

ALBERTA SECURITIES COMMISSION

IN THE MATTER OF the *Securities Act*
R.S.A. 2000, c. S-4 (“Act”)

-and-

THEODOR HENNIG (“Hennig”), PETER J. WORKUM (“Workum”),
CHESHIRE CAPITAL INC. (“Cheshire”), LEXINGTON CAPITAL LTD. (“Lexington”),
STRATEGIC INVESTMENTS FUND (“Strategic”) and ASHLAND HOLDINGS CORP.
 (“Ashland”)
(the “Respondents”)

AMENDED NOTICE OF HEARING

TAKE NOTICE THAT, pursuant to subsection 198(3) of the Act, the Alberta Securities Commission (“Commission”) will convene at its hearing room, 4th Floor, 300 - 5 Avenue SW, Calgary, Alberta, on Wednesday, the 21st day of August, 2002, at 9:30 a.m., to set a date for a hearing of the allegations in this Notice of Hearing and to deal with any other preliminary matters. At the hearing, the Commission will consider whether to make an order against the above Respondents pursuant to sections 198, 199 and 202 of the Act, or such further order as the Commission considers appropriate.

Allegations

- 1 At all material times, Workum and Hennig were the Chief Executive Officer (CEO) and Chief Financial Officer (CFO) respectively of Proprietary Industries Inc. (“PPI”). As of July 29, 2002, Workum and Hennig took leaves of absence as CEO and CFO respectively.

- 2 Workum and/or Hennig are also the beneficial owners of Cheshire, Lexington, Strategic and Ashland.
- 3 Cheshire, Strategic and Ashland are incorporated in the Turks and Caicos Islands of British West Indies. Lexington is incorporated in Belize City, Belize (“off-shore companies”).
- 4 Each of the four offshore companies had a brokerage account with the same brokerage firm in Vancouver, British Columbia.
- 5 Newmex Minerals Inc. (“Newmex”) was an Alberta Stock Exchange (“ASE”) listed company. PPI owned 72% of Newmex until September 30, 1998, at which time, PPI purported to sell its interest.

Market Manipulation

- 6 In September, 1998, Workum and Hennig were looking for ways to increase PPI’s earnings for the 1998 fiscal year. They devised a scheme that resulted in PPI purporting to sell its interest in Newmex at a significant gain.
- 7 PPI purported to sell its interest in Newmex to Pensionskasse der ASCOOP (“ASCOOP”) and SPIDA Ausgleichskasse (“SPIDA”), both incorporated in Switzerland, and an Alberta holding company, LynChris Holdings Inc. (“LynChris”) for \$1.00 per share, the then market value.
- 8 LynChris entered into an agreement to buy some of PPI’s interest in Newmex in order to facilitate the transaction; however LynChris did so on the understanding that there was no risk to LynChris and that LynChris could at any time request the return of its original purchase price plus interest.
- 9 By February 2000, LynChris requested the return of its original purchase price from PPI.
- 10 In order not to reveal the scheme and in order to reimburse LynChris as agreed, PPI would have to repurchase the shares at market value. However, by February 2000, the market price of Newmex had declined substantially. If PPI purchased the Newmex shares at that market price, LynChris would have incurred a substantial loss and would not have received back its original purchase price as agreed.
- 11 As a result, Workum and/or Hennig directed a broker with a brokerage firm in Vancouver, British Columbia (the “Broker”) to purchase shares of Newmex on the open market in order to increase the share price of Newmex to between \$1.00 and \$1.20.

- 12 In accordance with these instructions, the Broker proceeded to purchase Newmex shares through the brokerage accounts of Cheshire and Strategic in order to increase the share price of Newmex (“February Market Manipulation”).
- 13 The February Market Manipulation was intended to conceal the fact that the LynChris/Newmex transaction was not bona fide, that PPI never intended to dispose of its interest in Newmex and that it was structured solely for the purpose of allowing PPI to record a gain which inflated its earnings for the 1998 fiscal year.
- 14 As the result of the above, Workum, Hennig, Cheshire and Strategic directly and indirectly traded and purchased securities of Newmex in order to artificially increase Newmex’s share price, contrary to subsection 93(b) of the Act and the public interest.
- 15 In addition to LynChris purchasing PPI’s shares of Newmex, also in September, 1998, PPI purported to sell to ASCOOP and SPIDA its remaining shares of Newmex for \$1.00 per share.
- 16 ASCOOP and SPIDA entered into an agreement to buy PPI’s remaining interest in Newmex. In order to facilitate the transaction, ASCOOP and SPIDA understood that there was no risk to them and that at the end of two years they could request the return of their original investment plus interest regardless of the market value of the Newmex shares.
- 17 PPI’s original agreement with ASCOOP and SPIDA contained a clause that specifically set out this understanding. The ASE rejected the agreement on the basis that any repurchase of the Newmex shares would have to take place at market value. The agreement was revised, removing the repurchase clause, implying that the share repurchase would take place at market value.
- 18 At the end of two years, in September 2000, Newmex was trading consistently below 60¢ per share.
- 19 In September 2000, Workum and/or Hennig directed the Broker to purchase shares of Newmex on the open market in order to increase the share price of Newmex to between \$1.00 and \$1.20.
- 20 In accordance with these instructions, the Broker proceeded to purchase shares of Newmex through the brokerage accounts of Cheshire, Lexington and Strategic in order to increase share price of Newmex (“October Market Manipulation”).
- 21 The October Market Manipulation was carried out in order to justify PPI’s repurchase of the Newmex shares from ASCOOP and SPIDA at the original price plus interest in accordance with the original ASCOOP/SPIDA agreement (that the ASE had rejected).

- 22 During the investigation of Staff of the Commission (“Staff”) the Newmex transaction, Workum advised Staff that PPI had repurchased the Newmex shares from ASCOOP and SPIDA at market value, which was in excess of \$1.00 per share.

Secret Commissions

- 23 Throughout Workum’s employment with PPI, and in numerous documents filed with the Commission and provided to its shareholders, Workum maintained that he did not receive any salary or remuneration from PPI. Hennig disclosed some remuneration from PPI. Staff’s investigation, however, has revealed that Workum and Hennig have received, directly or indirectly, substantial fees or monies from PPI and related companies that were not disclosed.
- 24 The LynChris/Newmex transaction provided that PPI would pay a commission of 200,000 freely trading shares of Newmex to Cheshire.
- 25 PPI, Workum and Hennig failed to disclose that Cheshire was a company owned and controlled by Workum.
- 26 In or about December 1998, Cheshire received the 200,000 Newmex shares from PPI with an approximate value of \$225,000.
- 27 In the Azterra transaction (referred to in the January 31, 2002, Notice of Hearing), Workum and Hennig structured the transaction such that PPI would pay Strategic a fee of 7% of the gross value of the shares of Willow Creek and Creative Classics which were purportedly sold to Azterra. Such value was significantly inflated and exaggerated for the purposes of the transaction and calculation of the fee.
- 28 PPI, Workum and Hennig failed to disclose that Strategic was a company owned and controlled by Workum.
- 29 In November 2000, PPI purchased a 70% interest in Sulphur Corp. of Canada (“Sulphur Corp.”). PPI structured the transaction such that Lexington would receive a 5% interest in Sulphur Corp.
- 30 PPI, Workum, and Hennig failed to disclose that Lexington was a company owned and controlled by Workum.
- 31 In or about June 2000, Workum requested that the Broker set up or find an offshore bank account for his benefit. The Broker proceeded to do so and arranged for Workum and Hennig to use and have access to Mandolin Inc.’s (“Mandolin”) bank account in the Turks and Caicos Islands.
- 32 On about July 4, 2000, PPI deposited into Mandolin’s bank account the amount of \$2,756,250 as payment of a commission on monies raised by PPI through a Swiss private placement of its common shares.

- 33 PPI, Hennig and Workum failed to disclose and, indeed, Workum and Hennig took active steps to conceal the fact that these commissions were payable to Workum and Hennig.
- 34 On or about April 13, 2001, PPI deposited into Mandolin's bank account the amount of \$1,173,000 as payment of a commission on monies raised by PPI through a Swiss private placement of its common shares.
- 35 PPI, Hennig and Workum failed to disclose and, indeed, Workum and Hennig took active steps to conceal that these commissions were payable to Workum and Hennig.
- 36 In addition, PPI paid commissions to Workum and Hennig as follows:

October 21, 1999	Ashland	\$36,000
October 25, 1999	Ashland	\$15,000
November 9, 1999	Ashland	\$210,311
November 9, 1999	Cheshire	\$105,511
November 9, 1999	Strategic	\$23,231
January 13, 2000	Strategic	\$202,500
January 13, 2000	Cheshire	\$100,000
January 13, 2000	Ashland	\$100,000
August 2, 2000	Ashland	\$350,031

- 37 PPI, Hennig and Workum failed to disclose and, indeed, Workum and Hennig took active steps to conceal that these commissions were payable to Workum and Hennig.
- 37.1 Hennig and Workum failed to disclose that Workum was a shareholder of Hippocampus Corporate Development AG, a Swiss company that received commissions of approximately \$400,000 from one of PPI's private placements.

Failure to File Insider Trading Reports

- 38 From October 31, 1995 to present, Workum and Hennig, through Strategic, actively traded in securities of PPI and other companies related to PPI, without filing insider-trading reports, contrary to subsection 182(2) of the Act.
- 39 From November 1997 to present, Workum and Hennig, through Cheshire, actively traded in securities of PPI and other companies related to PPI, without filing insider-trading reports, contrary to subsection 182(2) of the Act.

- 40 From July 1999 to present, Workum and Hennig, through Ashland, traded in securities of PPI and other companies related to PPI, without filing insider-trading reports, contrary to subsection 182(2) of the Act.
- 41 From July 2000 to present, Workum and or Hennig, through Lexington, traded in securities of PPI and other companies related to PPI, without filing insider-trading reports, contrary to subsection 182(2) of the Act.

Misrepresentations

- 42 Throughout the Staff's investigation, and, in particular, in Hennig's examination under oath on July 10, 2002, and Workum's examination under oath on July 12 and 15, 2002, Workum and Hennig concealed, lied and misled Staff in their evidence, the particulars of which include the following:
- 42.1 Workum and Hennig denied any interest or knowledge as to the beneficial owners or principals of Strategic, Lexington, Ashland, Mandolin and Cheshire;
- 42.2 Workum denied any involvement in setting up Cheshire or Lexington;
- 42.3 Workum testified that Lexington, Cheshire and Strategic were owned by Swiss persons who raised money on behalf of PPI;
- 42.4 Workum testified that Lexington, being owned by Swiss brokers, was to receive a 5% interest in Sulphur Corp. in order to ensure that these brokers would remain interested in and encourage further investment in Sulphur Corp.;
- 42.5 Workum testified that he had lines of credit with Lexington, Cheshire and Strategic. In fact, Workum had concocted the idea of lines of credit with the offshore companies in order to mislead Staff as to the reason Workum was receiving monies from the offshore companies;
- 42.6 Workum and Hennig failed to disclose that CommCept AG, a Swiss brokerage firm allegedly responsible for raising large amounts of private placement monies for PPI, was forwarding a percentage of its commissions for these private placements to Workum and Hennig through the off-shore companies;
- 42.7 Hennig represented and Workum testified that PPI had repurchased the Newmex shares from LynChris, ASCOOP and SPIDA at market value, which was in excess of \$1 per share. In fact, however, this market value was artificially increased at the direction of Workum and/or Hennig; and

42.8 Hennig and Workum failed to disclose in PPI's 2001 financial statements that Tuscana Management Corp. and Finspeed GmbH were parties related to PPI.

43 In addition, Workum instructed the Broker to draft and send letters to Staff in which false beneficial owners of Strategic, Lexington and Cheshire would be disclosed.

Administrative

44 At the hearing, the Commission will follow the rules and procedures provided for in section 29 of the Act, including the right of the Respondents to be represented by legal counsel.

45 The hearing may be adjourned from time to time by the Commission and, if the hearing is not concluded on the date set out above, the Commission may grant an interim order pursuant to section 33 of the Act.

46 The Respondents may obtain disclosure and further particulars of the facts and allegations in this Notice of Hearing prior to the hearing by contacting Charlene Anderson, Senior Enforcement Counsel, c/o Staff of the Alberta Securities Commission, 4th Floor, 300 - 5 Avenue SW, Calgary, Alberta, T2P 3C4.

47 Upon the failure of the Respondents to attend at the above time and place, and upon proof to the Commission of service of this Notice of Hearing on the Respondent, the hearing may proceed in their absence and without further notice to them, and the Commission may grant any order it considers to be in the public interest.

Dated at Calgary, Alberta)	ALBERTA SECURITIES COMMISSION
)	
this 19 th day of September,)	
)	<u>"Original Signed By"</u>
2003.)	David Linder
)	Executive Director