

**In the Matter of Staff's Recommendations  
to Suspend the Registrations of  
ST & T Capital Management Ltd. and Ning Wang**

**Opportunity to be Heard by the Director  
Under Section 31 of the Securities Act**

**Decision**

1. For the reasons outlined below, following an opportunity to be heard (**OTBH**) under section 31 of the *Securities Act* (Ontario), my decision is that:
  - a. the registration of ST & T Capital Management Ltd. (**ST&T**) in the categories of portfolio manager (**PM**), exempt market dealer (**EMD**) and investment fund manager (**IFM**) is suspended; and
  - b. the registration of Ning Wang (**Wang**) as ultimate designated person (**UDP**), chief compliance officer (**CCO**), advising representative and dealing representative is suspended.
2. The suspension of ST&T and Wang (collectively, the **Registrants**) shall be effective at 5:00 p.m. on the 30<sup>th</sup> calendar day after the date of this decision for the purpose of facilitating an orderly transfer of client accounts to a different registered firm.

**Overview**

3. By letter dated December 18, 2023, staff (**Staff**) of the Ontario Securities Commission (the **Commission** or the **OSC**) advised the Registrants that Staff had recommended to the Director that their registrations be suspended.
4. The primary issues of the OTBH were:
  - a. Have the Registrants failed to comply with Ontario securities law, specifically, the conflicts of interest requirements, the know-your-client and suitability determination obligations, and the requirement to deal fairly, honestly and in good faith with clients?
  - b. Are the Registrants not suitable for registration?
5. ST&T has been registered as a PM, an IFM and an EMD in Ontario since September 2018.
6. Wang is registered as UDP, CCO, advising representative and dealing representative with ST&T. Wang is ST&T's sole advising representative and one of two dealing representatives.

7. ST&T is owned equally by Wang and Aaron Zhouzt (**Zhouzt**). Zhouzt is not registered in any capacity.
8. ST&T offers separately managed accounts (**SMA**) which it manages on a discretionary basis. As of March 6, 2024, ST&T managed approximately US\$4.8 million for ten SMA clients. ST&T is registered as an IFM but has not yet launched any funds.
9. ST&T earned management fees of \$53,236 in 2020, \$63,353 in 2021, and \$218,326 in 2022. ST&T reported losses of \$11,351 in 2020, \$76,674 in 2021 and \$839,156 in 2022.

## Issues

### ***Conflicts of interest***

10. The conflicts of interest requirements are set out in Division 2 of Part 13 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations (NI 31-103)*. Among other requirements, sections 13.4 and 13.4.1 of NI 31-103 requires a registered firm and a registered individual, respectively, to take reasonable steps to identify existing and reasonably foreseeable material conflicts of interest, and to address those conflicts of interest in the best interest of clients or to avoid the conflicts of interest where the conflict is not or cannot be addressed in the best interest of clients.
11. From January 2020 to January 2023, ST&T sold \$1.9 million of Class B non-voting shares (the **Class B shares**) of ST&T to eight investors.
12. Two of the investors who were sold the Class B shares were SMA clients of ST&T. Another investor, CR was sold \$500,000 Class B shares.
13. The purpose of the capital raised through the issuance of the Class B shares was to fund ST&T's operating expenses, such as renting office space, paying salaries, and legal and compliance consulting.
14. From December 2022 to February 2023, ST&T issued US\$1.3 million in promissory notes. A US\$700,000 promissory note was issued to XY, an existing SMA client. A US\$300,000 promissory note was issued to a former SMA client. Another US\$300,000 promissory note was issued to a client whose SMA account was closed by Interactive Brokers on January 30, 2023 and who subsequently reopened an SMA account in July 2023 with ST&T.
15. The funds from the promissory notes were deposited in ST&T's proprietary account. The primary purpose of the proprietary account is to apply and showcase ST&T's proprietary quantitative space-time trading system, with the view of eventually

marketing the proprietary account to institutional investors. The purpose of the loans was to increase the assets under management in ST&T's proprietary account to show an increase in the proprietary account balance and to attract institutional investors. Prior to the deposit of the funds from the loans, the proprietary account held approximately US\$45,014.40.

16. The proprietary accounts and SMA accounts were held at Interactive Brokers. Wang was informed by Interactive Brokers on January 18, 2023 that they believed the deposits to the proprietary trading account from XY's SMA was contrary to IIROC regulations against personal financial dealings with clients and borrowing from clients. On January 26, 2023, Interactive Brokers advised Wang that it was closing the proprietary account and SMA accounts.
17. At the time the Class B shares were sold and the loans were made, Wang did not believe that there were any conflicts of interest. Wang understood the issues related to conflicts of interest after Staff brought them to his attention.

#### ***Know your client (KYC) and suitability determination obligations***

18. A registered firm is required to know the client under section 13.2 of NI 31-103 and to determine before taking an action that the action is suitable for and is in the best interest of the client under section 13.3 of NI 31-103.
19. ST&T did not collect and document KYC information for six of the eight investors who were sold the Class B shares of ST&T and as such, Wang could not make a suitability determination.
20. XY and MW opened their SMA accounts in July 2020 and December 2021, respectively.
21. XY and MW were each sold \$100,000 of Class B shares on October 18, 2021 and December 29, 2022, respectively.
22. Wang had XY and MW sign suitability waivers subsequent to the sale of the Class B shares. Wang had XY and MW sign suitability waivers on June 30, 2023 and on July 10, 2023, respectively.
23. MW's KYC information indicated a moderate risk tolerance yet Wang sold her the Class B shares that he had concluded were a high risk investment.

#### ***Dealing with clients fairly, honestly and in good faith***

24. Section 2.1 of Ontario Securities Commission Rule 31-505 *Conditions of Registration* requires a registered dealer or adviser, and a representative of a registered dealer or adviser, to deal fairly, honestly and in good faith with clients.

25. The documentation for the sale of the Class B shares consisted of a three-sentence subscription agreement and a share certificate.
26. ST&T and Wang did not view the issuance of the promissory notes or the sale of Class B shares to SMA clients as raising conflicts of interest. Wang only acknowledged the conflicts of interest only after staff brought them to his attention.
27. The Registrants did not collect KYC or make suitability determination in respect of the sale of the Class B shares for all eight investors.
28. The purpose of the promissory notes was to increase the amount of the proprietary account to be able to attract additional investors to grow ST&T.
29. XY loaned the firm US\$700,000 on December 15, 2022. XY advanced the US\$700,000 to Wang by withdrawing the funds from XY's separately managed account at ST&T.

### **Reasons for decision**

30. For the reasons set out below, my decision is to impose the sanctions requested by Staff as set out in paragraph 1 of this decision. My decision is based on the:
  - a. written submissions of Mark Skuce (Senior Legal Counsel, Registrations, Inspections and Examinations (previously known as the Compliance and Registrant Regulation Branch)) and of Natalia Vandervoort (counsel to both Registrants),
  - b. the affidavit of Trevor Walz, (Senior Accountant, Registrations, Inspections and Examinations), and
  - c. the affidavit of Ning Wang.
31. In my view, Staff has proven its allegations that ST&T and Wang have failed to comply with the conflicts of interest requirements, the know your client and suitability determination requirements, and the requirement to deal fairly, honestly and in good faith with clients, and that ST&T and Wang are not suitable for registration.
32. Section 28 of the Act provides that the registration of a person or company may be suspended if it is determined that the person or company is not suitable for registration (i.e., the person or company does not possess the requisite integrity, proficiency and solvency), or has failed to comply with Ontario securities law, or that their registration is otherwise objectionable.
33. Integrity is not defined by statute, but the term's meaning has been explained in case law. In *Re Sawh and Trkulja* (2012), 35 OSCB 7431 *affirmed* 2013 ONSC 4018(Div. Ct.) the Hearing Panel said

While integrity is not defined under the Act, the Commission in *Istanbul* stated that an assessment of integrity should be “guided by the criteria set out in paragraph 2.1(1)(iii) of the Act. This provision states that an important principle that the Commission shall consider in pursuing the purposes of the Act is ‘the maintenance of *high standards of fitness and business conduct* to ensure *honest and responsible* conduct by market participants’” [Emphasis in original] (*Istanbul, supra*, at para. 68). In *Istanbul, supra*, at para. 66, the Commission cited an earlier decision by the Director in *Wall, Re* (2007), 30 O.S.C.B. 7521 (Ont. Securities Comm.) which addresses the issue of integrity. The latter decision explains that:

OSC staff look at the honesty and the character of the applicant when analyzing integrity. In particular, staff examines the applicant’s dealings with clients, compliance with Ontario securities law and other applicable laws, and the use of prudent business practices.

34. Based on the principle reiterated in *Re Sawh and Trkulja*, integrity encompasses more than dishonesty or fraud, it includes honest and responsible conduct.
35. In my view, there was a clear material conflict of interest between the Registrants and its clients when the Registrants sold the Class B shares of ST&T and issued the promissory notes. The stated purpose of the sale of the Class B shares was to help fund the ongoing operations of ST&T, which was incurring ongoing losses from operations, and the issuance of the promissory notes was to increase the amount in the proprietary account from US\$45,014.40 and attract institutional investors. Both of these actions were for the benefit of the Registrants. The Registrants have admitted that they did not identify the conflicts of interest at the time of the sale of the Class B shares and issuance of the promissory notes. Since the Registrants did not identify the material conflicts of interest, they could not have addressed the conflicts of interest in the best interest of the client and disclosed the conflicts of interest, or could not have avoided the conflicts of interest where the conflict is not or cannot be addressed in the best interest of the client. I find that the Registrants failed to comply with section 13.4 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations (NI 31-103)* and section 2.1 of OSC Rule 31-505 *Conditions of Registration*.
36. The Registrants stated in their submissions that the prohibition from borrowing from clients in section 13.12 of NI 31-103 only applies to registered individuals and not the registered firm. It is concerning that the Registrants emphasize this point of form over substance. Although in form the borrowing was made by the firm, in substance, Wang owns 50% of ST&T and would ultimately benefit from the loan. Regardless of

whether the prohibition only applies to registered individuals and not registered firm, as discussed above, there are clear conflicts of interest in borrowing from clients.

37. I do not believe that the failure of ST&T and Wang to comply with the conflicts of interest requirements are only about a lack of proficiency given the nature of the transactions, but demonstrates a failure to act fairly, honestly and in good faith with clients. ST&T had incurred increasing losses from operations over several years, and the sale of the Class B shares to clients with little information provided to the clients was done with the objective of using the funds received to pay for operating expenses of ST&T. The issuance of the promissory notes to clients was made with the objective of using the funds received to attract institutional investors to the proprietary account. As a 50% shareholder of ST&T, Wang stood to benefit.
38. I find that the Registrants also failed to comply with the know your client obligations of section 13.2 of NI 31-103 and the suitability determination requirements of section 13.3 of NI 31-103. The Registrants had an obligation to determine that an action is suitable for a client and the action puts the client's interests first.
39. Despite being registered as an EMD, the Registrants did not collect and document KYC information and, therefore, could not make a suitability determination for the six non-SMA purchasers of the Class B shares. The fact that Wang may have certain personal knowledge of the investors does not lessen the KYC or suitability determination obligation.
40. The Registrants did not consider their know your client and suitability determination obligations to CR, an administrative assistant with a salary of \$30,000 per year when they proceeded with the sale of \$500,000 of Class B shares to CR. The Registrants stated that CR was from an independently wealthy family and was known to them. Having financial wealth is not a substitute for making a suitability determination. Given the lack of documentation, I am not convinced that the suitability determination obligation or the KYC obligations were met.
41. The Registrants have suggested that the sale of the Class B shares of ST&T was limited activity which did not require registration because these investors were angel investors. I do not agree with this position. The Registrants are required to comply with their registrant obligations under securities laws. The Registrants were registered to sell securities and, as registrants, were required to comply with securities laws when selling securities.

## **Conclusion**

42. Based on the foregoing, I accept Staff's recommendation to suspend the registration of the Registrants and I direct Staff to take the necessary steps to implement the decision.

43. If the Registrants apply for registration at some point in the future, each will need to demonstrate through their actions that they are suitable for registration. In the Director's decision *Re Sawh* (2016), 39 OSCB 2477, there are six factors that must be considered in making a determination on the applicant's suitability for registration after a finding by the Director or the Commission that the applicant was not suitable for registration. If they can provide evidence to support these factors, then their suitability for registration can be reassessed.

*"Felicia Tedesco"*

Felicia Tedesco  
Deputy Director, Registration, Inspections and Examinations  
Ontario Securities Commission  
Dated: April 10, 2024