



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF THE *SECURITIES ACT*,
R.S.O. 1990, c. S.5, AS AMENDED**

- and -

EDWARD JOHN HOLKO

**STATEMENT OF ALLEGATIONS
OF STAFF OF THE ONTARIO SECURITIES COMMISSION**

1. Further to a Notice of Hearing dated April 1, 2010, Staff of the Ontario Securities Commission (“Staff”) make the following allegations:

I. FACTS

2. Retrocom Growth Fund (“Retrocom” or the “Fund”) is a reporting issuer in Ontario incorporated in 1995 as a labour-sponsored investment fund. In December 2005, Retrocom suspended redemptions because it did not have sufficient liquidity to meet outstanding redemption requests. In or about August 2006, Retrocom filed a Notice of Intention to make a Proposal under the *Bankruptcy and Insolvency Act* (Canada). RSM Richter Inc. (“Richter”) was named as trustee. It is not expected that any assets will be available for distribution to the Fund’s investors.

3. At all Material Times (defined to include all financial reporting periods between 2003 and 2005), approximately 90% of Retrocom’s holdings were comprised of direct and/or indirect investments in real property.

4. It appears that the Fund's assets were materially over-valued during, at least, the fiscal period between August 31, 2000 and August 31, 2004. Audited financial statements for the year ending August 31, 2005 were never completed.

5. Retrocom Investment Management Inc. (“RIMI”) was, from June 2001, Retrocom’s manager. RIMI was incorporated in Ontario in 1995. RIMI was registered with the Commission as an Investment Counsel and Portfolio Manager (“ICPM”) on April 2, 1998 and as a Limited Market Dealer (“LMD”) on September 5, 2000. On October 2, 2006, the Commission issued an Order accepting RIMI’s surrender of registration.

6. At all material times, the respondent, Edward John Holko (“Holko” or the “Respondent”) was the Vice-President of Finance and Administration at RIMI. Holko holds the professional designation of Certified Management Accountant. Holko did not sit on any of the Fund’s committees and played no role in the recommendation, valuation or audit of the Fund’s assets.

II. BREACH OF ONTARIO SECURITIES LAW AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

7. Pursuant to the Fund’s prospectus, RIMI was to receive an annual management fee calculated based on the Fund’s NAV and was permitted to receive fees directly from investee companies for services provided to them.

8. The management agreement between RIMI and the Fund (the “Management Agreement”) provided, among other things, that RIMI shall “exercise the powers granted hereunder and discharge the duties hereunder honestly, in good faith and in the best interests of the Fund and, in connection therewith, shall exercise the degree of care, diligence and skill that a reasonable prudent person performing similar functions would exercise in the circumstances.”

9. The Management Agreement also provided, among other things, that RIMI “shall not, and shall not permit its employees, directors or officers” to enter into any arrangement whereby they would receive “any fee, payment or benefit as a result of dealing with [any] Eligible Business or Investee Company or [persons related to them]” without obtaining the consent of the Fund.

10. During the Material Time, RIMI received payments totalling approximately \$3.5 million from companies/projects in which the Fund had invested on RIMI's advice in respect of the provision of services (the "Additional Fees").

11. A portion of the Additional Fees was paid, rather than to RIMI, by way of the transfer of a condominium unit to a numbered company controlled 50% by the Respondent and 50% by another RIMI employee (the "Condominium"). Based on the valuations of the Condominium received, it appears that the Respondent obtained a personal benefit in the amount of at least \$245,327.10 as a consequence of the transfer of the Condominium (the "Personal Benefit").

12. A conflict of interest existed with respect to the Additional Fees and the Personal Benefit. However, the Respondent did not take steps to obtain the consent of the Fund prior to or after RIMI's acceptance of the Additional Fees or his acceptance of the Personal Benefit nor did he take reasonable steps to ensure that others had done so.

13. RIMI's failure to disclose to the Fund the intended and actual receipt of the Additional Fees (including the Personal Benefit) was in breach of its obligations pursuant to section 116 of the Act. By failing to take reasonable steps to ensure that RIMI's receipt of the Additional Fees (including the Personal Benefit) was disclosed to the Fund and consented to by the Fund, the Respondent authorized, permitted or acquiesced in these non-compliances with Ontario securities law by RIMI and accordingly, failed to comply with Ontario securities law contrary to section 129.2 of the Act and the public interest.

14. The conduct engaged in by the Respondent as set out above compromised the integrity of Ontario's capital markets.

15. Staff reserve the right to make such other allegations as Staff may advise and the Commission may permit.

DATED AT TORONTO this 1st day of April, 2010