ALBERTA SECURITIES COMMISSION

File No.: ENF-013016
Citation: Re Colin Garfield Wagner, 2025 ABASC 122 **Date: 20250922**

SETTLEMENT AGREEMENT AND UNDERTAKING

Colin Garfield Wagner

Regulatory Message

Fraud is among the most serious form of securities misconduct – it typically involves intentional deceit, and results in, or risks, economic harm. Fraud by management of a reporting issuer is especially egregious, given their heightened duty to investors.

Misrepresentations in continuous disclosure documents – whether to the investing public or the Alberta Securities Commission – are also serious breaches of the *Securities Act (Alberta)*. Complete, accurate, and timely disclosure is fundamental to securities regulation. Disclosure of related party transactions is particularly critical; while not inherently improper, such transactions carry a risk of abuse and demand full transparency so investors can assess management's integrity.

Management is responsible for ensuring disclosure compliance, with Chief Financial Officers playing a central role. Chief Financial Officers must certify that financial disclosures fairly present the issuer's financial condition and cash flows and are free from misrepresentations. They must do so independently of the Chief Executive Officer. Certifying false or misleading disclosure is a serious violation of Alberta securities laws.

Agreed Facts

Introduction

1. Staff of the Alberta Securities Commission (**Staff** and **Commission**, respectively) conducted an investigation into Colin Garfield Wagner (**Wagner**) to determine if Alberta securities laws had been breached.

2. After conducting the investigation, Staff issued a Notice of Hearing on January 22, 2025, *Re Mottahed*, 2025 ABASC 7, alleging that Wagner and Shahin Mottahed (**Mottahed**) breached the following sections of the *Securities Act*, RSA 2000, c S-4, as amended (***Act***):

   2.1 section 93(1)(b) of the *Act* by engaging or participating directly or indirectly in an act, a practice or a course of conduct that they knew or reasonably ought to have known may perpetrate a fraud;

2.2 section 221.1(2) of the *Act* by making, and authorizing, permitting or acquiescing in, false and materially misleading statements in:

2.2.1 an interim financial report and management's discussion and analysis for the period ended December 31, 2019;

2.2.2 certifications of interim filings for the period ended December 31, 2019; and

2.2.3 news releases filed between August 6, 2020 and October 14, 2020; and

2.3 section 92(4.1) of the *Act* by making, and authorizing, permitting or acquiescing in, materially misleading statements in the documents listed in paragraphs 2.2.1 and 2.2.3.

3. The investigation confirmed, and Wagner admits, that he breached these sections of the *Act* referred to in this Settlement Agreement and Undertaking (**Agreement**).

4. Solely for securities regulatory purposes in Alberta and elsewhere, and as the basis for the settlement and undertakings referred to in paragraph 40 and for no other use or purpose, Wagner agrees to the facts and consequences set out in this Agreement.

5. Terms used in this Agreement have the same meaning as provided in Alberta securities laws, a defined term in the *Act*.

Background

6. Target Capital Inc. (**Target**), now called Westgate Energy Inc., was incorporated in Alberta and had a registered office in Calgary throughout the period October 7, 2019 to February 9, 2021 (the **Relevant Period**). It was a reporting issuer, and its shares traded on the TSX Venture Exchange and Canadian Securities Exchange during that time. During the Relevant Period, Target's main business was investing in early-stage cannabis-related businesses. Target's fiscal year ended March 31.

7. Mottahed is an individual who was a resident of Calgary. He became chairman, president and Chief Executive Officer (**CEO**) of Target in 2017 in connection with a reorganization and recapitalization financing. He held those positions throughout the Relevant Period. At all relevant times, Target's board was composed of Mottahed and three independent directors.

8. Performance CBD Brands Corp. (**Performance**) was incorporated in Alberta and had a registered office in Calgary during the Relevant Period. It was a private company during that time. Performance's business was the sale of sports supplements containing cannabidiol through a subsidiary in the United States.

9. Mottahed was the sole director, CEO and majority shareholder of Performance throughout the Relevant Period.

10. Wagner is an individual who is a resident of Calgary. He was the Chief Financial Officer (**CFO**) of Target and the CFO of Performance throughout the Relevant Period.

11. During the Relevant Period, Wagner and Mottahed were Target's only employees. Wagner carried out all accounting and financial reporting functions at Target. Mottahed presented Target's continuous disclosure to the board of directors for approval before Wagner caused it to be filed with the Commission.

12. Mottahed and Wagner were the signing authorities for Target's and Performance's bank accounts.

13. 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. Target had some revenue but operated at a loss prior to and throughout the Relevant Period.

Fraud

14. In October 2019, at Mottahed's request, Wagner began using Target's cash to pay invoices from third party vendors on Performance's behalf. By December 31, 2019, Wagner had used approximately $369,686 of Target's cash to pay invoices for Performance.

15. After December 31, 2019, Wagner continued using Target's cash to pay invoices for Performance, and he began making direct transfers of funds from Target's bank account to Performance's bank account. Wagner made such transfers on a regular basis throughout 2020 and into 2021.

16. By February 9, 2021, the net total that Target paid to, or on behalf of, Performance (the **Transfers**) was $2,286,440. The Transfers were used to support Performance's business operations.

17. The Transfers were undocumented and unsecured, and they were made without the approval of Target's board of directors. Of the directors, only Mottahed knew of the Transfers. Target's independent directors did not discover the Transfers until February 2021.

18. Wagner relied upon Mottahed's representations to him that the board was aware of and had approved the Transfers to Performance. At no time during the Relevant Period did Wagner seek independent confirmation from other directors nor any other evidence of approval by the board.

19. The Transfers were not disclosed to Target's investors or the market during the Relevant Period. As described below, Wagner caused Target to file false and misleading continuous disclosure that concealed the Transfers and their effect on Target's financial condition.

Misleading interim filings and certifications of interim filings

20. Wagner prepared Target's interim financial report and MD&A (together, **interim filings**) for the period ended December 31, 2019. In his capacity as CFO, Wagner certified that

those interim filings fairly presented in all material respects the financial condition, financial performance and cash flows of the issuer and did not contain misrepresentations.

21. Target was required to prepare the interim financial report in accordance with the International Financial Reporting 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.

22. 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:

    22.1 falsely reported that Target had $2,032,870 in cash at December 31, 2019, when in fact Target had only $407,176 in cash and $1,000,000 in cashable short-term investments, largely as a result of the Transfers; and

    22.2 failed to disclose the existence, nature and amounts of the related party transactions with Performance during the period ended December 31, 2019, as required by IAS 24.

23. Wagner knew or ought to have known that, because of these deficiencies, Target's December 31, 2019 interim filings, and his certification of those interim filings, were false or misleading in material respects.

Misleading news releases

24. 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.

25. Target relied on Commission Blanket Order 51-519 (**BO 51-519**), a temporary measure related to the COVID-19 pandemic, to extend the deadline for its annual filings by 45 days. BO 51-519 required Target to file news releases providing updates of any material business developments, or confirming the absence of any material business developments, during the extension period. When Target reached its extended filing deadline, it applied for and obtained a management cease trade order (**MCTO**) from the Commission.

26. Between August 6, 2020 and October 14, 2020, Wagner prepared five news releases relating to Target's reliance on BO 51-519 and the MCTO (the **relevant news releases**), and caused them to be filed with the Commission.

27. Each of the relevant news releases were false or misleading in a material respect, as they:

    27.1 falsely stated that there had been "no material business developments" at Target;

    27.2 failed to disclose the existence, nature and amounts of the related party transactions with Performance; and

27.3 failed to disclose that at the time of filing, the net total of the ongoing Transfers to Performance was close to $2 million, and the Transfers had nearly depleted Target's cash.

28. In particular:

28.1 on August 6, 2020, Target filed a news release which stated there had been "no material business developments" since the December 31, 2019 interim filings. Yet by that time the net total of the Transfers was $1,862,252 and, mainly as a result of the Transfers, Target's bank balance was approximately $42,852.

28.2 on August 28, 2020, Target filed a news release which stated there had been "no material business developments" since the December 31, 2019 interim filings. At that time, the net total of the Transfers was approximately $2,109,440, and Target's bank balance was approximately $22,527.

28.3 on September 15, 2020, Target filed a news release which stated that Target had "no material business developments that require disclosure to the public." At that time, the net total of the Transfers was approximately $2,109,440, and Target's bank balance was approximately $14,769.

28.4 on September 29, 2020, Target filed a news release stating that it had "no material business developments" since the December 31, 2019 interim filings. By that time, the net total of the Transfers was approximately $2,119,440, and Target's bank balance was approximately $3,713.

28.5 on October 14, 2020, Target filed a news release stating that it had "no material business developments" since the December 31, 2019 interim filings. At that time, the net total of the Transfers was approximately $2,126,440, and Target's bank balance was approximately $3,283.

29. Wagner knew or ought to have known that the ongoing Transfers to Performance and the resulting change in Target's cash position were material business developments that ought to have been disclosed.

30. Target 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.

31. The failure-to-file cease trade order led to the delisting of Target shares from both exchanges and the loss of Target's only source of revenue.

32. Target remained in default and did not complete its 2020 annual filings until April 2022, when the company was under new management.

33. Performance could not, and did not, repay the funds it received from Target. Performance was unable to continue with its business and ceased operating. It was struck from Alberta Corporate Registry in 2021.

Admitted Breaches of Alberta Securities Laws (Admitted Breaches)

34. Based on the Agreed Facts, Wagner admits he breached:

34.1 section 93(1)(b) of the *Act* by engaging and participating in a course of conduct that he knew or ought to have known may perpetrate a fraud on Target and investors;

34.2 section 221.1(2) of the *Act* by making false and misleading statements, and by authorizing, permitting or acquiescing in Target's breach of section 221.1(2) of the *Act*, by making false and misleading statements, in:

34.2.1 Target's interim filings for the period ended December 31, 2019;

34.2.2 his certification of Target's interim filings for the period ended December 31, 2019; and

34.2.3 the relevant news releases Target filed between August 6, 2020 and October 14, 2020; and

34.3 section 92(4.1) of the *Act* by making false and misleading statements that would reasonably be expected to have a significant effect on the market price or value of Target securities, in the documents referred to in paragraphs 34.2.1 and 34.2.3.

Circumstances Relevant to Settlement

35. Wagner has not been previously sanctioned by the Commission.

36. Wagner cooperated with Staff during the investigation.

37. This Agreement has saved the Commission the time and expense associated with a contested hearing under the *Act*.

38. Wagner states that he relied upon Mottahed's representations to him that Target's board was aware of and had approved the Transfers to Performance.

39. Wagner was the CFO of Target (and Performance) throughout the Relevant Period. CFOs play a central role in ensuring compliance with continuous disclosure obligations. In particular, they must certify that financial disclosures fairly present the financial condition, financial performance and cash flows of the issuer, and they do not contain misrepresentations. They must act independently of the CEO in fulfilling those obligations. By certifying false and misleading disclosures, Wagner fell far short of meeting his obligations.

Settlement and Undertakings

40. Based on the Agreed Facts and Admitted Breaches, Wagner agrees and undertakes to the Executive Director of the Commission to:

40.1 pay the Commission a monetary settlement amount of $100,000;

40.2 resign all positions he may have as a director or officer, or both, of any issuer; and

40.3 be prohibited for a period of 15 years from:

40.3.1 trading in or purchasing securities or derivatives, except trades or purchases made in a single Registered Retirement Savings Plan and a single Tax-Free Savings Account in his own name through a registrant who has first been given a copy of this Agreement;

40.3.2 using any of the exemptions contained in Alberta securities laws;

40.3.3 engaging in investor relations activities;

40.3.4 becoming or acting as a director or officer, or as both a director and an officer, of any issuer or other person or company that is authorized to issue securities;

40.3.5 advising in securities or derivatives;

40.3.6 becoming or acting as a registrant, investment fund manager or promoter; and

40.3.7 acting in a management or consultative capacity in connection with activities in the securities market.

Administration

41. Wagner acknowledges that he has had an opportunity to seek independent legal advice and has chosen not to do so. Wagner acknowledges that he has voluntarily made the admissions and undertakings in this Agreement.

42. Wagner waives any right existing under the *Act*, or otherwise, to a hearing, review, judicial review or appeal of this matter.

43. Wagner acknowledges and agrees that the Commission may enforce this Agreement in the Court of King's Bench or in any other court of competent jurisdiction.

44. Wagner understands and acknowledges that this Agreement may form the basis for securities-related orders in other jurisdictions in Canada. The securities laws of some other Canadian jurisdictions may allow for provisions of a settlement agreement made in this matter to be given parallel effect in those other jurisdictions automatically, without further notice to him. Wagner understands and acknowledges that he should contact the securities regulator of any other jurisdiction in which he may intend to engage in any securities-related activities.

45. Execution and fulfillment of the terms of this Agreement by Wagner resolves all issues involving him relating to the conduct described above, and Staff will take no further steps against him arising from these facts.

46. Notwithstanding paragraph 45, Wagner understands and acknowledges that the Commission has entered into this Agreement in reliance on statements made by Wagner. The Commission reserves its right to take action against Wagner if Staff later learn that any of these statements are false or materially misleading and constitute a further breach of Alberta securities laws.

47. This Agreement may be executed in counterpart.

Signed by COLIN GARFIELD WAGNER at Calgary, Alberta this 28 day of August, 2025, in the presence of:	)	
WITNESS NAME WITNESS NAME	)	
"Original Signed By" SIGNATURE	)	*"Original Signed By"* Colin Garfield Wagner
	)	ALBERTA SECURITIES COMMISSION
Calgary, Alberta, 22 September, 2025	)	
	)	*"Original Signed By"* Samir Sabharwal Executive Director