



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 CALDWELL INVESTMENT MANAGEMENT LTD.

**STATEMENT OF ALLEGATIONS OF
STAFF OF THE ONTARIO SECURITIES COMMISSION
(Section 127)**

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

PART I - OVERVIEW

2. Caldwell Investment Management Ltd. (“CIM” or the “Respondent”) is registered with the Commission as an Investment Counsel Portfolio Manager (“ICPM”). during the relevant time period commencing in 2007 through to August 2010.

3. Between 2007 and August 2010 (the “Relevant Time Period”), the Respondent engaged in conduct contrary to the public interest by:

- (a) failing to keep such books, records and other documents as were necessary for the proper recording of the business transactions and the financial affairs relating to frontierAlt investment funds;
- (b) failing to provide adequate compliance oversight and supervision over its individual portfolio adviser with day-to-day responsibility for providing portfolio management services to FALT investment funds.

PART II - ALLEGATIONS

4. Commencing in 2007, CIM was retained by the general partner of certain limited partnerships organized as public investment funds promoted by the FrontierAlt ("FALT") financial organization. CIM agreed to act as portfolio manager of certain FALT investment funds including: a public mutual fund, FrontierAlt Resource Capital Class Fund ("FALT Resource"), and two limited partnerships organized as public, non-redeemable investment funds, FrontierAlt 2007 Energy & Precious Metals Flow-Through Limited Partnership and FrontierAlt 2008 Precious Metals & Energy Flow-Through Limited Partnership (collectively, the "FALT LPs"). CIM was compensated by these FALT public investment funds for its portfolio management services pursuant to portfolio management agreements executed with the general partners for the FALT investment funds. The FALT LPs prepared and issued prospectuses and raised \$24 million from the public. In the prospectuses, CIM was identified as the ICPM of the FALT LPs.

5. Under the limited partnership agreements governing the FALT LPs, the general partners for the FALT LPs controlled and managed the business of the partnerships and retained control over the portfolio assets of the FALT LPs. During the relevant time, CIM primarily received information about portfolio assets from the back-office service provider affiliated with the FALT financial organization (the "Service Provider").

6. In practice, investment recommendations were routinely made to CIM by representatives of a limited market dealer affiliated with the FALT financial organization ("LMD") and CIM's approval of the investments was routinely conveyed to the LMD verbally. Written trade instructions were not given by CIM.

7. During the relevant period:

- (a) CIM failed to maintain adequate documentation recording trade instructions provided for portfolio transactions executed for the FALT investment funds. Further, CIM failed to maintain a separate trade blotter of transactions conducted by the FALT investment funds.

- (b) CIM had insufficient access to information about activity in the brokerage accounts maintained by the general partners to monitor trading activities. CIM did not have trading authority over or adequate access to monitor the brokerage accounts or the parties maintaining the custody of the assets of the FALT LPs. CIM did not receive copies of trade confirmations for transactions effected in the portfolios of FALT LPs nor did CIM receive monthly account statements from the brokerages. Rather, the general partners of the FALT LPs received those records and CIM received data about the portfolio assets it was responsible for managing and monitoring from the Service Provider. As a result, CIM lacked adequate means to independently monitor trading activity in the FALT investment funds that it was responsible for advising and managing.

8. In or about August 2009 and continuing through to December 2009, unauthorized purchases and sales of securities of issuers for the accounts of FALT LPs were conducted by a principal of the general partners of the FALT LPs without the authorization, approval, consent or knowledge of CIM which went undetected by CIM until early 2010 as a result of the inadequate monitoring of trading activity.

9. Until as late as the end of 2008, Caldwell compliance staff failed to perform adequate monitoring or oversight of the portfolio management activities performed by CIM for the FALT investment funds. This included inadequate ongoing monitoring of compliance with applicable investment restrictions and guidelines set out in the portfolio management agreements. The absence of ongoing portfolio monitoring resulted in CIM compliance staff learning and reporting to CIM senior management and FALT management in January 2009 about compliance issues relating to the FALT funds which included: concentration of ownership of issuers, early warning thresholds being reached but not reported on a timely basis, and a control block position being obtained in the securities of a reporting issuer.

10. Following the identification of compliance issues in 2009, CIM failed to implement adequate changes to its internal controls and procedures respecting its portfolio management activities for the FALT investment funds. This included: failing to start conducting periodic compliance reviews of the portfolios and failing to take steps to improve access to and control

over the brokerage accounts. As late as the fall of 2009, CIM lacked adequate access to monitor trading in the brokerage accounts which held custody of the public assets of the FALT investment funds.

11. CIM failed to adequately monitor and manage activities of the individual portfolio adviser for the FALT investment funds. There was inadequate compliance oversight and supervision of the individual portfolio adviser's activities.

PART III - CONDUCT CONTRARY TO THE PUBLIC INTEREST

12. By engaging in the conduct described above, the Respondent engaged in conduct contrary to the public interest.

Dated at Toronto this 24th day of May, 2011.