



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 -

**IN THE MATTER OF
EDWARD FURTAK, AXTON 2010 FINANCE CORP.,
STRICT TRADING LIMITED, RONALD OLSTHOORN,
TRAFALGAR ASSOCIATES LIMITED, LORNE ALLEN and
STRICTRADE MARKETING INC.**

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

Staff of the Ontario Securities Commission (“Staff”) make the following allegations:

A. Overview

1. This proceeding relates to the trading in and distribution of securities in breach of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “Act”) by Edward Furtak (“Furtak”), Axton 2010 Finance Corp. (“Axton”), Strict Trading Limited (“STL”), Ronald Olsthoorn (“Olsthoorn”), Trafalgar Associates Limited (“TAL”), Lorne Allen (“Allen”) and Strictrade Marketing Inc. (“SMI”) (collectively, the “Respondents”).
2. The securities at issue were comprised of a series of contractual arrangements regarding licenses for trading software (the “Strictrade Offering”). The Respondents were involved in promoting and selling the Strictrade Offering during the period January 2012 to July 2014 (the “Material Time”). The Strictrade Offering is a “security” as defined in clause (n) of subsection 1(1) of the Act.

3. During the Material Time, the Respondents' conduct in respect of the Strictrade Offering violated Ontario securities laws as follows:
 - (a) the Respondents engaged in illegal distributions of the Strictrade Offering, contrary to subsection 53(1) of the Act;
 - (b) Allen, SMI, Furtak, Axton and STL engaged in, or held themselves out as engaging in, trading in securities without registration, contrary to subsection 25(1) of the Act;
 - (c) Furtak and STL made misleading statements in contracts entered into with investors, contrary to subsection 44(2) of the Act; and
 - (d) as registrants, TAL and Olsthoorn violated several provisions of National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("NI 31-103").

B. The Respondents

4. SMI was incorporated in Canada on January 1, 2012. Allen is the sole officer, director and shareholder of SMI. Neither SMI nor Allen was registered with the Ontario Securities Commission (the "Commission") during the Material Time.
5. TAL was incorporated in Ontario on February 24, 1994. TAL has been registered as an Exempt Market Dealer ("EMD") in Ontario since August 19, 2011, and in Alberta, British Columbia, Manitoba and Saskatchewan since June 12, 2014.
6. Olsthoorn is the sole officer and director of TAL and owns 50% of TAL's shares. Olsthoorn has been registered as a Dealing Representative, Chief Compliance Officer ("CCO") and Ultimate Designated Person ("UDP") of TAL in Ontario since August 19, 2011, and in Alberta, British Columbia, Manitoba and Saskatchewan since June 12, 2014.
7. Axton was incorporated in the British Virgin Islands on May 26, 2010. Axton owns the STRICT trading software (the "Software") that is at the centre of the Strictrade Offering. Axton was not registered with the Commission during the Material Time.

8. STL was incorporated in the British Virgin Islands on June 5, 2012. STL hosts and operates the Software. STL was not registered with the Commission during the Material Time.
9. Furtak is the founder, beneficial owner and an officer and director of Axton and STL. Furtak indirectly owns 50% of the shares of TAL and is designated as a permitted individual (shareholder) with TAL. Furtak was not registered with the Commission during the Material Time.

C. Background to Allegations

The Strictrade Offering

10. The Strictrade Offering involved a series of contracts which, taken together, constituted a security within the meaning of clause (n) in subsection 1(1) of the Act.
11. Pursuant to these contracts, investors:
 - obtained licenses for the Software (“Software Licenses”) from Axton;
 - obtained financing for 100% of the purchase of the Software Licenses from Axton; and
 - sold trading instructions generated by the Software (“Trading Instructions”) to STL in return for payments (“Trading Report Payments”).
12. During the Material Time, eight individuals invested in the Strictrade Offering. Collectively, these investors paid approximately \$385,000 in interest and fees to Axton and STL; borrowed approximately \$1,200,000 from Axton to finance their purchases of the Software Licenses; and received approximately \$130,250 in Trading Report Payments due from STL.
13. Investors’ return on their investment in the Strictrade Offering included the Trading Report Payments from STL, a potential software performance bonus from STL, and the

ability to claim certain deductions from their income taxes related to the Software Licenses.

14. None of the investors who invested in the Strictrade Offering took possession of the Software. Rather, investors simply entered into the contractual arrangements described above, made payments of interest and fees pursuant to the agreements, and filed their tax returns.
15. The Strictrade Offering had not been previously issued and no prospectus was filed for the Strictrade Offering.

D. The Respondents' Conduct in Respect of the Strictrade Offering

Conduct of SMI and Allen

16. During the Material Time, SMI and Allen marketed the Strictrade Offering to potential investors and distributors, giving more than 60 presentations to individuals during one-on-one meetings and to groups at educational seminars.
17. SMI and Allen dealt directly with investors who participated in the Strictrade Offering. Allen sold the Strictrade Offering to some investors, had meetings with them and was present when they signed the contracts for the Strictrade Offering.
18. SMI and Allen received compensation in the form of commissions and/or other payments for their participation in the Strictrade Offering.
19. SMI also engaged TAL and Olsthoorn to market the Strictrade Offering and agreed to pay Olsthoorn 3% of any of SMI's sales of Software Licenses.
20. SMI and Allen engaged in, or held themselves out as engaging in, the business of trading in securities without registration contrary to subsection 25(1) of the Act. SMI and Allen also distributed the Strictrade Offering without a prospectus, contrary to subsection 53(1) of the Act.

Conduct of TAL and Olsthoorn

21. During the Material Time, Olsthoorn and TAL marketed the Strictrade Offering, giving approximately 29 marketing presentations to potential investors and distributors in Ontario, Manitoba, British Columbia, Saskatchewan and the United States.
22. Olsthoorn and TAL dealt directly with investors who participated in the Strictrade Offering. Olsthoorn and TAL sold the Strictrade Offering to some investors and served as their main point of contact in respect of their investment in the Strictrade Offering.
23. Olsthoorn and TAL distributed the Strictrade Offering without a prospectus, contrary to subsection 53(1) of the Act.
24. Further, as registrants, Olsthoorn and TAL failed to meet their Know Your Product (“KYP”), Know Your Client (“KYC”) and suitability obligations under sections 3.4, 13.2 and 13.3 of NI 31-103, as they:
 - (a) told potential investors that the Strictrade Offering did not require dealer registration under securities legislation; and
 - (b) failed to take reasonable steps to determine if the Strictrade Offering was suitable for investors.
25. Given that Olsthoorn and TAL failed to meet their KYP, KYC and suitability obligations under NI 31-103 and engaged in illegal distributions, Olsthoorn failed to fulfil his obligations as UDP and CCO of TAL to ensure, promote and monitor compliance with securities legislation by TAL and individuals acting on its behalf under sections 5.1 and 5.2 of NI 31-103.

Conduct of Furtak, Axton and STL

26. Furtak created the Software. The Strictrade Offering was Furtak’s idea and he was involved in all contractual arrangements with respect to the Strictrade Offering.

27. Axton indirectly solicited potential investors and distributors for the Strictrade Offering by entering into an agreement with SMI and agreeing to pay SMI a commission of 28% of all first-year prepaid interest, loan maintenance fees and service fees paid by investors.
28. Axton entered into contracts with all of the investors for the purchase of the Software Licenses. Axton also entered into contracts with all of the investors to finance their purchases of the Software Licenses. Axton received funds from the investors in the form of prepaid interest and loan maintenance fees pursuant to these contracts. Each of these contracts was an integral part of the Strictrade Offering.
29. STL entered into contracts with all of the investors under which the investors sold Trading Instructions generated by the Software to STL in return for Trading Report Payments. Under the contracts with STL, investors had to pay STL a service fee for hosting and operating the Software. The contracts with STL were also an integral part of the Strictrade Offering.
30. Furtak arranged for SMI to solicit potential investors and distributors for the Strictrade Offering. Furtak signed all contracts entered into between Axton and investors. Furtak also signed all contracts entered into between STL and investors.
31. Furtak set up the Axton and STL bank accounts and the STL trading account. Furtak directed the payment of commissions to SMI and the payment of Trading Report Payments that were due to investors from STL.
32. Furtak, Axton and STL engaged in, or held themselves out as engaging in, the business of trading in securities without registration contrary to subsection 25(1) of the Act. Furtak, Axton and STL also distributed the Strictrade Offering without a prospectus, contrary to subsection 53(1) of the Act.
33. Further, in contracts between investors and STL that were executed by Furtak between June and December 2012, STL and Furtak represented that STL was purchasing Trading Instructions from investors for the purpose of trading for its own account and that it would commence trading on the date of the contracts. This representation was

misleading. Furtak was aware that no brokerage account was opened for STL until November 1, 2013, nor did STL commence any trading until that date.

34. By representing that STL was purchasing Trading Instructions from investors for the purpose of trading and that STL would commence trading on the date of the contracts, Furtak and STL made statements that a reasonable investor would consider relevant in deciding whether to enter into or maintain a trading or advising relationship, which statements were untrue or omitted information necessary to prevent the statements from being false or misleading in the circumstances in which they were made, contrary to subsection 44(2) of the Act.

E. Breaches of Ontario Securities Law and Conduct Contrary to the Public Interest

35. Staff alleges that:

- (a) Allen, SMI, Furtak, Axton and STL engaged in, or held themselves out as engaging in, the business of trading in securities without registration contrary to subsection 25(1) of the Act;
- (b) all of the Respondents distributed securities when a preliminary prospectus and a prospectus had not been filed and a receipt had not been issued by the Director, contrary to subsection 53(1) of the Act;
- (c) Furtak and STL made statements that a reasonable investor would consider relevant in deciding whether to enter into or maintain a trading or advising relationship, which statements were untrue or omitted information necessary to prevent the statements from being false or misleading in the circumstances in which they were made, contrary to subsection 44(2) of the Act;
- (d) Olsthoorn and TAL:
 - i. failed to discharge their KYP obligation in respect of the Strictrade Offering and therefore breached their suitability obligations under sections 3.4 and 13.3 of NI 31-103; and

- ii. failed to take reasonable steps to collect sufficient information to determine whether the Strictrade Offering was suitable for investors, breaching their KYC and suitability obligations under sections 13.2 and 13.3 of NI 31-103;

(e) Olsthoorn, as CCO and UDP of TAL:

- i. failed to fulfil his obligations as UDP to supervise the activities of TAL in order to ensure compliance with securities legislation by TAL and individuals acting on its behalf, and to promote compliance with securities legislation, contrary to section 5.1 of NI 31-103; and
- ii. failed to fulfil his obligations as CCO of TAL to monitor and assess compliance by TAL and individuals acting on its behalf with securities legislation, contrary to section 5.2 of NI 31-103;

(f) Furtak, Olsthoorn and Allen, as directors and officers of Axton and STL (Furtak), TAL (Olsthoorn), and SMI (Allen), (the “Corporate Respondents”), authorized, permitted or acquiesced in the Corporate Respondents’ non-compliance with Ontario securities law, and accordingly are deemed to have failed to comply with Ontario securities law, pursuant to section 129.2 of the Act.

- 36. By reason of the foregoing, the Respondents violated the requirements of Ontario securities law and/or engaged in conduct contrary to the public interest, such that it is in the public interest to make orders under section 127 of the Act.
- 37. Staff reserve the right to make such other allegations as Staff may advise and the Commission may permit.

DATED at Toronto, March 30, 2015.