

ALBERTA SECURITIES COMMISSION

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

- and -

Proprietary Industries Inc.,
Theodor Hennig and Peter Jay Workum
(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 Friday, February 22, 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

Summary of Breaches

- 1 Staff alleges that Proprietary Industries Inc.’s (“PPI”) consolidated financial statements for the years ended September 30, 1998, September 30, 1999 and September 30, 2000, were not prepared in accordance with generally accepted accounting principles (“GAAP”), in contravention of section 144 of the rules made pursuant to the Act (the “Rules”) and contained misrepresentations contrary to subsection 194(1)(b) of the Act, both of which are contrary to the public interest.

- 2 Further, Staff also alleges that PPI made misrepresentations in respect of material submitted or given to the Commission contrary to subsection 194(1)(a) of the Act and the public interest.

Parties

- 3 PPI, formerly known as Proprietary Energy Industries Inc., is an Alberta corporation with its head office in Calgary.
- 4 At all material times, PPI was a reporting issuer in Alberta. It was listed on the Toronto Stock Exchange (“TSE”) on April 12, 1999, and became a component company of the TSE 300 composite index as of December 14, 2000.
- 5 At all material times, Peter Jay Workum (“Workum”) was a director and president of PPI. Theodor Hennig (“Hennig”) was the chief financial officer, secretary and treasurer of PPI. Any acts by PPI referred to herein were carried out by Workum and/or Hennig and as such, Workum and Hennig are responsible for those acts.

1998 Financial Statements – Gain on sale of Newmex shares

- 6 On February 19, 1999, PPI filed with the Commission its audited consolidated financial statements for the year ended September 30, 1998 (“1998 Financial Statements”). The 1998 Financial Statements were approved by PPI’s board of directors and signed by Workum and Andrew Mackenzie, another director of PPI.
- 7 The consolidated statement of earnings and retained earnings included in the 1998 Financial Statements reported a “gain on [the] sale of mining properties” in the amount of \$3,878,486.
- 8 The gain arose as result of PPI’s purported sale of its entire interest in Newmex Minerals Inc. (“Newmex”) for \$4,082,875 (“Newmex transaction”).
- 9 Newmex was listed on the Alberta Stock Exchange (“ASE”), and subsequently Canadian Venture Exchange (“CDNX”).
- 10 PPI owned approximately 72% of the outstanding common shares of Newmex. At all material times, Workum was a director and also the president of Newmex. Hennig was a director and also the vice-president of finance of Newmex. Newmex and PPI shared the same offices.
- 11 There were three purchasers of PPI’s interest in Newmex: Pensionskasse der ASCOOP (“ASCOOP”) and SPIDA Ausgleichskasse (“SPIDA”), both incorporated in Switzerland and an Alberta holding company, LynChris Holdings Inc. (“LynChris”).

- 12 Two different agreements of purchase and sale were entered into: one between PPI and ASCOOP and SPIDA, dated September 8, 1998 (“ASCOOP/SPIDA Agreement”) and the other between PPI and LynChris, dated September 30, 1998 (“LynChris Agreement”).

Sale of Newmex to ASCOOP and SPIDA

- 13 The ASCOOP/SPIDA Agreement included, among others, the following terms:
- 13.1 PPI would sell 750,000 shares of Newmex to each of ASCOOP and SPIDA at \$1.00 per share, for total consideration of \$1,500,000;
 - 13.2 PPI would have the option to re-purchase the Newmex shares for the original consideration, plus a premium of 0.8333% for each month [10% per annum]; the option remained outstanding for 24 months following the transaction;
 - 13.3 after 24 months, ASCOOP and SPIDA would have the right to sell the Newmex shares back to PPI for the original consideration plus a 10% premium; and
 - 13.4 ASCOOP and SPIDA would vote the Newmex shares in concert with PPI for the duration of the agreement.
- 14 In November 1998, the ASE requested that PPI remove the repurchase terms in the ASCOOP/SPIDA Agreement. As a result, and without the first agreement being rescinded, a new agreement was signed and dated as of September 8, 1998. The new agreement did not contain the terms found in subparagraphs 13.2, 13.3, & 13.4 herein.
- 15 Despite the new agreement, the parties conducted themselves in accordance with the original agreement. In or about October 2000, PPI repurchased the shares of Newmex from ASCOOP and SPIDA for the original consideration plus a premium (which amounted to 10% per annum).

Sale of Newmex to LynChris

- 16 The LynChris Agreement included, among others, the following terms:
- 16.1 PPI would sell 2,582,875 shares of Newmex to LynChris at \$1.00 per share, for total consideration of \$2,582,875 (the “LynChris shares”);
 - 16.2 the entire purchase price would be paid by a two year promissory note with a stated interest rate of 7% with interest and principal due at the end of two years (“LynChris Promissory Note”);

- 16.3 the LynChris shares were subject to an escrow agreement;
 - 16.4 PPI would pay a commission of 200,000 [freely trading] Newmex shares to Cheshire Capital Inc. (“Cheshire”); and
 - 16.5 the agreement was subject to shareholder, regulatory and board of directors’ approval.
- 17 The escrow agreement to which the LynChris shares were subject was dated April 22, 1998. Among other terms, it provided that:
- 17.1 the securities would remain in escrow and only be released in accordance with the terms of the escrow agreement and on written consent of the ASE;
 - 17.2 the consent of the ASE would be required to transfer the securities within escrow;
 - 17.3 the ASE would generally consent to the release from escrow of one share for each eighty-six (\$.86) cents of deferred expenditures incurred on the property and in any event no more than one third per calendar year; and
 - 17.4 any securities not released from escrow within 5 years would be cancelled.
- 18 As an inducement for entering into the Newmex transaction, Hennig, who approached LynChris about the transaction, promised LynChris 40,000 shares of PPI.
- 19 In November 1998, while reviewing the Newmex transaction, the ASE requested further information from PPI including the names of the beneficiaries of Cheshire. PPI did not provide that information to the ASE.
- 20 In addition, the ASE advised PPI that it did not consent to the proposed payment of the LynChris shares being deferred for two years. The ASE stated that the proceeds from the share disposition must be received by PPI at the time of closing of the transaction.
- 21 As a result, PPI and LynChris added an addendum to the LynChris Agreement, back-dating the addendum to September 30, 1998. Pursuant to the addendum, the parties agreed that the transfer of the LynChris shares would not take place until the LynChris Promissory Note was paid in full.
- 22 Notwithstanding that it was an express term of the LynChris Promissory Note to pledge security for the debt in an amount not to exceed 20%, in late 1998, LynChris refused to do so.

- 23 In or about February 1999, PPI and Hennig pledged the requested 20% security on behalf of LynChris. They did so by forwarding 133,334 PPI shares to PPI's solicitors.
- 24 The 1998 Financial Statements, in note 5, reported that the LynChris Promissory Note was secured by marketable securities. It was not disclosed, however, that PPI and Hennig, and not LynChris, had posted the shares as the security.
- 25 During 1999, LynChris demanded that PPI repurchase the LynChris shares for the original consideration plus interest paid.
- 26 As a result, on February 29, 2000, PPI purported to reacquire the LynChris shares for the return of the LynChris Promissory Note, plus cash in the amount of \$213,876.62. At the time, freely tradable Newmex shares were typically trading below \$1.00 per share.
- 27 PPI's reported earnings for its 1998 fiscal year were \$2,977,781. Without recognizing the gain on the Newmex transaction, PPI's reported earnings for 1998 would have been less than \$250,000.

Newmex transaction - not bona fide

- 28 Staff alleges that the Newmex transaction was not a *bona fide* commercial transaction and that the primary or dominant purpose of both arrangements was to enable PPI to report a gain of approximately \$3.8 million in the 1998 Financial Statements. In support of its contention, Staff relies on the following:
 - 28.1 following the Newmex transaction, Workum and Hennig continued in their positions with Newmex;
 - 28.2 Newmex and PPI continued to share the same offices;
 - 28.3 despite the purchase of substantially all of the issued and outstanding shares of Newmex, none of ASCOOP, SPIDA or LynChris sought any representation on its board of directors or management;
 - 28.4 at the time of the sale, ASCOOP was both a significant shareholder of PPI and its President (Jean-Claude Dueby) was the chairman of PPI;
 - 28.5 despite an express requirement in the LynChris Promissory Note, LynChris refused to provide any security (on a debt in the amount of approximately \$2.5 million);
 - 28.6 PPI and Hennig posted the security on behalf of LynChris, using PPI shares as collateral;

- 28.7 PPI failed to disclose both the source and the specific nature of the security, referring to it only as marketable securities in the 1998 Financial Statements;
- 28.8 the LynChris Agreement and the LynChris Promissory Note both provided that interest was due at the end of the two year term. Despite this, at the request of Hennig, LynChris made two interest payments to PPI prior to the end of the two year term; and
- 28.9 PPI reimbursed LynChris for the escrowed shares for a price of \$1.00 plus interest, when freely trading shares were typically trading below \$1.00 per share. In the end, and as a result of the 40,000 shares provided to LynChris or its sole director as inducement for entering into the Newmex transaction, LynChris or its sole director made a profit of approximately \$80,000.

Newmex transaction – not recorded in accordance with GAAP

- 29 Staff further alleges that PPI's recognition of a gain from the Newmex transaction was contrary to GAAP and constituted a misrepresentation of its financial position as reported in the 1998 Financial Statements in that:
 - 29.1 the Newmex transaction had not occurred as of September 30, 1998, or anytime shortly thereafter;
 - 29.2 neither ASCOOP nor SPIDA assumed the risks or rewards of ownership of the Newmex shares. ASCOOP and SPIDA were assured a return of their original consideration plus 10% per annum, no more and no less, regardless of the share price at the time of the sale; and
 - 29.3 LynChris did not assume the risks or rewards of ownership. PPI neither gave up control of the Newmex shares nor intended to and in fact the Newmex shares were never transferred to LynChris.

Newmex sale - further misrepresentations

- 30 On October 16, 1998, PPI issued a press release disclosing that it had completed the disposition of all of its 4,282,875 shares of Newmex for gross proceeds of \$4,282,875. The press release also stated that the purchasers had the ability to fund the planned capital projects that Newmex had budgeted for the coming year. The press release invited the public to contact Workum or Hennig for further information.
- 31 Staff alleges that the above referenced press release was inaccurate and misleading, and therefore contrary to the public interest, in that:
 - 31.1 PPI had not disposed of its shares as represented;

- 31.2 the gross proceeds of the Newmex transaction was only \$4,082,875 as 200,000 Newmex shares were paid to Cheshire as a commission;
 - 31.3 the sale of Newmex was structured primarily for the purpose of recording a gain in its 1998 Financial Statements; and
 - 31.4 ASCOOP, SPIDA and LynChris had no intention of funding the planned capital projects of Newmex.
- 32 On or about March 12, 1999 and July 9, 1999, PPI made bids to acquire units in The Lodge at Kananaskis Limited Partnership. Attached to the March 12, 1999 offer were the 1998 Financial Statements. The July 9, 1999 offer contained extracts from the 1998 Financial Statements. The offers were filed with the Commission and provided to the unit holders. The certificates of the offeror were signed by Hennig and Workum.
- 33 On or about March 12, 1999 and July 13, 1999, PPI made bids to acquire units of The Mountain Inn at Ribbon Creek Limited Partnership. Attached to the March 12, 1999 were the 1998 Financial Statements. The July 13, 1999 offer contained extracts from the 1998 Financial Statements. The offers were filed with the Commission and provided to the unit holders. The certificates of the offeror were signed by Hennig and Workum.
- 34 Staff alleges that the distribution of the 1998 Financial Statements and extracts therefrom, to the above unit holders, with the intention, express or implied, that they could rely upon them, constituted a further misrepresentation by PPI contrary to the public interest.

1999 Financial Statements - Gain on sale of Swiss Plastering

- 35 On February 17th 2000, PPI filed with the Commission its audited consolidated financial statements for the year ended September 30, 1999 (“1999 Financial Statements”). The 1999 Financial Statements were approved by PPI’s board of directors and signed by Workum and Jean-Claude Dueby, Chairman of PPI as well as president of ASCOOP.
- 36 The consolidated statement of earnings and retained earnings included in the 1999 Financial Statements reported a “gain on [the] sale of businesses” in the amount \$6,263,594 (“Swiss Plastering transaction”).
- 37 The gain arose as a result of PPI purportedly selling its entire interest in Swiss Plastering and Interiors, Inc. (“Swiss Plastering”) to Orion Resource Corporation (“Orion”) for \$7,982,656.

- 38 Swiss Plastering was owned by EnerGCorp Inc. (“EnerGCorp”), a 94% owned subsidiary of PPI.
- 39 As of April 1996, Orion was listed on the ASE and subsequently CDNX.
- 40 As of March 1999, Workum, Hennig and PPI director, Douglas Street (“Street”) were directors of Orion. Street owned or controlled at least 51% of the outstanding common shares of Orion. Orion and PPI shared the same auditor and offices.
- 41 The sale of Swiss Plastering was agreed to in March 1999. It was anticipated that all of the existing assets of Orion would be transferred to Orion’s creditors and Swiss Plastering would then be vended into Orion. In exchange, Orion would issue to EnerGCorp approximately either 1,000,000 or 4,000,000 common shares from treasury at a post consolidation price of \$1.00 per share.
- 42 Subsequently, the terms of the Swiss Plastering transaction were amended such that the purchase and sale agreement dated September 30, 1999 provided that:
- 42.1 the purchase price would be \$8,160,000;
- 42.2 the purchase price would be payable by the issuance of 966,500 common shares of Orion valued at \$1.00 per share and representing approximately 48% of the issued and outstanding shares of Orion. In addition, Orion was to issue a secured 2 year promissory note for \$7,193,500 bearing interest at a rate of 10% per annum; and
- 42.3 it was subject to the completion of a formal purchase and sale agreement as well as shareholder, regulatory and board of directors’ approval.
- 43 The 1999 Financial Statements refer to a promissory note being received from Orion in the amount of \$7,016,156 (“Orion Promissory Note”).
- 44 The Orion Promissory Note was secured by a loan guarantee from Cofima Finanz AG (“Cofima”), identified in the 1999 Financial Statements as an independent financial institution (“Cofima guarantee”).
- 45 EnerGCorp paid Cofima approximately \$240,000 for guaranteeing the Orion Promissory Note.
- 46 By its terms, the Cofima guarantee expired two years and 30 days from September 29, 1999.
- 47 Orion was:
- 47.1 suspended by CDNX on January 24, 2000, pending regulatory approval of a number of proposed corporate changes and transactions, including the

purchase of Swiss Plastering;

- 47.2 cease traded by the Commission on February 4, 2000, for its failure to file its financial statements; and
- 47.3 delisted from CDNX as of July 4, 2001.
- 48 Orion has never issued the 966,500 shares nor did it make any interest payments on the Orion Promissory Note.
- 49 PPI's reported earnings for its 1999 fiscal year were \$6,628,943. Without recognizing the gain on the Swiss Plastering transaction, PPI's reported earnings for 1999 would have been less than \$500,000.

Swiss Plastering transaction - not bona fide

- 50 Staff alleges that the Swiss Plastering transaction was not a *bona fide* commercial transaction and that the primary or dominant purpose of the arrangement was to enable PPI to report a gain of approximately \$6.2 million in the 1999 Financial Statements. In support of its contention, Staff relies on the following:
 - 50.1 at all material times, Orion was controlled by Street, a director of PPI;
 - 50.2 as of March, 1999, Workum and Hennig were directors of Orion;
 - 50.3 Orion and PPI shared the same offices;
 - 50.4 the sale price of Swiss Plastering was substantially increased by the inclusion of the Orion Promissory Note;
 - 50.5 as of September 30, 1999, there was no duly authorized and executed Orion Promissory Note for examination by either PPI's auditors or Staff. Ultimately two different versions were produced for Staff, at least one of which was a false promissory note created by an employee of PPI;
 - 50.6 if it existed, servicing the interest on the Orion Promissory Note would utilize substantially all of Swiss Plastering's free cash flow and there would be insufficient funds to repay the principal within 2 years;
 - 50.7 as a result, it was virtually certain that Orion would default on the Orion Promissory Note and that the Cofima guarantee could be called upon; and
 - 50.8 the Cofima guarantee was not called upon until the involvement of Staff and then only approximately one month before the Cofima guarantee was to expire.

Swiss Plastering transaction - not in accordance with GAAP

- 51 Staff further alleges that PPI's recognition of a gain from the Swiss Plastering transaction was contrary to GAAP and constituted a misrepresentation of its financial position as reported in the 1999 Financial Statements in that:
- 51.1 the Swiss Plastering transaction had not taken place as of September 30, 1999 or anytime shortly thereafter as:
- 51.1.1 the conditions of the agreement of purchase of sale were not met, including the receipt of regulatory approval; and
- 51.1.2 neither EnerGCorp nor PPI had received the Orion Promissory Note or the Orion shares;
- 51.2 if, in fact, the Orion Promissory Note provided for monthly interest payments, by the time the 1999 Financial Statements were filed, Orion was already in default;
- 51.3 even if the transaction was *bona fide* and had taken place as anticipated, in order to recognize a gain under GAAP, PPI would have to demonstrate that:
- 51.3.1 it did not control Orion by virtue of its 48% ownership of the common shares, the holding of the Orion Promissory Note and the involvement of Workum, Hennig and Street; and
- 51.3.2 it was probable that the Orion Promissory Note or the Cofima guarantee was realizable.
- 51.4 PPI did not have nor maintain in its offices documentation to support its position that the Orion Promissory Note or the Cofima guarantee could be honoured. In any event, neither Orion nor Cofima could honour the Orion Promissory Note or the guarantee;
- 51.5 the maximum gain that PPI could recognize in the 1999 Financial Statements would be approximately 52% of the gain reported as that is the percentage of Swiss Plastering that PPI had in effect disposed of.

Continued Reporting of the LynChris Promissory Note in 1999

- 52 In its subsequent fiscal year, PPI continued to report the LynChris Promissory Note. The consolidated balance sheets and note 6, included in the 1999 Financial Statements reported the LynChris Promissory Note as an asset.

- 53 Staff alleges that the continued recognition of the LynChris Promissory Note represents a further breach of GAAP and a further misrepresentation for the reasons outlined above.

Swiss Plastering - further misrepresentations

- 54 On or about July 12, 2000, PPI made a bid to acquire up to 5,000,000 common shares of Prism Petroleum Inc. ("Prism"). Attached to the offer to purchase were the 1999 Financial Statements with comparative 1998 Financial Statements. The certificate of the offeror was signed by Hennig and Workum.
- 55 Staff alleges that the distribution to the Prism shareholders of the 1999 Financial Statements with comparative 1998 Financial Statements, with the intention, express or implied, that they could rely upon them, constituted a misrepresentation by PPI contrary to the public interest.

2000 Financial Statements - Gain on sale of Creative Classics and Willow Creek

- 56 On February 19, 2001, PPI filed with the Commission its audited consolidated financial statements for the year ended September 30, 2000 ("2000 Financial Statements"). The 2000 Financial Statements were approved by PPI's board of directors and signed by Workum and Jean-Claude Dueby.
- 57 The consolidated statement of earnings and retained earnings included in the 2000 Financial Statements reported a "gain on [the] sale of businesses" in the amount of \$5,612,779.
- 58 The gain arose from the alleged sale of PPI's interest (through EnerGCorp) in The Creative Classics Company ("Creative Classics") and Willow Creek Homes Inc. ("Willow Creek") to The Azterra Corporation ("TAC") for \$7,250,000 ("TAC transaction").
- 59 As of February 26, 1998, TAC was listed on the ASE and subsequently on CDNX.
- 60 PPI and TAC entered into a letter of intent regarding both companies on June 29, 2000 ("TAC letter of intent"). Among other terms, it provided that:
- 60.1 as consideration for the purchase of Willow Creek, TAC would issue 2,484,000 common shares at a deemed subscription price of \$0.03 per share, and provide a promissory note for \$425,480 with interest payable annually in the amount of 8%;
- 60.2 as consideration for the purchase of Creative Classics, TAC would issue 33,516,000 common shares at a deemed subscription price of \$0.03 per share and a promissory note for \$5,744,520, with interest payable annually in

the amount of 8% (“TAC Promissory Note”);

- 60.3 the parties would enter into a mutually satisfactory formal purchase and sale agreement;
 - 60.4 TAC would complete a satisfactory appraisal and review of Creative Classics and Willow Creek;
 - 60.5 PPI would pay Strategic Investments Fund a fee of 7% of the gross value of the shares of Willow Creek and Creative Classics;
 - 60.6 the parties would obtain all applicable governmental, regulatory, shareholder, board of directors and contractual approvals to complete the transaction, including the approval of CDNX and the TSE; and
 - 60.7 on closing, the issuance of TAC common shares would not be subject to consent, notice or other approval of any party for which the vendor or the subsidiaries have not obtained such consent, notice or approval.
- 61 Upon completion of the TAC transaction, TAC’s only assets would be Creative Classics and Willow Creek and PPI would own approximately 49% of the issued and outstanding shares of TAC.
- 62 PPI represented that the TAC Promissory Note was executed on June 30, 2000 and provided that interest was payable annually, with the principal due on June 30, 2010. In fact, the TAC Promissory Note was not executed until August 2001.
- 63 Cofima also guaranteed the TAC Promissory Note. Although the TAC Promissory Note was due on June 30, 2010, and contrary to representations included in note 7 of the 2000 Financial Statements, the guarantee provided by Cofima was allegedly executed on September 30, 2000, and only valid for 25 months from June 30, 2000.
- 64 EnerGCorp paid Cofima approximately \$172,328 for guaranteeing the TAC Promissory Note.
- 65 The TAC letter of intent was amended on December 29, 2000 and again on August 27, 2001.
- 66 The second amendment, which among other things purported to waive the conditions on closing, took place one day after four out of five directors of TAC resigned, on August 26, 2001.
- 67 TAC was:
- 67.1 halted by CDNX on September 12, 2000;

67.2 suspended by CDNX on November 26, 2001; and

67.3 cease traded by the Commission as of December 7, 2001.

68 The shares of TAC have never been issued to PPI.

69 The ASE did not give its consent to the TAC transaction.

70 PPI's reported earnings for its 2000 fiscal year were \$9,524,063. Without recognizing the gain on the sale of Creative Classics and Willow Creek, PPI's entire reported earnings for 2000 would have been less than \$5 million.

TAC transaction - not bona fide

71 Staff alleges that the TAC transaction was not a *bona fide* commercial transaction and that the primary or dominant purpose of the TAC transaction was to enable PPI to report a gain of approximately \$9.5 million in the 2000 Financial Statements. In support of its contention, Staff relies on the following:

71.1 the interest rate on the TAC Promissory Note was not reflective of market rates of interest for such notes;

71.2 neither Creative Classics nor Willow Creek had the financial capacity to service the interest payments on the TAC Promissory Note;

71.3 the guarantee was valid for only 2 years even though the TAC Promissory Note was not due for 10 years; and

71.4 Cofima paid out on the Cofima guarantee when it was not clear that it was obligated to do so.

TAC transaction - not recorded in accordance with GAAP

72 Staff further alleges that PPI's recognition of a gain from the alleged sale of Creative Classics and Willow Creek was contrary to GAAP and constituted a misrepresentation in its financial position in that:

72.1 the TAC transaction had not taken place as of September 30, 2000 or anytime thereafter as:

72.1.1 the conditions of the sale were not met including the receipt of regulatory approval; and

72.1.2 neither EnerGCorp nor PPI received the TAC shares;

72.2 even if the TAC transaction was *bona fide* and had taken place September 30,

2000 or shortly thereafter, in order to recognize a gain under GAAP, PPI would have to demonstrate that:

72.2.1 it did not control TAC by virtue of its 49% ownership of the common shares and the holding of the TAC Promissory Note; and

72.2.2 that it was probable that the TAC Promissory Note or the Cofima guarantee was realizable;

72.2(a) In fact, neither Azterra nor Cofima could honour the TAC Promissory Note or guarantee;

72.3 In any event, the maximum gain that PPI could recognize in the 2000 Financial Statements would be approximately 51% of the gain reported as that is the percentage of Creative Classics and Willow Creek that PPI would have in effect disposed of; and

72.4 Finally, TAC reported that the Creative Classics and Willow Creek transactions were pending and had not yet closed in note 17 of its audited financial statements for the year ending December 31, 2000 and in its interim financial statements for the quarter ending March 31, 2001.

Continued Reporting on the Orion Promissory Note in 2000

73 In its subsequent fiscal year, PPI continued to report the Orion Promissory Note. The consolidated balance sheets and note 7 included in the 2000 Financial Statements reported the Orion Promissory Note as an asset for the 2000 fiscal year.

74 Staff alleges that the continued recognition of the Orion Promissory Note represents a further breach of GAAP and misrepresentation in the 2000 Financial Statements.

TAC transaction - further misrepresentations

75 On or about May 14, 2001, PPI made a bid to acquire the outstanding common shares of Ventra Group Inc. ("Ventra") Incorporated by reference in PPI's take over bid circular were the 2000 Financial Statements with comparative statements for 1999. The circular was provided to the Ventra shareholders and the certificate of the offeror was signed by Hennig and Workum.

76 Staff alleges that the distribution of the circular to the shareholders, with the intention, express or implied, that they could rely upon them constituted a misrepresentation by PPI contrary to the public interest.

Misrepresentations

- 77 In or about June 2001, in response to an application brought by Ventra, PPI provided Staff of the Ontario Securities Commission with a copy of the Orion Promissory Note containing Hennig's signature. PPI knew or ought to have known that the document was not authentic.
- 78 Further, in or about July 2001, PPI advised Staff that the Orion Promissory Note had been issued as of September 30, 1999. Staff alleges that Orion had not issued the Orion Promissory Note as of September 30, 1999.
- 78.1 Workum and Hennig represented to Staff that the TAC Promissory Note was executed June 30, 2000, when in fact it was not executed until August 2001.
- 78.2 Workum and Hennig represented that Cofima was an independent financial institution when in fact Cofima was not independent of PPI, Workum and Hennig.
- 78.3 Hennig represented that the risks and rewards of ownership had been transferred in the Newmex transaction when this in fact was not accurate.
- 78.4 Hennig represented that the Newmex share certificates had been issued in the name of LynChris when in fact they had not.
- 78.5 Hennig represented that all parties to the Newmex transaction had conducted themselves in accordance with the purchase and sale agreements but in fact all parties conducted themselves in accordance with agreements not disclosed.
- 78.6 Hennig represented that KPMG had supported PPI's accounting treatment of the three transactions when in fact KPMG did not support PPI's treatment of the Orion or TAC transactions, nor did it have full knowledge of the agreements in the Newmex transaction.
- 79 In addition, in or about August 2001, Hennig advised Staff that LynChris had posted security for the LynChris Promissory Note when he knew that this was not accurate.
- 80 Finally, PPI advised Staff that as of the date of the Swiss Plastering and TAC transactions, the Cofima guarantees were reinsured by an affiliated company Gruppo Triad-FCC, SPA, an entity located in Panama City, Panama. Staff alleges that the reinsurance did not take place until the summer of 2001, if at all.
- 81 Further, the reinsurance was not disclosed in the 1999 Financial Statements or the 2000 Financial Statements.
- 82 Staff submits the above misrepresentations were contrary to subsection 194(1)(a) of the Act and contrary to the public interest.

