



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

P.O. Box 55, 19th Floor CP 55, 19^e étage
20 Queen Street West 20, rue queenouest
Toronto ON M5H 3S8 Toronto ON M5H 3S8

**IN THE MATTER OF THE *SECURITIES ACT*
R.S.O. 1990, c.S.5, AS AMENDED**

- AND -

**IN THE MATTER OF
LEHMAN BROTHERS & ASSOCIATES CORP., GREG MARKS, KENT EMERSON
LOUNDS AND GREGORY WILLIAM HIGGINS**

**SETTLEMENT AGREEMENT
BETWEEN STAFF AND GREGORY WILLIAM HIGGINS**

PART I - INTRODUCTION

1. By Notice of Hearing dated September 3, 2010, the Ontario Securities Commission (the "Commission") announced that it proposed to hold a hearing, commencing on September 8, 2010, pursuant to sections 37, 127, and 127.1 of the *Securities Act*, R.S.O. 1990, c. S. 5, as amended (the "Act"), to consider whether it is in the public interest to make orders, as specified therein, against Lehman Brothers & Associates Corp. ("Lehman Corp."), Greg Marks, Kent Emerson Lounds, and Gregory William Higgins ("Higgins"), (collectively the "Respondents"). The Notice of Hearing was issued in connection with the allegations as set out in the Statement of Allegations of Staff of the Commission dated September 3, 2010.

2. The Commission will issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to sections 37, 127 and 127.1 of the Act, it is in the public interest for the Commission to approve this Settlement Agreement and to make certain orders in respect of Higgins.

PART II – JOINT SETTLEMENT RECOMMENDATION

3. Staff agree to recommend settlement of the proceeding initiated by the Notice of Hearing dated September 3, 2010 against Higgins (the “Proceeding”) in accordance with the terms and conditions set out below. Higgins consents to the making of an order in the form attached as Schedule “A”, based on the facts set out below.

PART III – AGREED FACTS

Overview

4. This proceeding involves the unregistered trading of securities of TBS New Media Ltd. (“TBS New Media”), a private issuer incorporated in Ontario, and TBS New Media PLC (“TBS PLC”), a company created pursuant to the laws of the United Kingdom.

5. Between 2004 and 2008, securities in TBS New Media and TBS PLC (collectively “TBS”) were distributed to investors in Ontario and throughout Canada purportedly pursuant to a private placement. Some of the persons who originally acquired securities of TBS New Media were asked to return these securities in exchange for securities of TBS PLC to allow the securities of TBS New Media to be traded on an exchange located in Frankfurt, Germany.

6. In 2008 and 2009 (the “Material Time”), TBS investors in Canada (the “TBS Investors”) were solicited by representatives of Lehman Corp. to sell their shares in TBS at a substantial premium.

7. The TBS Investors were told that in order to execute the trade they would need to provide an advance fee. In most cases, TBS Investors were told that this advance fee represented a refundable security deposit. In other cases, TBS Investors were told the refundable advance fee covered non-resident taxes and/or other disbursements.

8. According to the Lehman Corp. website and materials provided to TBS Investors Lehman Corp. was operating out of Montreal, Quebec.

9. The address posted on the Lehman Corp. website and included in materials provided to TBS Investors by representatives of Lehman Corp. does not correspond to any valid Montreal address and Lehman Corp. is not a registered corporation in Quebec or Ontario.

10. TBS Investors were instructed by representatives of Lehman Corp. to wire the advance fee to bank accounts in Ontario in the name of Emerson Global Holdings (“Emerson”) and/or Triad Holdings (“Triad”).

11. In response to the solicitations from representatives of Lehman Corp. regarding their TBS shares, TBS Investors transferred a total of approximately \$173,913 to the accounts of Emerson and Triad.

Triad Holdings

12. Higgins is a resident of Ontario and has never been registered in any capacity with the Commission.

13. Triad is a sole proprietorship that was issued an Ontario business license on February 9, 2009. During the Material Time, Higgins was the registered owner and sole directing mind of Triad.

14. On February 11, 2009, Higgins opened an account at the Bank of Nova Scotia in the name of Triad Holdings (the “Triad Scotia Account”). Higgins was the sole authorized signatory on the Triad Scotia Account during the Material Time.

15. On April 7, 2009, the Triad Scotia Account was closed on suspicion of fraud.

16. On April 20, 2009, Higgins opened both a Canadian dollar and US dollar account at the Royal Bank of Canada in the name of Triad Holdings (the “Triad RBC Accounts”). Higgins was the sole authorized signatory on the Triad RBC Accounts during the Material Time.

17. Of the \$173,913 paid by TBS Investors in advance fees as a result of the solicitations by representatives of Lehman Corp., approximately \$29,661 was deposited into the Triad Scotia Account and the Triad RBC Accounts (the “Triad Accounts”).

18. During the Material Time, Higgins was the sole beneficiary and signatory on the Triad Accounts and the only person authorized to withdraw money from those accounts.

19. The majority of funds transferred to the Triad Accounts by TBS Investors was withdrawn by Higgins in cash.

20. The TBS Investors have received no consideration for their TBS shares from Lehman Corp., Triad or Higgins and nothing in exchange for the advance fees transferred to the Triad Accounts.

Unregistered Trading in Securities of TBS Contrary to Section 25(1) of the Act

21. Neither Lehman Corp. nor Higgins have ever been registered in any capacity with the Commission.

22. Members of the public in Canada were solicited by Lehman Corp., and persons associated with Lehman Corp., to sell their TBS securities in exchange for an advance fee. The TBS Investors were instructed to wire the funds representing the advance fee to the Triad Accounts in order to complete the transaction. As a result, TBS Investors sent approximately \$29,661 to the Triad Accounts.

23. Higgins participated in acts and conduct, directly or indirectly in furtherance of the sale or disposition of TBS securities for valuable consideration, in circumstances where there were no exemptions available to Higgins under the Act. The actions of Higgins relating to the securities of TBS constituted the trading of securities without registration contrary to section 25(1) of the Act.

Securities Fraud Contrary to Section 126.1 of the Act

24. Members of the public in Canada were provided with information by representatives of Lehman Corp. that was false, inaccurate and misleading, including, but not limited to, the following: that Lehman Corp. was a brokerage firm based out of Montreal; that a US firm was interested in buying TBS shares from the TBS Investors at a substantial premium; that in order to execute this transaction the TBS Investors would need to provide an advance fee which

represented a refundable security deposit, non-resident taxes and/or paid for other disbursements; and that the TBS Investors would receive consideration for their TBS shares.

25. These and other false, inaccurate, misleading representations and omissions were made with the intention of defrauding the TBS Investors.

26. Higgins provided representatives of Lehman Corp. with the information necessary to facilitate the transfer of funds representing advance fees from TBS Investors to the Triad Accounts. Higgins was aware of all the deposits made by TBS Investors into the Triad Accounts and personally withdrew all the TBS Investors' funds from the Triad Accounts, mostly in cash. Higgins knew or ought to have known that the Triad Accounts were being used to facilitate a fraud on the TBS Investors.

27. Higgins engaged or participated in acts or a course of conduct relating to TBS securities that he knew or reasonably ought to have known perpetrated a fraud on any person or company contrary to section 126.1(b) of the Act.

PART IV - CONDUCT CONTRARY TO THE PUBLIC INTEREST

28. By engaging in the conduct described above, Higgins admits and acknowledges that he contravened Ontario securities law during the Material Time in the following ways:

- (a) During the Material Time, Higgins traded in securities without being registered to trade in securities, contrary to section 25(1) of the Act and contrary to the public interest;
- (b) During the Material Time, Higgins engaged or participated in acts, practices or courses of conduct relating to securities that Higgins knew or reasonably ought to have known perpetrated a fraud on persons or companies, contrary to section 126.1(b) of the Act and contrary to the public interest.

29. Higgins admits and acknowledges that he acted contrary to the public interest by contravening Ontario securities law as set out in sub-paragraphs 28. (a) and (b).

PART V - TERMS OF SETTLEMENT

30. Higgins agrees to the terms of settlement listed below.

31. The Commission will make an order, pursuant to sections 37 and s. 127(1) of the Act, that:

- (a) the Settlement Agreement is approved;
- (b) trading in any securities by Higgins cease permanently from the date of the approval of the Settlement Agreement;
- (c) the acquisition of any securities by Higgins is prohibited permanently from the date of the approval of the Settlement Agreement;
- (d) any exemptions contained in Ontario securities law do not apply to Higgins permanently from the date of the approval of the Settlement Agreement;
- (e) Higgins is prohibited permanently from the date of this Order from becoming or acting as a director or officer of any issuer, registrant, or investment fund manager;
- (f) Higgins is prohibited permanently from the date of this Order from becoming or acting as a registrant, as an investment fund manager or as a promoter; and,
- (g) Higgins shall disgorge to the Commission \$29,661 obtained as a result of his non-compliance with Ontario securities law, to be paid to or for the benefit of third parties designated by the Commission, pursuant to s. 3.4(2) of the Act;
- (h) Higgins shall pay an administrative penalty of \$50,000 for his failure to comply with Ontario securities law, to be paid to or for the benefit of third parties designated by the Commission, pursuant to s. 3.4(2) of the Act; and
- (i) Higgins cease permanently, from the date of the approval of the Settlement Agreement, to telephone from within Ontario to any residence within or outside Ontario for the purpose of trading in any security or any class of securities.

32. Higgins undertakes to consent to a regulatory Order made by any provincial or territorial securities regulatory authority in Canada containing any or all of the prohibitions set out in subparagraphs 31. (a) to (f) and (i) above.

PART VI - STAFF COMMITMENT

33. If this Settlement Agreement is approved by the Commission, Staff will not initiate any other proceeding under the Act against Higgins in relation to the facts set out in Part III herein, subject to the provisions of paragraph 34 below.

34. If this Settlement Agreement is approved by the Commission, and at any subsequent time Higgins fails to honour the terms of the Settlement Agreement, Staff reserve the right to bring proceedings under Ontario securities law against Higgins based on, but not limited to, the facts set out in Part III herein as well as the breach of the Settlement Agreement.

PART VII - PROCEDURE FOR APPROVAL OF SETTLEMENT

35. Approval of this Settlement Agreement will be sought at a hearing of the Commission scheduled on a date to be determined by the Secretary to the Commission, or such other date as may be agreed to by Staff and Higgins for the scheduling of the hearing to consider the Settlement Agreement.

36. Staff and Higgins agree that this Settlement Agreement will constitute the entirety of the agreed facts to be submitted at the settlement hearing regarding Higgins' conduct in this matter, unless the parties agree that further facts should be submitted at the settlement hearing.

37. If this Settlement Agreement is approved by the Commission, Higgins agrees to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.

38. If this Settlement Agreement is approved by the Commission, neither party will make any public statement that is inconsistent with this Settlement Agreement or inconsistent with any additional agreed facts submitted at the settlement hearing.

39. Whether or not this Settlement Agreement is approved by the Commission, Higgins agrees that he will not, in any proceeding, refer to or rely upon this Settlement Agreement or the

settlement negotiations as the basis of any attack on the Commission's jurisdiction, alleged bias or appearance of bias, alleged unfairness or any other remedies or challenges that may otherwise be available.

PART VIII – DISCLOSURE OF SETTLEMENT AGREEMENT

40. If, for any reason whatsoever, this Settlement Agreement is not approved by the Commission or the order attached as Schedule "A" is not made by the Commission:

- (a) this Settlement Agreement and its terms, including all settlement negotiations between Staff and Higgins leading up to its presentation at the settlement hearing, shall be without prejudice to Staff and Higgins; and
- (b) Staff and Higgins shall be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations in the Notice of Hearing and Statement of Allegations of Staff, unaffected by the Settlement Agreement or the settlement discussions/negotiations.

41. The terms of this Settlement Agreement will be treated as confidential by all parties hereto until approved by the Commission. Any obligations of confidentiality shall terminate upon approval of this Settlement Agreement by the Commission. The terms of the Settlement Agreement will be treated as confidential forever if the Settlement Agreement is not approved for any reason whatsoever by the Commission, except with the written consent of Higgins and Staff or as may be required by law.

PART IX. - EXECUTION OF SETTLEMENT AGREEMENT

42. This Settlement Agreement may be signed in one or more counterparts which together will constitute a binding agreement

43. A facsimile copy of any signature will be as effective as an original signature.

Dated this 3rd day of June, 2011.

Signed in the presence of:

“Rob Warren”

Rob Warren

“Gregory William Higgins”

Gregory William Higgins

Dated this 31st day of May, 2011

STAFF OF THE ONTARIO SECURITIES COMMISSION

“Tom Atkinson”

Tom Atkinson
Director, Enforcement Branch

Dated this 3rd day of June, 2011



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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
GREGORY WILLIAM HIGGINS**

**ORDER
(Sections 37 and 127(1))**

WHEREAS on _____, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 37 and 127 of the *Securities Act*, R.S.O. 1990, c.S.5, as amended (the "Act") in respect of Gregory William Higgins ("Higgins");

AND WHEREAS Higgins entered into a Settlement Agreement with Staff of the Commission dated _____, 2011 (the "Settlement Agreement") in which Higgins agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing, subject to the approval of the Commission;

AND UPON reviewing the Settlement Agreement, the Notice of Hearing, and the Statement of Allegations of Staff of the Commission, and upon hearing submissions from counsel for Higgins and from Staff of the Commission;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this Order;

IT IS HEREBY ORDERED THAT:

- (a) the Settlement Agreement is approved;
- (b) pursuant to clause 2 of subsection 127(1) of the Act, trading in any securities by Higgins cease permanently;
- (c) pursuant to clause 2.1 of section 127(1) of the Act, Higgins is prohibited permanently from the acquisition of any securities;
- (d) pursuant to clause 3 of section 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Higgins permanently;
- (e) pursuant to clauses 8, 8.2, and 8.4 of subsection 127(1) of the Act, Higgins is prohibited permanently from the date of this Order from becoming or acting as a director or officer of any issuer, registrant, or investment fund manager;
- (f) pursuant to clause 8.5 of subsection 127(1) of the Act, Higgins is prohibited permanently from the date of this Order from becoming or acting as a registrant, as an investment fund manager or as a promoter;
- (g) pursuant to clause 10 of subsection 127(1) of the Act, Higgins shall disgorge to the Commission \$29,661 obtained as a result of his non-compliance with Ontario securities law, to be paid to or for the benefit of third parties designated by the Commission, pursuant to s. 3.4(2) of the Act;
- (h) pursuant to clause 9 of subsection 127(1) of the Act, Higgins shall pay an administrative penalty of \$50,000 for his failure to comply with Ontario securities law, to be paid to or for the benefit of third parties designated by the Commission, pursuant to s. 3.4(2) of the Act; and
- (i) pursuant to section 37(1) of the Act of the Act, Higgins shall be prohibited permanently from telephoning from within Ontario to any residence within or outside Ontario for the purpose of trading in any security or in any class of security.

DATED AT TORONTO this day of , 2011.
