

JESSE LASLOVICH  
BRETT O'NEIL  
Office of the Commissioner of Securities and Insurance  
Montana State Auditor  
840 Helena Avenue  
Helena, MT 59601  
406-444-2040

Attorneys for the CSI

**BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE  
MONTANA STATE AUDITOR**

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IN THE MATTER OF:	)	CASE NO.	SEC-2013-56
	)		
	)		
HIGHLANDER HOLDINGS, LLC,	)	<b>NOTICE OF PROPOSED AGENCY</b>	
STIRLING RECLAMATION, LLC, and	)	<b>ACTION AND OPPORTUNITY FOR</b>	
MORNING STAR MINING COMPANY,	)	<b>HEARING</b>	
LLC.	)		
	)		
	)		
Respondents.	)		
	)		

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Staff of the Office of the Commissioner of Securities and Insurance, Montana State Auditor (CSI), pursuant to the authority of the Securities Act of Montana, Mont. Code Ann. § 30-10-101 et seq. (Act), is proposing to the Commissioner of Securities and Insurance, Montana State Auditor (Commissioner), that she take specific action against Highlander Holdings, LLC, Stirling Reclamation, LLC, and Morning Star Mining Company, LLC (collectively; Respondents) for violations of the Act. The Commissioner has authority to take such action under §§ 30-10-102, 30-10-103, 30-10-107, 30-10-110, 30-10-301, 30-10-304, 30-10-305, and 30-10-309. Service of process is pursuant to § 30-10-107(8).

## **REASONS FOR ACTION**

There is probable cause to believe that the following facts, if true, justify and support such specific action. Furthermore, there is reason to believe that the following facts will be proven true, and, therefore, justify and support the relief requested.

## **ALLEGATIONS OF FACT**

1. On March 29, 2012, the CSI received an investor complaint concerning Highlander Holdings, LLC (Highlander), Stirling Reclamation, LLC (Stirling), and Morning Star Mining, LLC (Morning Star);
2. A CSI investigation revealed that Respondents were part of an investment model based on the exploration of properties in Idaho containing legacy mining claims.
3. Approximately 63.75 Highlander units were sold to investors into and out of Montana. An investment in a Highlander unit resulted in the investor receiving equal shares in Morning Star and Stirling. A Highlander unit was a share in the company, but investors oftentimes paid differing amounts for their investment as compared to other investors. Investors invested an aggregate of \$4,819,167 for their ownership in Respondents' companies, for an average investment of \$75,594 per unit.
4. Investors were told their investment proceeds would directly benefit Highlander and Morning Star. Each investor, respectively, signed an agreement to that effect.
5. Highlander's Operating Agreement prohibited the sale of units without registration.
6. Respondents' units were never registered with the CSI or with the Securities and Exchange Commission (SEC), nor were they exempt from registration under Regulation D of the Securities Act of 1933.

7. Investor money did not go directly to Highlander, but was instead funneled through Highlander's president Robert McKay, and, in most cases, given to Highlander as a loan. This arrangement was not disclosed to investors.

8. Highlander investors received neither a prospectus nor the requisite disclosure information, including Respondents' business and properties, offering price factors, use of proceeds, capitalization, description of securities, plan of distribution, ongoing and potential litigation, federal and state tax aspects, financial statements, and dilution.

### **CONCLUSIONS OF LAW**

1. The Commissioner has jurisdiction over this matter pursuant to § 30-10-101 et seq.
2. A "person" is an individual, a corporation, a partnership, or an association. § 30-10-103(16).
3. Respondents are all persons.
4. A security is any note, debenture, evidence of indebtedness, investment contract, or certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under a title or lease, or any interest or instrument commonly known as a security. § 30-10-103(22).
5. Highlander, Morning Star and Stirling units are securities.
6. An issuer is any person who issues or proposes to issue a security. § 30-10-103(13).
7. Highlander, Morning Star and Stirling issued securities in, into and from Montana.
8. It is unlawful for any person, in connection with the sale of a security in, into or from the state of Montana, to engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person. § 30-10-301(1)(c).

9. It is fraudulent to engage in conduct such as nondisclosure, incomplete disclosure or misstatement of material facts. Admin R. Mont. 6.10.401(g).

10. Highlander issued securities which operated as a fraud or deceit when its issuing documents contained contradictory information and when it did not include the requisite disclosure information.

### **RELIEF REQUESTED**

WHEREFORE, the CSI seeks the following relief:

1. Pursuant to § 30-10-305, imposition of a fine not to exceed \$5,000 for each identifiable violation of the Act.
2. Pursuant to § 30-10-309, restitution for all financial losses incurred by investors in Respondents' enterprises. In the event funds are unavailable, an order granting equitable ownership of Respondents' assets commensurate with paid-in capital.
3. Any other relief deemed just and proper.

### **STATEMENT OF RIGHTS**

You are entitled to a hearing to respond to this notice, and to present evidence and arguments on all issues involved in this case. You have a right to be represented by an attorney at any and all stages of this proceeding. You may demand a formal hearing before a hearing examiner appointed by the Commissioner pursuant to the Montana Administrative Procedure Act, § 2-4-601 et seq., including § 2-4-631. If you demand a hearing, you will be given notice of the time, place, and the nature of the hearing.

If you wish to contest the proposed action under the jurisdiction of the Commissioner, you must advise the Commissioner within 15 days of the date you receive this notice. You must advise the Commissioner of your intent to contest the proposed action by writing to

Brett O’Neil, Office of the Commissioner of Securities and Insurance, Montana State Auditor, 840 Helena Avenue, Helena, Montana 59601. Your letter must clearly indicate whether you demand a hearing, or whether you waive formal proceedings and, if so, what informal proceedings you prefer for disposition of this case. Should you request a hearing on the matters raised in this Notice, a hearing must be held within a reasonable period of time unless postponed by mutual consent of the parties, pursuant to § 30-10-305.

Should you request a hearing, you have the right to be accompanied, represented, and advised by counsel. If the counsel you choose has not been admitted to practice law in the state of Montana, he or she must comply with the requirements of *Application of American Smelting and Refining Co.* (1973), 164 Mont. 139, 520 P.2d 103, and *Montana Supreme Court Commission on the Unauthorized Practice of Law v. O’Neil*, 2006 MT 284, 334 Mont. 311, 147 P.3d 200.

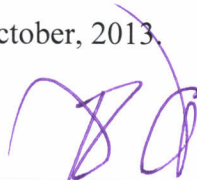
#### **CONTACT WITH COMMISSIONER’S OFFICE**

If you have questions or wish to discuss this matter, please contact Jesse Laslovich or Brett O’Neil, legal counsel for the CSI, at 840 Helena Avenue, Helena, MT, 59601, 406-444-2040. If you retain counsel, please make any contacts with this office through your attorney.

#### **POSSIBILITY OF DEFAULT**

Failure to give notice or to advise of your demand for a hearing or informal procedure within 15 days will result in the entry of a default order imposing the disciplinary sanctions against you without further notice to you, pursuant to Mont. Admin. R. 6.2.101, and the Attorney General’s Model Rule 10, Mont. Admin. R. 1.3.214.

DATED this 29<sup>th</sup> day of October, 2013.



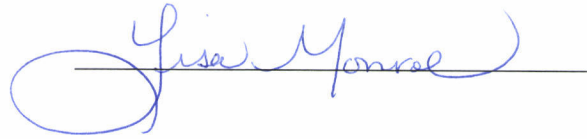
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JESSE LASLOVICH  
BRETT O'NEIL  
Attorney for the CSI

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing was sent to Respondents on the 29<sup>th</sup> day of October, 2013, by certified mail, to the following:

Mark Bryan  
11 East Main Street, Suite D  
Bozeman, MT 59715

A handwritten signature in blue ink, reading "Lisa Monroe", is written over a horizontal line. The signature is cursive and includes a large, stylized initial "L".