

August 23, 2023

**Sent By Email**

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**Attention: The Commission Hearing Office**

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Our reference  
1001255447

Your reference

**NorthWest Copper Corp. – Notice of Application under s. 114 of the *Securities Act***

We are counsel to NorthWest Copper Corp. (the **Company**).

On May 23, 2023, Grant Sawiak, a shareholder of the Company, issued a public notice announcing his intention to propose a new slate of directors for the Company. We write to request an urgent hearing to address issues in respect of Mr. Sawiak's proxy solicitation, described below, pursuant to s. 114 of the British Columbia *Securities Act*.

The Company has reason to believe that Mr. Sawiak is acting jointly or in concert with other shareholders, including but not limited to Tony Ianno and John Kimmel. As joint actors, these individuals collectively own more than 10% of the Company's issued and outstanding common shares. Despite their collective share ownership, these joint actors have failed to comply with the early warning requirements of NI 62-103 and NI 62-104.

The Company is concerned that the joint actors have put forward Mr. Sawiak as the face of their efforts in order to conceal the identities of the rest of the group. Most notably, Mr. Ianno has a history of securities law infringements that the joint actors would be keen to keep hidden from other shareholders. As a consequence of the joint actor's deliberate flouting of NI 62-103 and NI 62-104, neither the Company's shareholders nor the market at large have the information they are entitled to have regarding Mr. Sawiak's solicitations.

**Background**

The Company is incorporated pursuant to the British Columbia *Business Corporations Act* and headquartered in Vancouver. Its shares are traded on the TSX-V under the symbol "NWST". The Company acquires and explores for mineral properties in Canada. The Company has 190,177,280 million shares outstanding.

On April 14, 2023, the Company filed a Notice of Meeting and Record Date. The meeting was to be held on June 23, 2023 with a record date of May 10, 2023.

**Mr. Sawiak Begins his Solicitation**

On May 19, 2023, Mr. Sawiak sent a Nominating Shareholder's Notice to the Company indicating that he proposed to nominate a slate of directors at the June 23, 2023 meeting pursuant to the advance notice provisions of the Company's articles. On May 22, 2023, Mr. Sawiak sent a revised Nomination Shareholder's Notice to the Company. Neither of these submissions made any reference to Mr. Sawiak working in concert with other shareholders. In fact, the notice specifically states that "The Nominating Shareholder is not acting jointly or in concert with any other person or company in connection with the foregoing."

On May 23, 2023, Mr. Sawiak issued a press release stating that the “Concerned shareholder Grant Sawiak has announced a competing directors’ slate for election at the upcoming June 23 annual meeting (the “Meeting”) nominated in accordance with section 4.12 of NWST’s articles.” The press release makes no mention of any other shareholders that Mr. Sawiak is working in concert with.

On May 29, 2023, the Company issued a press release postponing the meeting from June 23, 2023 to September 6, 2023 to allow for appropriate considerations of the disclosure made by Mr. Sawiak.

On May 29, 2023, counsel to the Company wrote to Mr. Sawiak’s counsel with respect to issues with Mr. Sawiak’s solicitation. Specifically, the Company’s counsel noted that it had reason to believe that Mr. Sawiak was acting jointly with other shareholders, including but not limited to Mr. Ianno and Mr. Kimmel, and that Mr. Sawiak had failed to disclose this fact.

On June 6, 2023, Mr. Sawiak’s counsel responded. Notably, Mr. Sawiak did not deny that he was acting jointly with Mr. Ianno, Mr. Kimmel or others. Instead, Mr. Sawiak opined that the Company couldn’t prove that he was acting jointly with these individuals, and insisted that the onus was on the Company to marshal such proof.

On June 16, 2023, the Company’s counsel wrote to Mr. Sawiak’s counsel, reminding Mr. Sawiak that he is legally obligated to disclose other shareholders with whom he is acting jointly so that the Company’s shareholders are properly informed. The issue is not one of proof, but of positive disclosure obligations.

On July 28, 2023, the Company filed a new Notice of Meeting and Record Date, reflecting the meeting date of September 6, 2023, with a record date of August 4, 2023.

On August 4, 2023, Mr. Sawiak re-submitted his Nominating Shareholder’s Notice. The notice was changed in one key respect. It now stated: “Except as disclosed below, the Nominating Shareholder is not acting jointly or in concert with any other person or company in connection with the foregoing.” Under the “Costs of Solicitation” section of the notice, Mr. Sawiak now revealed that “The cost of any solicitation in respect of the Nominees will be borne by the Nominating Shareholder and Mr. John Kimmel.” The notice made no reference to any other joint actors.

The same day, Mr. Sawiak issued a press release regarding his re-submitted Nominating Shareholder’s Notice. Despite the indication in the re-submitted Nominating Shareholder’s Notice that Mr. Kimmel would be participating in the costs of the solicitation, Mr. Sawiak’s press release implied that he was covering the costs of the solicitation himself: “The Concerned Shareholder has engaged Shorecrest Group Ltd. to act as proxy solicitor in respect of this matter and will incur expenses of up to \$120K plus out of pocket expenses.”

On August 8, 2023, the Company issued a press release announcing that the meeting would be rescheduled to September 19, 2023, following receipt of Mr. Sawiak’s revised Nominating Shareholder’s Notice which for the first time disclosed that Mr. Kimmel was jointly funding the solicitation. On the same day, the Company filed a Notice of Meeting and Record Date. The record date for the meeting was unchanged from August 4, 2023.

On August 11, 2023, the Company’s counsel wrote to Mr. Sawiak’s counsel explaining that despite prior communications on the matter, Mr. Sawiak had failed to properly disclose that he is acting jointly with others in his efforts to reconstitute the Company’s board and given that these joint actors’ shareholdings collectively exceed 10% of the Company’s outstanding common shares, they were required by s. 5.2(1) of National Instrument 62-104 to promptly issue a news release alerting shareholders and the market to the fact that they controlled more than 10% of the Company’s common shares, as well as to file an early warning report.

On August 14, 2023, Mr. Sawiak's counsel responded in the same manner as it had before: Mr. Sawiak did not deny acting jointly with Mr. Ianno or any others, but again asserted that the Company bore the burden to prove that Mr. Sawiak was working jointly with others.

Mr. Sawiak's refusal to make proper disclosure, while refraining from denying the truth of the Company's concerns, forces the Company to seek relief from the British Columbia Securities Commission in order to rectify Mr. Sawiak's breaches of securities laws. The details of Mr. Sawiak's connections to Mr. Ianno and Mr. Kimmel that are known to the Company are set out below.

### **The Joint Actors**

According to the Company's information, as of May 26, 2023, Mr. Sawiak owned approximately 735,165 shares in the Company, equivalent to approximately 0.39% of the Company's outstanding shares. At the same time, Mr. Kimmel owned approximately 14,909,263 shares in the Company, equivalent to approximately 7.9% of the Company's outstanding shares, and Mr. Ianno owned approximately 6,907,922 shares in the Company, equivalent to approximately 3.64% of the Company's outstanding shares.

Therefore, by at least May 26, 2023, Mr. Sawiak, Mr. Kimmel and Mr. Ianno collectively held more than 10% of the Company's outstanding shares. The Company understands that Mr. Kimmel has since increased his shareholding to approximately 15,156,243.

Mr. Sawiak is plainly working jointly or in concert with Mr. Kimmel. Mr. Kimmel is funding Mr. Sawiak's proxy solicitation efforts. While Mr. Sawiak concealed this fact in his initial Nominating Shareholder's Notice, and falsely asserted that he was not working jointly with anybody at all, his revised Nominating Shareholder's Notice concedes that he is working jointly or in concert with Mr. Kimmel. These two individuals collectively hold close to 7% of the Company's outstanding shares at a minimum.

The Company is also aware that Mr. Ianno is working with Mr. Sawiak and Mr. Kimmel in their efforts to reconstitute the Board of Directors. Through conversations and messages with David Moore (the Company's interim President and CEO), Mr. Ianno has similarly advised that he is acting in concert with Mr. Sawiak.

In October 2022, Mr. Ianno called Mr. Moore and claimed to control 70 million shares in the Company. In November 2022, he called Mr. Moore and claimed to now control 72.5 million shares and asserted that Mr. Kimmel was prepared to acquire a further 10 million from Korean shareholders.

In March 2023, Mr. Ianno advised Mr. Moore that he had recruited Mr. Sawiak to seek changes to the Company's board, and that Mr. Kimmel was ready to purchase a further 700,000 shares in the Company. Mr. Ianno also advised that he had a plan to take the Company private, with financial backing from UBS.

In May 2023, Mr. Moore offered to speak with Mr. Ianno to explain the Company's plans in an effort to assuage Mr. Ianno's concerns about board composition. Mr. Ianno declined, responding that he had enough "votes to win" any proxy fight, but wanted to see how talks between the Company and Mr. Sawiak went first.

In June 2023, in speaking with another large shareholder of the Company, Mr. Moore learned that Mr. Ianno and Mr. Kimmel were jointly meeting with other shareholders to drum up support for changes to the board.

Mr. Ianno has also contacted the Company's investment bankers and advised that he is planning to replace the board with his own nominees.

In conversations with Lewis Lawrick, a member of the Company's Board of Directors, Mr. Sawiak has made it clear that he is working in concert with Mr. Ianno and others, and that their efforts to change the composition of the Company's board are coordinated.

Mr. Lawrick has also had discussions with Mr. Ianno that reveal extensive collaboration with Mr. Kimmel as regards their holdings in the Company. In January and February 2023, the Company raised capital through an equity financing. Over the course of multiple calls, Mr. Ianno told Mr. Lawrick that he had a “group” that could invest funds in the millions of dollars, including a lead investment of \$1.5 million that would come from Mr. Kimmel. Mr. Kimmel did in fact invest that sum. Mr. Ianno himself invested \$500,000, which he disclosed was funded by a loan he was receiving from Mr. Kimmel. In total, the “group” that Mr. Ianno advised he was speaking for invested approximately \$3 million in the financing. Mr. Ianno delivered Mr. Kimmel’s signed investment documents to the Company on Mr. Kimmel’s behalf. Mr. Ianno and Mr. Kimmel also worked together to approach UBS Securities to discuss the Company.

Given all of these communications, it is clear to the Company the Mr. Ianno, Mr. Sawiak and Mr. Kimmel are working jointly and in concert in their efforts to reconstitute the Company’s board of directors. Indeed, it defies belief that Mr. Sawiak, who holds only 0.43% of the Company’s shares, is the sole or prime instigator of this proxy battle.

### **Prejudice to the Market and Shareholders**

Mr. Sawiak’s failure to disclose his joint actors has left the market and the Company’s shareholders in the dark with respect to the individuals behind this solicitation, and therefore the controlling minds of the individuals proposing to gain control of the Company.

It is unclear why Mr. Sawiak refuses to comply with his obligations to disclose his joint actors or deny that he is working with joint actors. The only conclusion that can be drawn from his refusal to announce his co-actors, and in specific Mr. Ianno, is that he believes this will negatively effect his proxy solicitation efforts.

In 2011, Mr. Ianno entered into a settlement with Staff of the Ontario Securities Commission whereby he admitted to conduct contrary to the public interest relating to trading in shares of Covalon Technologies Ltd. Mr. Ianno admitted that, in the period between June 2007 and April 2008, he engaged in the purchase and sale of shares of Covalon that had the effect of manipulating their trading price, in order to assist with margin requirements in his own accounts and potentially in the accounts of others.

As a result of this conduct, Mr. Ianno was banned from trading securities (subject to certain exceptions) for a period of five years. He was also prohibited from becoming an officer or director of a public company, or a promoter for a period of five years. Mr. Ianno agreed to make a payment of \$50,000 towards the Commission’s costs of the investigation in the matter, and a further voluntary payment of \$50,000.

The Company’s shareholders and the market are entitled to know that one of the individuals leading the efforts to reconstitute the Company’s Board has previously admitted to the violation of securities laws and specifically admitted to conduct contrary to the public interest.

It is particularly egregious that Mr. Sawiak has refused to disclose the true nature of his efforts despite multiple demands from the Company that he do so. His insistence that the Company bears the burden of proving that he is acting jointly with others is a distortion of securities laws and their purpose. Mr. Sawiak, Mr. Ianno and Mr. Kimmel have positive disclosure obligations under NI 62-103 and NI 62-104. They are not entitled to shirk those obligations unless and until somebody can prove that they have done so. The market is entitled to all information that would be contained in disclosure pursuant to NI 62-103 and NI 62-104, including disclosure of all members of their group and the number of shares they collectively own.

This lack of disclosure has been occurring for months. The Company believes that the joint actors have been engaged in the purchase and sale of shares in the Company during this time, while the rest of the market has been ignorant of their status. This is highly improper and damaging to confidence in the public markets.

## Remedies Sought

While the damage has already been done by Mr. Sawiak launching his campaign in the absence of any disclosure of his joint actors, the Commission has the ability under s. 114 of the *Securities Act* to provide some relief.

In the circumstances, with the meeting scheduled for September 19, 2023, the Company seeks an order from the Commission:

- a) prohibiting Mr. Sawiak, Mr. Kimmel and Mr. Ianno from exercising voting rights attached to shares they hold or control, directly or indirectly, with respect to the election of the Company's directors at the meeting;
- b) requiring that Mr. Sawiak, Mr. Kimmel and Mr. Ianno cease trading in the Company's shares for a period of six months; and
- c) directing Mr. Sawiak to: (i) comply with s. 5.2(1) of NI 62-104 by promptly issuing a news release alerting shareholders and the market to the fact that he and his joint actors control more than 10% of the Company's common shares and filing an early warning report; and (ii) distribute a revised Nominating Shareholder's Notice and accompanying news release stating that his solicitation is in concert with the joint actors.

Mr. Sawiak has sought to gain an undue advantage in the upcoming proxy fight by withholding information from the market. The appropriate remedy is to remove any advantage gained by these breaches of securities laws and prohibit Mr. Sawiak and his joint actors from voting their shares at the meeting.

Further, and in the event Mr. Sawiak is still able to put forward a proposed slate of directors, Mr. Sawiak should be required to comply with all applicable securities laws and disclose his joint actors prior to a vote on the slate of directors he has proposed. The markets and shareholders should not be permitted to vote on Mr. Sawiak's slate of directors without all material information at their disposal, and the incumbent board should be able to respond to Mr. Sawiak's solicitation appropriately.

We propose a call to discuss an efficient procedure to hold an urgent hearing in respect of the Company's application. We are available any day next week other than Friday to have that call. We have copied Mr. Sawiak and Mr. Kimmel's counsel, as well as Mr. Ianno and personally, to provide notice of the Company's application. The Company is also looking at other remedies as the situation progresses.

Yours very truly,



James Renihan  
Partner

JR/ra

Copy to: Walied Soliman, Mark Bissegger, Tyler Morrison, *Norton Rose Fulbright Canada LLP*  
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