

ALBERTA SECURITIES COMMISSION

AMENDED NOTICE OF HEARING

Citation: Malsbury Investment Corporation, Re, 2008 ABASC 672

Date: 20081201

Docket: E/03688

Securities Act, R.S.A. 2000, c. S-4 (Act)

To: Malsbury Investment Corporation and Shayne Lorne Malsbury

Notice: The Alberta Securities Commission (Commission) will convene at 8:30 a.m. on Friday, the 23rd day of January 2009, to set a date for a hearing in Calgary, or elsewhere, of the allegations in this Notice and to deal with any preliminary matters. At the hearing, the Commission will consider whether it is in the public interest to order:

- (i) Under subsections 198(1)(a) and (b) of the *Act*, that you cease trading in or purchasing any securities or specified securities;
- (ii) Under section 198(1)(c) of the *Act*, that any or all of the exemptions contained in the Alberta securities laws do not apply to you;
- (iii) Under sections 198(1)(d) and (e) of the *Act*, that you resign one or more positions that you hold as a director or officer of any issuer, and that you be prohibited from becoming or acting as such;
- (iv) Under section 198(1)(i) of the *Act*, that you pay to the Commission any amounts obtained or payments or losses avoided as a result of your non-compliance with the Alberta securities laws;
- (v) Under section 199 of the *Act*, that you pay an administrative penalty to the Commission;
- (vi) Under sections 202(1) and (2) of the *Act*, that you pay the costs of the investigation and hearing to the Commission; and
- (vii) Such other order as may be appropriate under sections 198, 199 and 202 of the *Act*.

Location: Alberta Securities Commission, 6th Floor, 300 – 5th Avenue SW, Calgary, Alberta.

Procedure: 1. You may obtain disclosure and particulars of the allegations in this Notice from Shannon Hindmarch, c/o Alberta Securities Commission, 4th Floor,

300 - 5 Avenue SW, Calgary, Alberta, T2P 3C4, telephone 403.297.2524.

2. You may be represented by legal counsel and you or your counsel may make representations and introduce relevant evidence at the hearing.

3. If you or your counsel fail to attend on Friday the 23rd day of January, 2009, at 8:30 a.m., or as directed, the hearing may proceed in your absence and an order may be made against you without further notice.

See also section 29 of the Act.

Allegations

Summary of Breaches

1 Staff of the Commission (**Staff**) alleges that Shayne Lorne Malsbury (**Malsbury**) and Malsbury Investment Corporation (**MIC**) engaged in an illegal distribution of securities of MIC to Alberta residents and thereby acted contrary to the public interest.

Parties

2 Malsbury is a resident of Calgary, Alberta, and was at all material times the President and sole shareholder and director of MIC.

3 MIC is an Alberta corporation, based in Calgary, and is promoted by Malsbury as being involved with real estate projects in Alberta.

4 Neither Malsbury nor MIC has ever been registered in any capacity under the *Act* with the Executive Director of the Commission (**Executive Director**).

Circumstances

5 From 2006 to 2008, Malsbury, on behalf of MIC, solicited Albertans to invest in MIC promissory notes, with representations of yearly interest payments of up to 50%. Approximately 171 Alberta investors contributed over \$12 million to MIC through these notes.

6 Staff alleges that the promissory notes are securities as defined in the *Act*, and that the sales of securities of MIC were trades as defined in the *Act*. As trades in the securities of an issuer that had not previously been issued, the sales of securities of MIC were distributions as defined in the *Act*.

7 At no time did either of the Respondents file with the Commission and receive a receipt for a preliminary and final prospectus, and Staff alleges there were no appropriate exemptions for some or all of these trades.

8 In September 2007, Malsbury was advised by legal counsel not to accept any further investments in MIC until the Commission's concerns were resolved. Malsbury accepted investments in MIC after September 2007 from at least 7 investors.

9 In March 2008, Staff alleges that Malsbury falsely advised at least 6 investors that one of the reasons he had not yet paid them back is that the Commission had "frozen" his assets. This statement is untrue.

Breaches

10 As a result of the above, Staff alleges that the Respondents:

10.1 breached subsection 75(1)(a) of the *Act* by trading in securities of MIC without registration; and

10.2 breached subsection 110(1) of the *Act* by engaging in a distribution of securities of MIC without filing a prospectus or relying on an appropriate exemption.

11 Staff further alleges that Malsbury breached subsection 92(4.1) by making untrue representations that the Commission had frozen his assets.

12 Staff alleges that the failure of the Respondents to comply with the registration and prospectus requirements of the *Act*, and the untrue statements made by Malsbury that the Commission had frozen his assets, amounts to conduct that was contrary to the public interest.

Calgary, Alberta, 1st of December 2008.

) ALBERTA SECURITIES COMMISSION
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) "*Original Signed By*"

) David C. Linder
) Executive Director