



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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

STATEMENT OF ALLEGATIONS

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

A. OVERVIEW

1. This case arises from the illegal offering and misleading promotion of crypto securities to Ontario investors. In promoting the Axia Project's (defined below) offerings of crypto security tokens, Nicholas Agar ("**Agar**") and Paul Ungerman ("**Ungerman**", together the "**Founders**" or "**Respondents**") enticed investors by making misleading or untrue statements that represented Axia to be a safe and sophisticated investment opportunity. Investors in both Ontario and around the world suffered significant financial losses. Companies that issue misleading or untrue statements in their promotional materials deprive investors of the ability to make informed investment decisions. Retail investors can be particularly vulnerable as they may not have a complete understanding of crypto securities.

2. The Respondents also made misleading and untrue statements to the Ontario Securities Commission ("**OSC**" or the "**Commission**") that prevented the early detection of their unlawful conduct. This matter should serve as a warning that all persons who deal in crypto securities with Ontario investors, wherever the business is domiciled, cannot circumvent compliance with, or evade enforcement of, Ontario securities law by moving their operations offshore and/or misleading the Commission about the nature and extent of their operation.

3. Beginning in or around April 2018, and continuing to at least October 2022 (the “**Solicitation Period**”),¹ Ungerman and Agar, and the entities they controlled (together the “**Axia Project**” or “**Axia**”), created crypto assets called “LinkCoin” and later “Axia Aion Network Token” and later “Axia Aion Network ERC 777 Token” and later “Axia ERC 20 Token” and finally “Axia Network Coin” or “AXC Coin” (collectively, the “**Axia Coin**”) – which are securities – and sold millions of dollars’ worth of them to Ontarians. Throughout the Solicitation Period, Axia raised a total of approximately US\$41 million from investors worldwide, of which more than US\$9 million was raised from approximately 215 Ontario investors.

4. Ungerman and Agar (together, the “**Founders**” or “**Respondents**”) disseminated promotional materials which contained misleading or untrue statements, including misleading or untrue statements that Axia held over US\$29 billion dollars’ worth of audited “hard” or “real-world” assets (e.g., real property, precious minerals and gems) in a reserve to support the value of the Axia Coin. In fact, the existence, ownership and value of the assets had not been verified and the conditions for transfer of the assets to Axia Project were never satisfied. They also took a significant amount of compensation in fiat currency, contrary to explicit and repeated representations that they would not draw any form of fiat currency compensation from the Axia Project.

5. No prospectus was filed by any Axia Entity (defined below) with respect to the distribution of the Axia Coin. None of Ungerman, Agar or their companies obtained the necessary registration with the Commission to engage in trading activities regarding the Axia Coin. By selling the Axia Coin to investors without complying with those requirements, the Founders and the Axia Entities

¹ All activities described occurred during the Solicitation Period unless otherwise indicated.

deprived investors of important safeguards in place to protect them and maintain confidence in Ontario's capital markets.

6. Finally, in early 2020, the Founders made misleading and untrue statements about the nature of their business activities, contrary to s 122(1)(a) of the *Securities Act*, RSO 1990, c S.5 (the "**Act**"). These misleading statements prevented early detection of the Respondents' unlawful conduct and thus interfered with the Commission's ability to enforce compliance with Ontario securities laws and protect Ontario investors.

B. FACTS

Staff of the Enforcement Branch of the Ontario Securities Commission ("**Enforcement Staff**") makes the following allegations of fact:

A. The Axia Project Overview

7. Agar and Ungerman are individuals residing in Ontario.

8. In 2018, the Founders started the Axia Project with a vision of creating a decentralized blockchain network on which participants could store and transfer value and that would provide utility on an online platform with access to applications and services using the Axia Coin as digital currency (the "**Axia Ecosystem**").

9. Initially, the Founders operated the Axia Project through an Ontario company. Axia Operations Ltd. ("**Axia Operations**") was incorporated under the Ontario *Business Corporations Act*, in or around February 2018. At the time of incorporation, the company's name was Linkcoin Ltd., but its name was changed to Axia Operations in or around November 2018. Axia Operations was dissolved in or around February 2022. The Founders were the sole shareholders, directors and officers of Axia Operations.

10. Beginning in or around early 2019, the Founders moved the Axia Project offshore. In total, the Founders created or acquired, or caused to be created or acquired, approximately thirty entities worldwide that were involved in the Axia Project, with several Axia entities involved in promotional activities for the Axia Project (the “**Axia Entities**”). During the Solicitation Period, the Founders were the legal or *de facto* controlling minds, directly or indirectly, of the Axia Entities and the Axia Project as a whole.

11. Once the Axia Project moved offshore, the Founders developed a governance structure whereby a foundation entity oversaw the operations of the other Axia Entities, including the promotion, generation, distribution and sale of the Axia Coin. All funds raised from the sale of the Axia Coin were held by various Axia Entities on behalf of the foundation entity, and the foundation would direct the Axia Project’s use of funds. Over the course of the Axia Project, Axia had multiple foundation entities, including Axia Capital Ltd. in the Cayman Islands, Axia Foundation Inc. in the Commonwealth of Dominica and Axia Network Foundation in the Cayman Islands (collectively, the “**Foundation**”).

12. Under the supervision of the Foundation, an issuer entity was responsible for the issuance of Axia Coin for distribution. Over the course of the Axia Project, Axia had two issuer entities, both incorporated in the British Virgin Islands (“**BVI**”), Axia Issuer Inc. and AXC Issuer Corp., (together, the “**Issuer**”).

13. Another BVI company, Axia Systems Inc. (“**Axia Systems**”), was responsible for software and technological services to the entire Axia Project, including the maintenance of the “**Axia Websites**”:

- i. From in or around December 2019 to mid-2020, the Axia Project maintained a website with the URL axiacoin.com.

- ii. From in or around August 2020 to January 2022, the Axia Project maintained a website with the URL axiacoin.org.
- iii. Finally, beginning January 2022, the Axia Project has maintained a website with the URL axia.global.

14. Each of the Axia Websites was owned by Ungerman, through his wholly-owned company BXB Family Corp., and maintained by Axia Systems with support from the other Axia Entities.

15. Each of the Axia Websites was freely accessible to any user of the internet; there was no password requirement or similar portal restricting public access. The Axia Websites were accessible to investors in Ontario.

B. The Sale of Axia Coin

16. The Founders directed the creation of the Axia Coin, a blockchain digital token that has been traded on third party exchanges, with promises of listings on further exchanges, and purported or future utility on the Axia Ecosystem. The Founders developed the idea for the Axia Coin and were the directing minds of the Axia Project. The Founders established, or arranged for the establishment of, the Axia Entities to carry out the software development and deployment activities required to issue Axia Coin and accept proceeds of sales of Axia Coin.

17. The particulars of the Axia Coin being developed and offered to Ontario investors changed over the course of the Project:

- i. The digital currency was initially called LinkCoin, but in November 2018 the Founders changed the name of the digital currency to Axia Coin or AXC.
- ii. Beginning in early 2019, Axia partnered with Aion Foundation (“**Aion**”) to develop and launch its token on the Aion blockchain network that it was

developing, later called the Open Application Network. In December 2019, the Axia Ecosystem mobile application was released. Although Axia Coin was not issued at that time, early investors could view the number of Axia Coins to which they were entitled in the application.

- iii. In January 2021, the first version of Axia Coin was issued as a token built on the Open Application Network (“**Axia ERC 777 Tokens**”). Axia ERC 777 Tokens were delivered to early-stage investors who opened accounts with Axia Capital Bank Ltd., a licensed bank governed under the laws of the Commonwealth of Dominica (“**Axia Bank**”). Early-stage investors were required to complete a know-your-client (“**KYC**”) process to open their accounts, but as part of this KYC process, Axia did not collect any information pertaining to investors’ or their spouses’ net income, financial assets and liabilities. Axia ERC 777 Tokens were held in “cold storage” custody by a service provider to Axia Bank. Holders could see the balances of their Axia ERC 777 Tokens through the mobile application but could not transfer the tokens to a wallet outside the Axia Ecosystem.
- iv. In mid-January 2021, the core developers of the Open Application Network announced that they were abandoning development of that network, and the Founders then moved the Axia Project to the Ethereum Network. In March 2021, all Axia ERC 777 Tokens were replaced with ERC 20 Tokens (“**Axia ERC 20 Tokens**”). This conversion occurred within holders’ accounts at Axia Bank and through the mobile application.

- v. On or about April 9, 2022, the Axia Project launched its mainnet network and all Axia ERC 20 Tokens were converted into a new digital coin maintained on the new network.

18. The Founders, through the Axia Entities, facilitated the sale of Axia Coin and/or future entitlements to Axia Coin in three different offerings (together, the “**Offerings**”):

- i. Simple Agreements for Future Tokens (the “SAFTS”); between April 2018 and September 2019, twenty-four Ontario investors entered into SAFTs with Axia Operations in exchange for future tokens and options to purchase future tokens. Axia Operations raised approximately US\$2.5 million through SAFTs with Ontario investors.
- ii. Token Subscription Agreements (“Subscription Agreements”); between May 2020 and September 2021, approximately thirty-nine Ontario residents invested a total of approximately US\$2 million in the Axia Project through Subscription Agreements with the Issuer.
- iii. Axia Bank Sale; between June 2021 and October 2022, Ontario investors were able to purchase Axia Coin from the Issuer through Axia Bank. Axia Bank holds a banking licence in the Commonwealth of Dominica. At all material times, Ungerman was the sole shareholder and director of the Axia Bank. On behalf of the Axia Project, Axia Bank onboarded token purchasers and credited Axia Coin into the purchasers’ Axia Bank accounts. Approximately 157 Ontario investors purchased approximately US\$4.6 million worth of Axia Coin through Axia Bank.

19. In total, Axia raised over US\$9 million from approximately 215 Ontario investors during the Solicitation Period.
20. Each of the Offerings was a distribution of a security.
21. On or about October 5, 2022, Axia announced the suspension of all Axia Coin sales pending a review of the Axia Project by the third-party governance and compliance firm with the support of forensic accounting professionals.
22. On or about March 10, 2023, Axia announced that the review of the Axia Project was complete and Axia was beginning efforts to wind down the project. The wind-down process is ongoing. Axia subsequently announced a clarification that the decision to wind down was based on a recommendation by the third-party governance and compliance firm. The recommendation was driven primarily by the Axia Project's potential compliance issues related to various applicable legal and regulatory regimes.
23. Of the approximately US\$41 million dollars raised worldwide, less than US\$10 million remains for distribution to investors as part of the wind down.

C. Promotion of Axia Coin as an Investment

24. During the Solicitation Period, the Founders continuously disseminated or caused to be disseminated promotional materials with respect to the Axia Coin in a variety of ways, including by:
 - i. Distributing white papers directly to investors and prospective investors;
 - ii. Distributing multiple versions of white papers through the Axia Websites;
 - iii. Sending email announcements to subscribers for the Axia Websites and/or Axia Coin holders;

- iv. Issuing press releases through third parties;
- v. Making posts on social media platforms, such as Telegram and Medium, including through third parties;
- vi. Hosting meetings with prospective investors to promote the Axia Coin and Axia Project; and
- vii. Engaging and paying significant amounts to third parties for their services identifying and soliciting purchasers of Axia Coin.

25. The Founders actively and regularly promoted Axia Coin as a means to profit or obtain increased value. The Founders solicited investors both in person and online, making representations that the Axia Coin had the potential to increase in value over time.

26. The Founders promoted unique “tokenomics” that purported to give the Axia Coin increasing value over time. Initially, the Axia Coin was promoted as deflationary (referring to a finite coin supply that Axia claimed would never increase) and stable (because of its purported asset support or backing, discussed in greater detail below). The concept of coin burning was introduced in or around August 2021 and the Founders promoted the Axia Coin as the first ever “hyper-deflationary” (diminishing supply and asset support or backing) digital currency.

27. Throughout the Solicitation Period, promotional materials, including project descriptions and blogs on the Axia Websites and white papers distributed or caused to be distributed by the Founders on behalf of the Axia Project represented that these “tokenomics” created or increased Axia Coin value and made the Axia Coin a “safe haven” for purchasers. The Founders made or caused to be made statements in Axia promotional materials that the Axia Coin provided an

“unmatched” value proposition in the global marketplace and would become the “preferred global medium of exchange” and/or the “new reserve currency for the world”.

28. Promotional materials also represented that demand for Axia Coin would rise and Axia Coin would be tradeable on a trading platform to be built on the Axia network (AXchange) – which never became operational – as well as through third party crypto asset exchanges. The Axia ERC 20 Token was eventually listed on two third-party crypto asset exchanges (KuCoin and Bitmart) between July 2021 and March 2022. Although the Founders made or caused to be made representations that the Axia Coin would be listed on other exchanges and/or re-listed on KuCoin following the launch of the mainnet Axia network, the Axia Coin was never re-listed on KuCoin or listed for trading on any other exchanges.

D. The Asset Reserve Misleading or Untrue Statements

29. One of the Axia Coin’s key “tokenomics” features that the Respondents promoted, was its purported asset reserve. Indeed, throughout the Axia Project, the Founders promoted the Axia Coin as the world’s first asset supported or backed global crypto currency. The asset supported feature was represented to create or deliver “unprecedented” or “fundamental” value for the Axia Coin.

30. However, during the Solicitation Period, the Respondents made, or caused to be made, materially misleading or untrue statements in promotional materials regarding the asset-backing feature of the Axia Coin, including statements that stated or otherwise suggested that made representations concerning the Axia Coin’s purported asset-backing feature including:

- i. The Axia Project had established a proprietary “Asset Acquisition Algorithm”, “transaction link” and/or other technology to automate Axia’s asset purchasing strategy and maintain Axia’s asset base, through which asset

acquisitions and holdings would be recorded on blockchain and visible to investors in real time;

- ii. The Axia Project had established an “Axia Reserve” which held over US\$29 billion worth of audited tangible assets including precious metals, gemstones, real estate, art and more; and
- iii. In early 2022, the Axia Reserve was being replaced with the “Axia Treasury” that would serve the same purpose as the Axia Reserve.

31. In reality,

- i. No automated or public asset acquisition or reporting on blockchain: No assets were acquired or maintained via any algorithm. No asset holdings or acquisitions were maintained by any automated or smart contract process. No asset acquisitions or holdings were reported on any blockchain.
- ii. No Axia Reserve: The Axia Reserve was never properly established, and no assets were transferred to any Reserve. The approximate US\$29 billion worth of assets referred to assets purportedly contributed by twelve third-party “**Asset Contributors**” pursuant to various trust agreements entered into with the Issuer between November 2019 and September 2021 (the “**Trust Agreements**”). The Founders did not, however, conduct or cause to be conducted adequate due diligence to verify the existence, ownership or value of the assets. Nor did they engage any accredited third party to conduct an audit of the purported assets. Moreover, the conditions of transfer of the assets to Axia were not met, and Axia never held legal or beneficial title to any of

the assets contemplated under the Trust Agreements. The Founders abandoned the Axia Reserve concept no later than October 2021, but did not announce the abandonment of the Axia Reserve concept until December 31, 2021;

iii. No Axia Treasury. No formal structure or accounting was established for the Axia Treasury and no purported Axia Treasury funds were separated from operating funds. Although the Founders made or caused to be made representations describing the Axia Treasury with substantially similar and, at times, identical language as the Axia Reserve, the concept behind the purported Axia Treasury was fundamentally different from the Axia Reserve concept that it was supposedly replacing. In particular:

i. The value of the Axia Treasury was limited to, at best, Axia’s cash and digital asset position. In January 2022, when the Founders represented that the Axia Treasury was established, Axia’s total global cash position, before any reductions for operating costs, was less than US\$14 million; and

ii. Despite making representations during the Solicitation Period that stablecoins, such as USDT and USDC, were “massive” or “extreme” investment risks, beginning in December 2021 the Founders converted, attempted to convert, or caused to be converted or attempted to be converted, approximately US\$10 million of funds from the sale of Axia Coins to USDT and USDC for the purported Axia Treasury. Of this, US\$3 million – representing over 20% of

Axia’s cash position at the time – was lost in failed transactions with two entities that did not deliver USDT or USDC as agreed. The Founders did not disclose these transactions or stablecoin holdings to investors.

E. Undisclosed Payments to Founders

32. During the Solicitation Period, the Founders made, or caused to be made, misleading or untrue statements in promotional materials, stating or otherwise suggesting that none of the Founders or senior members of the Project team would take any form of fiat currency compensation from the Project.

33. Contrary to these representations, the Founders authorized the payment of and received over CA\$368,686.19 in fiat compensation in “Director’s Fees” from the Axia Project. In addition, the Founders made or authorized over CA\$500,000 in fiat compensation to other senior members of the Axia Project team.

34. Additionally, in or about August 2022, Axia Foundation Inc. advanced US\$1.2 million to Agar’s legal counsel, in trust, further to a legal indemnity in favour of Agar (the “**Indemnity Funds**”). The Founders authorized, on behalf of the Foundation, the payment of the Indemnity Funds. The Indemnity Funds have been applied to pay for legal fees and disbursements of Agar’s counsel to date, with the balance still held in trust.

F. The Founders’ Misleading Statements to the Ontario Securities Commission

35. On April 29, 2020, the Case Assessment Branch of the Ontario Securities Commission (“**Case Assessment**”) wrote to Axia Operations seeking information and records about Axia Operation’s business activities. The Founders responded in a letter dated May 11, 2020. In their May 11, 2020 letter, the Founders misled Case Assessment as follows:

- i. In response to Case Assessment's request for a detailed description of all business activities, the May 11, 2020 letter described the development of a single communications application as the only business activity, and further stated that Axia was only in the conceptual stage. The Founders omitted any reference to Axia Operation's other extensive business activities to that date including having raised around US\$2.5 million through sale of SAFTs, having partnered and worked with third parties to develop and custody the Axia Coin, having engaged numerous marketing and investor relations service providers for the promotion of the Axia Coin and Axia Project to investors, having undertaken efforts to move the Axia Project offshore, and having entered into Trust Agreements contemplating the transfer of billions of dollars worth of purported assets for the Axia Reserve;
- ii. In response to Case Assessment's request for a copy of the white paper and particulars of all proceeds raised in connection with the white paper, the Founders stated that the white paper had not been released to the public and no proceeds had been raised. In reality, Axia Operations had been distributing a white paper to investors and prospective investors since in or around April 2018 and had already raised around US\$2.5 million.
- iii. In response to Case Assessment's request for particulars about the real assets that were described on Axia's website as backing its Coin, the Founders claimed that the references on Axia's website to assets were in respect of potential future initiatives that had not yet been determined. In reality, the Founders had begun efforts to establish the Axia Reserve in 2019 and, by May

11, 2020, had signed Trust Agreements with at least four Asset Contributors contemplating the transfer of purportedly nearly US\$11 billion worth of assets.

- iv. In response to Case Assessment's request for a detailed description of Axia Operation's relationship with the Open Application Network, the Founders wrote that the Open Application Network was "under consideration" for the network on which to release the Axia Coin. In reality, Axia Operations had already entered into a partnership with Opening Application Network beginning in or around August 2018 and technical token development on the Open Application Network had begun in or around November 2018. Axia Operations and Open Application Network memorialized their partnership in a signed written agreement dated March 8, 2019. By the May 11, 2020 letter, Axia had already expended considerable resources on work under that partnership.

36. The Founders thereby breached subsection 122(1)(a) of the Act because they made statements that, in a material respect and at the time and in light of the circumstances under which they were made, were misleading or untrue or did not state a fact that was required to be state or that was necessary to make the statements not misleading.

G. Unregistered Trading

37. None of Axia Operations, the Foundation, the Issuer or the Founders were registered with the Commission in any capacity under the Act. No exemptions from the registration requirement were available to any of Axia Operations, the Foundation, the Issuer or the Founders under Ontario securities law.

38. Based on the conduct described above, the Founders and their companies – Axia Operations, the Foundation, and the Issuer – continuously engaged in, or held themselves out as engaging in, the business of trading in Axia Coin without the necessary registration or an applicable exemption from the registration requirement, contrary to subsection 25(1) of the Act.

H. Illegal Distribution

39. Each of the Offerings were trades in securities not previously issued and were therefore distributions.

40. No preliminary prospectus or prospectus was filed for the distribution of the Axia Coin. The Founders did not take adequate, if any, steps to determine whether investors qualified as accredited investors. Many did not. The investments did not qualify for any other exemption from the prospectus requirements set out in section 53 of the Act and none of the Founders or their entities filed reports of exempt distribution, including Form 45-106F1, with the OSC.

41. By engaging in the conduct described above, Axia Operations, the Foundation, the Issuer and the Founders engaged in a distribution of securities without filing a preliminary prospectus or a prospectus and without an applicable exemption to the prospectus requirement, contrary to section 53 of the Act.

I. Authorizing, Permitting, or Acquiescing in Breaches of Ontario Securities Law

42. The Founders, as legal or *de facto* directors and officers of Axia Operations, the Foundation, the Issuer and Axia Systems, authorized, permitted or acquiesced in the conduct described above. As a result, Ungerman and Agar are deemed not to have complied with Ontario securities law pursuant to section 129.2 of the Act.

C. BREACHES AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

43. Enforcement Staff alleges the following breaches of Ontario securities law and conduct contrary to the public interest:

- i. The Founders, Axia Operations, Axia Foundation Inc., Axia Capital Ltd., Axia Issuer Inc., AXC Issuer Corp., and Axia Systems made statements that they know or ought to have known that that (a) were materially misleading or untrue, or did not state a fact that was required to be stated or that was necessary to make the statements not misleading, and (b) would reasonably be expected to have a significant effect on the market price or value of the Axia Coin, contrary to section 126.2 of the Act;
- ii. Axia Operations, Axia Foundation Inc., Axia Capital Ltd., Axia Issuer Inc., AXC Issuer Corp., Ungerman and Agar engaged in, and held themselves out as engaging in, the business of trading in securities without being registered to do so and without an applicable exemption from the registration requirement contrary to subsection 25(1) of the Act;
- iii. Axia Operations, Axia Foundation Inc., Axia Capital Ltd., Axia Issuer Inc., AXC Issuer Corp., Ungerman and Agar engaged in distributions of securities without filing a preliminary prospectus or prospectus and without an applicable exemption from the prospectus requirement contrary to section 53 of the Act;
- iv. Ungerman and Agar authorized, permitted or acquiesced in Axia Operations, Axia Foundation Inc., Axia Capital Ltd., Axia Issuer Inc., AXC Issuer Corp.,

and Axia Systems' non-compliance with Ontario securities law, contrary to section 129.2 of the Act;

- v. The Founders made four statements to Case Assessment that were misleading, untrue and/or did not state a fact that was required to be stated or that was necessary to make the statements not misleading, contrary to section 122(1)(a) of the Act; and
- vi. The Founders engaged in conduct that is contrary to the public interest.

44. These allegations may be amended, and further and other allegations may be added as counsel may advise, and the Capital Markets Tribunal (the "**Tribunal**") may permit.

D. ORDERS SOUGHT

45. Enforcement Staff requests that the Tribunal make an order pursuant to subsection 127(1) and 127.1 of the Act to approve the settlement agreement entered into by Ungerman and Agar with respect to the matters set out herein.

DATED this 10th day of January, 2024

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