



Capital
Markets
Tribunal

Tribunal
des marchés
financiers

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**IN THE MATTER OF
NICHOLAS AGAR and PAUL UNGERMAN**

File No. 2024-1

Adjudicators: Andrea Burke (chair of the panel)
Mary Condon

January 26, 2024

ORDER

(Subsection 127(1) and section 127.1 of the
Securities Act, RSO 1990, c S.5)

WHEREAS on January 26, 2024, the Capital Markets Tribunal held a hearing by videoconference to consider the Joint Request for a Settlement Hearing filed by Nicholas Agar and Paul Ungerman (the **Respondents**) and Staff of the Enforcement Branch of the Ontario Securities Commission for approval of a settlement agreement dated January 10, 2024 (the **Settlement Agreement**);

ON READING the Joint Request for a Settlement Hearing, including the Settlement Agreement dated January 10, 2024, and the written submissions, on hearing the submissions of the representatives for each of the parties, on considering that Agar has delivered to the Enforcement Branch of the Ontario Securities Commission an irrevocable direction for the immediate payment of US\$500,000 to Axia Foundation Inc. or such other entity as may be designated to receive funds for collection and distribution as part of the wind down of the Axia Project (as defined in the Settlement Agreement) in accordance with the terms of the Settlement Agreement, and on being advised by Staff of the Enforcement Branch of the Ontario Securities Commission that it has received payment from Ungerman of CA\$918,686.19 and the initial payment from Agar of CA\$200,000;

IT IS ORDERED THAT:

1. The Settlement Agreement is approved; and
2. Pursuant to subsection 127(2) of the Act, the approval of the Settlement Agreement is subject to the following terms and conditions:
 - (a) trading in any securities or derivatives, and the acquisition of any securities, by the Respondents cease permanently commencing on the date of the Order, pursuant to paragraph 2 and paragraph 2.1 of subsection 127(1) of the Act, except that the Respondents shall be permitted to trade;

- i. securities or derivatives and acquire securities in a registered retirement savings plan, registered retirement income fund, registered disability savings plan, and tax-free savings account, as defined in the *Income Tax Act*, R.S.C. 1985, c.1, as amended, in which only the Respondents, their spouse or children are the sole or joint legal and beneficial owners; and
- ii. solely through a registered dealer in Ontario, to whom the Respondents must have given a copy of the Settlement Agreement and this Order;

only after the amounts ordered in subparagraphs 2(h) through 2(l) have been paid in full;

- (b) the Respondents immediately resign any positions that they hold as directors or officers of any issuer, pursuant to paragraph 7 of subsection 127(1) of the Act;
- (c) the Respondents are prohibited permanently from becoming or acting as directors or officers of any reporting or non-reporting issuer, pursuant to paragraph 8 of subsection 127(1) of the Act, except that
 - i. Ungerma may continue as director and officer for Faith-Ungerma Holdings Inc., a non-reporting issuer that serves only as a personal family holding company, provided that none of the securities of Faith-Ungerma Holdings Inc. are owned by or offered for sale to anyone other than members of his immediate family; and
 - ii. this Order does not preclude Agar from becoming or acting as a director or officer (or both) of a single, non-reporting issuer that serves only as a personal family holding company and none of the securities of which are owned or offered for sale to anyone other than members of his immediate family;
- (d) the Respondents immediately resign any positions that they may hold as directors or officers of any registrant, pursuant to paragraph 8.1 of subsection 127(1) of the Act;
- (e) the Respondents are prohibited from becoming or acting as directors or officers of any registrant permanently, pursuant to paragraph 8.2 of subsection 127(1) of the Act;
- (f) the Respondents are prohibited permanently from becoming or acting as registrants, including as an investment fund manager, or as a promoter pursuant to paragraph 8.5 of subsection 127(1) of the Act;
- (g) any exemptions contained in Ontario securities law do not apply to the Respondents permanently, commencing on the date of the Order, pursuant to paragraph 3 of subsection 127(1) of the Act;

- (h) Agar shall disgorge to the Commission the amount of CA\$50,000, pursuant to paragraph 10 of subsection 127(1) of the Act;
- (i) Ungerman shall disgorge to the Commission the amount of CA\$318,686.19, pursuant to paragraph 10 of subsection 127(1) of the Act;
- (j) each of the Respondents shall pay an administrative penalty in the amount of CA\$550,000, pursuant to paragraph 9 of subsection 127(1) of the Act;
- (k) each of the Respondents shall pay costs of the investigation in the amount of CA\$50,000, pursuant to section 127.1 of the Act;
- (l) the amounts payable under subparagraphs 2(h) through 2(k) are payable forthwith, except that Agar shall pay CA\$200,000 forthwith with the balance of funds payable by him to be paid in nine monthly payments of CA\$50,000 by the last business day of each subsequent calendar month; and
- (m) the Respondents are reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act.

"Andrea Burke"

Andrea Burke

"Mary Condon"

Mary Condon