited Acts**).

- 14. In carrying out the Prohibited Acts, the Respondents placed the pecuniary interests of Target and investors at risk.
- 15. In carrying out the Prohibited Acts, the Respondents had subjective knowledge of the Prohibited Acts and had subjective knowledge that the Prohibited Acts could put the pecuniary interests of Target and investors at risk.
- 16. In carrying out the Prohibited Acts, the Respondents engaged or participated directly or indirectly in an act, practice or course of conduct relating to Target securities that they knew or ought to have known may perpetrate a fraud on Target and investors.

*Misleading interim filings*

- 17. On March 2, 2020, Target filed with the Commission an interim financial report and management's discussion and analysis (**MD&A**, and together, **interim filings**) for the period ended December 31, 2019.

18. Target was required to prepare the interim financial report in accordance with the IFRS® Accounting Standards, including International Accounting Standard 24 (IAS 24), which addresses related party disclosures. Target and Performance were related parties, and the Transfers were related party transactions, as defined in IAS 24.
19. The interim filings contained statements that were, in a material respect and at the time and in light of the circumstances under which they were made, misleading or untrue, or did not state facts required to be stated or necessary to make them not misleading, as they:
  - 19.1 falsely reported that Target had over \$2 million in cash at December 31, 2019; and
  - 19.2 failed to disclose the existence, nature and amounts of the related party transactions with Performance during the period ended December 31, 2019.
20. The statements would reasonably have been expected to have a significant effect on the market price or value of Target securities.
21. The Respondents knew or reasonably ought to have known the matters referred to in paragraphs 19 and 20.

*Misleading certifications of interim filings*

22. On March 2, 2020, Target also filed with the Commission certifications of interim filings signed by the Respondents in their capacities as CEO and CFO of Target, respectively.
23. The Respondents each certified that they had reviewed Target's interim filings and based on their knowledge, having exercised reasonable diligence, those filings:
  - 23.1 did not contain any untrue statement of a material fact or omit to state a material fact required to be stated or that is necessary to make a statement not misleading in light of the circumstances under which it was made, with respect to the period covered by the interim filings; and
  - 23.2 fairly presented in all material respects Target's financial condition, financial performance and cash flows, as of the date of and for the periods presented in the interim filings.
24. The certifications were, in a material respect and at the time and in light of the circumstances under which they were made, misleading or untrue, as each Respondent falsely certified that:
  - 24.1 based on his knowledge, the interim filings did not contain any untrue statement of a material fact or omit to state a material fact required to be stated or that is necessary to make a statement not misleading in light of the circumstances under which it was made, with respect to the period covered by the interim filings;

- 24.2 based on his knowledge, the interim filings fairly presented in all material respects Target's financial condition, financial performance and cash flows, as of the date of and for the periods presented in the interim filings; and/or
- 24.3 he had exercised reasonable diligence in his review.

*Misleading news releases*

25. Target was required to file audited annual financial statements, annual MD&A and certifications of annual filings (together, **annual filings**) for the year ended March 31, 2020 no later than July 29, 2020. Target was unable to meet this filing deadline.
26. Target relied on Commission Blanket Order 51-519 (**BO 51-519**) to extend the deadline for its annual filings by 45 days. When Target remained in default at the extended deadline, it applied for and obtained a management cease trade order (**MCTO**) from the Commission.
27. Between August 6, 2020 and October 13, 2020, Target filed five news releases (the **relevant news releases**) relating to its reliance on BO 51-519 and/or the MCTO. Each of the relevant news releases stated that there had been "no material business developments" at Target.
28. Each of the relevant news releases contained statements that were, in a material respect and at the time and in light of the circumstances under which they were made, misleading or untrue, or did not state facts required to be stated or necessary to make them not misleading, as they:
- 28.1 failed to disclose the existence, nature and amounts of the related party transactions with Performance; and
- 28.2 failed to disclose that at the time the news releases were filed, the net total of the Transfers had reached approximately \$2 million, and the Transfers had nearly depleted Target's cash.
29. The statements would reasonably have been expected to have a significant effect on the market price or value of Target securities.
30. The Respondents knew or reasonably ought to have known the matters referred to in paragraphs 28 and 29.
31. Target remained in default and did not complete its annual filings while subject to the MCTO. On November 5, 2020, the Commission revoked the MCTO and replaced it with a failure-to-file cease trade order.
32. Target's default was not remedied until April 2022 when Target was under new management. Target filed the required disclosure for all outstanding annual and interim

periods, and filed amended and restated interim filings for the period ended December 31, 2019, in April 2022.

*Breaches*

- 33. As a result of the above, Staff allege that each of the Respondents:
  - 33.1 breached section 93(1)(b) of the *Act* by engaging or participating directly or indirectly in an act, practice or course of conduct relating to a security that they knew or ought to have known may perpetrate a fraud on Target and investors;
  - 33.2 breached section 221.1(2) of the *Act* by making statements, and/or authorized, permitted or acquiesced in Target’s breach of section 221.1(2) of the *Act* by making statements, that were, in a material respect and at the time and in light of the circumstances under which they were made, misleading or untrue, or did not state facts required to be stated or necessary to make them not misleading, in each of the following documents:
    - 33.2.1 an interim financial report and MD&A for the period ended December 31, 2019;
    - 33.2.2 certifications of interim filings for the period ended December 31, 2019; and
    - 33.2.3 news releases filed between August 6, 2020 and October 13, 2020.
  - 33.3 breached section 92(4.1) of the *Act* by making statements they knew or reasonably ought to have known were, and/or authorized, permitted or acquiesced in Target’s breach of section 92(4.1) of the *Act* by making statements that Target knew or reasonably ought to have known were, in a material respect and at the time and in light of the circumstances under which they were made, misleading or untrue, or did not state facts required to be stated or necessary to make them not misleading, and would reasonably have been expected to have a significant effect on the market price or value of Target securities, in each of the documents referred to in paragraphs 33.2.1 and 33.2.3.

Calgary, Alberta, 22 January, 2025.

) ALBERTA SECURITIES COMMISSION  
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 ) “Original Signed By”  
 ) Samir Sabharwal  
 ) Executive Director