



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
XI BIOFUELS INC., BIOMAXX SYSTEMS INC., XIIVA HOLDINGS INC. CARRYING
ON BUSINESS AS XIIVA HOLDINGS INC., XI ENERGY COMPANY, XI ENERGY
AND XI BIOFUELS, RONALD CROWE AND VERNON SMITH**

**ORDER
(Sections 127 and 127.1 of the *Securities Act*)**

WHEREAS on October 16, 2008, the Ontario Securities Commission (the "**Commission**") issued a Notice of Hearing and Staff of the Commission ("**Staff**") issued a Statement of Allegations pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**") in respect of XI Biofuels Inc. ("**XI Biofuels**"), Biomaxx Systems Inc. ("**Biomaxx**"), and Xiiva Holdings Inc. carrying on business as Xiiva Holdings Inc., XI Energy Company, XI Energy and XI Biofuels (collectively, "**Xiiva**"), Ronald Crowe ("**Crowe**") and Vernon Smith ("**Smith**") (collectively, the "**Respondents**");

AND WHEREAS XI Biofuels, Biomaxx and Xiiva (the "**Corporate Respondents**") were petitioned into bankruptcy on May 21, 2008;

AND WHEREAS the Commission conducted a hearing on the merits in this matter on January 5, 7, 8, 9, 12, 13, 14, 15 and 16, 2009 and May 1, 2009;

AND WHEREAS the Commission issued its Reasons and Decision on the merits in this matter on March 31, 2010 (the "**Merits Decision**");

AND WHEREAS, in the Merits Decision, the Commission concluded that:

- (a) the Respondents traded in securities of Xiiva and Biomaxx without being registered to trade in securities and without any registration exemption being available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest;

(b) the Respondents distributed securities of Xiiva and Biomaxx when a preliminary prospectus and a prospectus had not been filed and receipts had not been issued by the Director, and without any prospectus exemption being available, contrary to subsection 53(1) of the Act and contrary to the public interest;

(c) Smith and Crowe, as directors and/or officers or *de facto* directors and/or officers of the Corporate Respondents, authorized, permitted or acquiesced in the contraventions of subsection 25(1)(a) and subsection 53(1) of the Act by the Corporate Respondents set out in paragraphs (a) and (b) above, contrary to section 129.2 of the Act and contrary to the public interest; and

(d) the Respondents engaged in conduct that is contrary to the public interest and harmful to the integrity of the Ontario capital markets by contravening subsection 25(1)(a), subsection 53(1) and section 129.2 of the Act, as set out above in paragraphs (a), (b) and (c), and by making false or misleading statements to investors on the XI Biofuels, XI Energy and Biomaxx websites, failing to account for the disposition of investor funds, most of which never made their way to the Corporate Respondents, and transferring or attempting to transfer Xiiva investor funds offshore;

AND WHEREAS on May 26, 2010, the Commission conducted a hearing with respect to sanctions and costs in this matter (the “**Sanctions and Costs Hearing**”), and Staff and Smith and Crowe (together, the “**Individual Respondents**”) provided written and oral submissions at the Sanctions and Costs Hearing, and the Corporate Respondents did not participate;

AND WHEREAS on November 17, 2010, the Commission, having considered the submissions of Staff and the Individual Respondents, issued its reasons and decision on sanctions and costs (the “**Sanctions and Costs Decision**”);

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this Order (the “**Sanctions and Costs Order**”);

IT IS HEREBY ORDERED THAT:

1. each of the Respondents shall cease trading in securities permanently, pursuant to clause 2 of subsection 127(1) of the Act, except that Smith and Crowe are permitted to trade securities for the account of their respective registered retirement savings plans, registered retirement income plans, registered education savings plans or tax-free savings accounts (as defined in the *Income Tax Act (Canada)*) in which they or their respective spouses have sole legal and beneficial ownership, provided that:

(i) the securities are listed and posted for trading on the Toronto Stock Exchange, the New York Stock Exchange or NASDAQ (or their successor exchanges) or are issued by a mutual fund that is a reporting issuer;

- (ii) the Individual Respondents do not own legally or beneficially (in the aggregate, together with their respective spouses) more than one percent of the outstanding securities of the class or series of the class in question;
 - (iii) the Individual Respondents carry out any permitted trading through a registered dealer and through trading accounts opened in their respective names only (and they must close any trading accounts that are not in their respective names only); and
 - (iv) the Individual Respondents give a copy of the Merits Decision, the Sanctions and Costs Decision and the Sanctions and Costs Order to any registered dealer through which they will trade in advance of any trading;
2. each of the Respondents is prohibited permanently from acquiring any securities, pursuant to clause 2.1 of subsection 127(1) of the Act, except that Smith and Crowe are permitted to acquire securities to allow the trading in securities permitted by and in accordance with paragraph 1 of this Order;
 3. any exemptions contained in Ontario securities law do not apply to each of the Respondents permanently, pursuant to clause 3 of subsection 127(1) of the Act;
 4. the Respondents are reprimanded, pursuant to clause 6 of subsection 127(1) of the Act;
 5. Smith and Crowe shall resign all positions that they may hold as a director or officer of any issuer, registrant or investment fund manager, pursuant to clauses 7, 8.1 and 8.3 of subsection 127(1) of the Act;
 6. each of Smith and Crowe is permanently prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager, pursuant to clauses 8, 8.2 and 8.4 of subsection 127(1) of the Act;
 7. each of the Respondents is permanently prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter, pursuant to clause 8.5 of subsection 127(1) of the Act;
 8. each of Smith and Crowe shall pay an administrative penalty of CDN \$200,000, pursuant to clause 9 of subsection 127(1) of the Act, to be designated pursuant to section 3.4(2)(b) of the Act, for allocation to or for the benefit of third parties;
 9. Smith shall disgorge to the Commission funds in the amount of CDN \$58,412, pursuant to clause 10 of subsection 127(1) of the Act, to be designated pursuant to section 3.4(2)(b) of the Act. for allocation to or for the benefit of third parties;
 10. Crowe shall disgorge to the Commission CDN \$16,507, pursuant to clause 10 of subsection 127(1) of the Act, to be designated pursuant to section 3.4(2)(b) of the Act, for allocation to or for the benefit of third parties;

11. Smith and Crowe shall, on a joint and several basis, disgorge to the Commission CDN \$85,000, pursuant to clause 10 of subsection 127(1) of the Act, to be designated pursuant to section 3.4(2)(b) of the Act, for allocation to or for the benefit of third parties; and

12. Smith and Crowe shall pay, on a joint and several basis, CDN \$117,441.51 in costs to the Commission, pursuant to subsection 127.1(2) of the Act.

DATED in Toronto, Ontario this 17th day of November, 2010.

“David L. Knight”

David L. Knight, FCA

“Margot C. Howard”

Margot C. Howard, CFA