



Ontario  
Securities  
Commission

Commission des  
valeurs mobilières  
de l'Ontario

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20 Queen Street West  
Toronto ON M5H 3S8

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20, rue queen ouest  
Toronto ON M5H 3S8

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**FILE NO.:** 2018-76

**IN THE MATTER OF  
KATANGA MINING LIMITED, ARISTOTELIS MISTAKIDIS,  
TIM HENDERSON, LIAM GALLAGHER, JEFFREY BEST,  
JOHNNY BLIZZARD, JACQUES LUBBE and MATTHEW COLWILL**

Timothy Moseley, Vice-Chair and Chair of the Panel  
M. Cecilia Williams, Commissioner  
Lawrence P. Haber, Commissioner

December 18, 2018

**ORDER**

(Subsection 127(1) and section 127.1 of the  
*Securities Act*, RSO 1990, c S.5)

WHEREAS on December 18, 2018, the Ontario Securities Commission held a hearing at the offices of the Commission, located at 20 Queen Street West, 17th Floor, Toronto, Ontario, to consider the Joint Request for a Settlement Hearing filed by Katanga Mining Limited ("**Katanga**"), Aristotelis Mistakidis ("**Mistakidis**"), Tim Henderson ("**Henderson**"), Liam Gallagher ("**Gallagher**"), Jeffrey Best ("**Best**"), Johnny Blizzard ("**Blizzard**"), Jacques Lubbe ("**Lubbe**"), Matthew Colwill ("**Colwill**") and Staff of the Commission ("**Staff**") for approval of a settlement agreement dated December 14, 2018 (the "**Settlement Agreement**");

ON READING the Statement of Allegations dated December 14, 2018 and the Settlement Agreement and on hearing the submissions of representatives of each of the parties, and on considering Katanga's having made a voluntary payment of \$28,500,000 to the Commission, and having paid costs in the amount of \$1,500,000 to the Commission;

IT IS ORDERED THAT:

1. the Settlement Agreement is approved;
2. the voluntary payment of \$28,500,000 made by Katanga is designated for allocation or use by the Commission in accordance with subclause 3.4(2)(b)(i) or (ii) of the *Securities Act*, RSO 1990, c S.5 (the **Act**);
3. Katanga shall submit to a review of its practices and procedures pursuant to paragraph 4 of subsection 127(1) of the Act by an independent consultant agreed to by Staff and Katanga and paid for by Katanga, as set out in Schedule "A" to this Order, and if necessary, Katanga or Staff, as the case may be, may file a motion

requesting the further direction of the Commission, as contemplated in paragraphs B(iv) and C(i) of Schedule "A" to this Order;

4. Mistakidis shall:
  - a. be prohibited from becoming or acting as a director or officer of any reporting issuer for a period of 4 years commencing on the date of this Order, pursuant to paragraph 8 of subsection 127(1) of the Act;
  - b. pay an administrative penalty in the amount of \$2,450,000 by wire transfer to the Commission within 30 days of the date of this Order, pursuant to paragraph 9 of subsection 127(1) of the Act, which amount is designated for allocation or use by the Commission in accordance with subclause 3.4(2)(b)(i) or (ii) of the Act; and
  - c. pay costs in the amount of \$50,000 by wire transfer to the Commission within 30 days of the date of this Order, pursuant to section 127.1 of the Act;
5. Henderson shall:
  - a. be prohibited from becoming or acting as a director or officer of any reporting issuer for a period of 3 years commencing on the date of this Order, pursuant to paragraph 8 of subsection 127(1) of the Act;
  - b. pay an administrative penalty in the amount of \$450,000 by wire transfer to the Commission within 30 days of the date of this Order, pursuant to paragraph 9 of subsection 127(1) of the Act, which amount is designated for allocation or use by the Commission in accordance with subclause 3.4(2)(b)(i) or (ii) of the Act; and
  - c. pay costs in the amount of \$50,000 by wire transfer to the Commission within 30 days of the date of this Order, pursuant to section 127.1 of the Act;
6. Gallagher shall:
  - a. be prohibited from becoming or acting as a director or officer of any reporting issuer for a period of 6 years commencing on the date of this Order, pursuant to paragraph 8 of subsection 127(1) of the Act;
  - b. pay an administrative penalty in the amount of \$950,000 by wire transfer to the Commission within 30 days of the date of this Order, pursuant to paragraph 9 of subsection 127(1) of the Act, which amount is designated for allocation or use by the Commission in accordance with subclause 3.4(2)(b)(i) or (ii) of the Act; and
  - c. pay costs in the amount of \$50,000 by wire transfer to the Commission within 30 days of the date of this Order, pursuant to section 127.1 of the Act;
7. Best shall:
  - a. be prohibited from becoming or acting as a director or officer of any reporting issuer for a period of 4 years commencing on the date of this Order, pursuant to paragraph 8 of subsection 127(1) of the Act;
  - b. pay an administrative penalty in the amount of \$750,000 by wire transfer to the Commission within 30 days of the date of this Order, pursuant to paragraph 9 of subsection 127(1) of the Act, which amount is designated for allocation or use by the Commission in accordance with subclause 3.4(2)(b)(i) or (ii) of the Act; and
  - c. pay costs in the amount of \$50,000 by wire transfer to the Commission within 30 days of the date of this Order, pursuant to section 127.1 of the Act;

8. Blizzard shall:
- a. resign any position that he holds as a director or officer of a reporting issuer, pursuant to paragraph 7 of subsection 127(1) of the Act, with the exception that Blizzard may hold the position of the CEO of Katanga for a transition period of 30 days from the date of this Order, provided that he has no role in approving or certifying Katanga's 2018 annual financial statements or Management's Discussion & Analysis, after which period Blizzard shall immediately resign as the CEO of Katanga;
  - b. be prohibited from becoming or acting as a director or officer of any reporting issuer for a period of 2 years commencing on the date of this Order, pursuant to paragraph 8 of subsection 127(1) of the Act, with the exception that Blizzard may:
    - i. hold the position of the CEO of Katanga for a period of 30 days from the date of this Order as set out above in subparagraph 8(a); and
    - ii. hold the position of Director of Operations with Katanga for a period of 90 days from the date of his resignation as the CEO of Katanga, provided that Blizzard shall not, directly or indirectly:
      - A. appoint officers or nominate directors of Katanga;
      - B. provide instructions or direction to any legal or financial advisors of Katanga, including its external auditor;
      - C. have signing authority for Katanga, other than the authority to sign such invoices as may be required as part of his role as the Director of Operations;
      - D. participate in any decisions relating to the compensation of management of Katanga;
      - E. participate in any decisions of management or the board of directors of Katanga in relation to: (i) financial reporting; (ii) compliance with any obligations that may be applicable to Katanga under Ontario securities law; and (iii) preparation of any disclosure, filing or other document(s) required to be submitted or filed by Katanga under Ontario securities law except as required by law or in respect of any disclosure describing Blizzard personally or describing his relationship to Katanga;
      - F. play any role (other than as an investor) in the raising of financing by, or the solicitation of investments in Katanga; and
      - G. participate in any meeting of the board of Katanga or any committee of the board, unless specifically invited to attend by the independent directors;
  - c. pay an administrative penalty in the amount of \$400,000 by wire transfer to the Commission within 30 days of the date of this Order, pursuant to paragraph 9 of subsection 127(1) of the Act, which amount is designated for allocation or use by the Commission in accordance with subclause 3.4(2)(b)(i) or (ii) of the Act; and
  - d. pay costs in the amount of \$50,000 by wire transfer to the Commission within 30 days of the date of this Order, pursuant to section 127.1 of the Act;

9. Lubbe shall:
- a. be prohibited from becoming or acting as a director or officer of any reporting issuer for a period of 4 years commencing on the date of this Order, pursuant to paragraph 8 of subsection 127(1) of the Act;
  - b. pay an administrative penalty in the amount of \$550,000 by wire transfer to the Commission within 30 days of the date of this Order, pursuant to paragraph 9 of subsection 127(1) of the Act, which amount is designated for allocation or use by the Commission in accordance with subclause 3.4(2)(b)(i) or (ii) of the Act; and
  - c. pay costs in the amount of \$50,000 by wire transfer to the Commission within 30 days of the date of this Order, pursuant to section 127.1 of the Act; and
10. Colwill shall:
- a. be prohibited from becoming or acting as a director or officer of any reporting issuer for a period of 2 years commencing on the date of this Order, pursuant to paragraph 8 of subsection 127(1) of the Act;
  - b. pay an administrative penalty in the amount of \$350,000 by wire transfer to the Commission within 30 days of the date of this Order, pursuant to paragraph 9 of subsection 127(1) of the Act, which amount is designated for allocation or use by the Commission in accordance with subclause 3.4(2)(b)(i) or (ii) of the Act; and
  - c. pay costs in the amount of \$50,000 by wire transfer to the Commission within 30 days of the date of this Order, pursuant to section 127.1 of the Act.

*"Timothy Moseley"*

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Timothy Moseley

*"M. Cecilia Williams"*

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M. Cecilia Williams

*"Lawrence P. Haber"*

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Lawrence P. Haber

**SCHEDULE "A"**

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**TERMS OF REFERENCE FOR THE CONSULTANT**

In connection with Katanga's agreement to submit to a review of its practices and procedures pursuant to paragraph 4 of subsection 127(1) of the Act by an independent consultant (the "**Consultant**"), the Consultant is required to conduct, in accordance with the following terms, a comprehensive examination and review of Katanga's metal accounting with respect to reporting of copper and cobalt metal production ("**Production**").

A. Scope of Review

The agreement with the Consultant shall provide that the Consultant examine at Katanga's expense:

- i. The policies, procedures and effectiveness of: (a) Katanga's metal accounting with respect to reporting of Production; and (b) Katanga's financial accounting with respect to the integration of production statistics, including the calculation of cost of sales and inventory values; and
- ii. In light of the findings with respect to A.i, whether any consequential changes directly related to such metal accounting or related financial accounting should be made in the policies and procedures followed by Katanga to prepare the disclosure documents filed by it to satisfy Ontario securities law requirements applicable to reporting issuers.

B. Consultant's Reporting Obligations

- i. The Consultant shall issue a report to Katanga's board of directors, its audit committee, and to Staff within three months of appointment, provided however, that the Consultant may seek to extend the period of review for one additional three-month term by requesting such an extension from Staff. After consultation with

Katanga, Staff shall have discretion to grant such extension for the period requested if deemed reasonable and warranted.

- ii. The Consultant's report shall address the Consultant's review of the areas specified in paragraphs A.i and A.ii above and shall include a description of the review performed, the conclusions reached, and the Consultant's recommendations for any changes or improvements, having regard to Katanga's size, industry and shareholder structure, and to best practices. In addition, any recommendation for changes or improvements shall be accompanied by a recommended procedural change which shall take into account any relevant remediation proposals put forward by Katanga.
- iii. Katanga shall adopt all recommendations contained in the Consultant's report, provided, however, that within forty-five days of its receipt of the report, Katanga shall, in writing, advise the Consultant and Staff of any recommendation that it considers to be unnecessary, unworkable or otherwise inappropriate. With respect to any recommendation that Katanga considers unnecessary, unworkable or otherwise inappropriate, Katanga need not adopt that recommendation at that time but shall explain in writing why the recommendation is unnecessary or propose in writing to the Consultant an alternative policy, procedure, or system designed to achieve the same objective or purpose on a basis that is workable and appropriate, for consideration by the Consultant.
- iv. As to any recommendations of the Consultant with respect to which Katanga and the Consultant do not agree, including any recommendations that Katanga considers unnecessary, unworkable or otherwise inappropriate, such parties shall attempt in good faith to reach an agreement within ninety days of the receipt of the Consultant's report. In the event Katanga and the Consultant are unable to agree on an alternative proposal, Katanga shall file a motion, on notice to Staff, asking the Commission to resolve the disagreement.
- v. Katanga shall retain the Consultant for a period of twelve months from the date of appointment in accordance with paragraph C below. After the Consultant's recommendations become final pursuant to this paragraph B, the Consultant shall provide a report to Katanga's board of directors, its audit committee, and to Staff twelve months after appointment concerning the progress of the implementation. If, at the conclusion of this twelve-month period, there remain any recommendations deemed significant by Staff that have not been substantially implemented for at least

two successive fiscal quarters, Staff may, in its discretion, direct Katanga to extend the Consultant's term of appointment until such time as all recommendations (to the extent deemed significant by Staff) have been substantially implemented for at least two successive fiscal quarters.

- vi. In addition to the reports identified above, the Consultant shall provide Katanga's board of directors, its audit committee, and Staff with such documents or other information concerning the areas specified in paragraph A.i and A.ii above as any of them may request during the pendency or at the conclusion of the review.

### C. Terms of Consultant's Retention

- i. Within forty-five days after the date of the Order, Katanga will submit to Staff a proposal setting forth the identity, qualifications, and proposed terms of retention of the Consultant. Staff, within thirty days of such notice, will either: (a) deem Katanga's choice of Consultant and proposed terms of retention not unacceptable; or (b) require Katanga to propose an alternative Consultant and/or revised proposed terms of retention within fifteen days. If the alternative Consultant and/or revised proposed terms of retention is unacceptable to Staff, Staff may (a) grant Katanga an extension of time to propose a further alternative Consultant and/or revised proposed terms of retention or, if no such extension is granted, (b) file a motion with the Commission on notice to Katanga for an order directing Katanga to appoint a Consultant nominated by Staff, on terms of retention that are proposed by Katanga and are not unacceptable to Staff.
- ii. The Consultant shall have reasonable access to all of Katanga's books and records including those of KCC and the ability to meet privately with Katanga's personnel and auditors pertaining to policies, procedures and accounting related to its metal accounting. Katanga shall instruct and otherwise encourage its officers, directors, and employees to cooperate fully with the review conducted by the Consultant, and inform its officers, directors, and employees that failure to cooperate with the review may be grounds for dismissal, other disciplinary actions, or other appropriate actions.
- iii. The Consultant shall have the right, as reasonable and necessary in his or her judgment but only after consultation with Katanga, to retain, at Katanga's expense, legal counsel, accountants, and other persons or firms, other than officers, directors,

or employees of Katanga, where necessary for the discharge of the Consultant's obligations. Katanga shall pay all reasonable fees and expenses (as reasonably documented) of any persons or firms retained by the Consultant.

- iv. The Consultant shall make and keep notes of interviews conducted, and keep a copy of documents gathered, in connection with the performance of his or her responsibilities, and require all persons and firms retained to assist the Consultant to do so as well.
- v. If the Consultant determines that he or she has a conflict with respect to one or more of the areas described in paragraph A.i or A.ii above, he or she shall delegate his or her responsibilities with respect to that subject to a person who is chosen by the Consultant and who is not unacceptable to Staff.