



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
DAVID CHARLES PHILLIPS and JOHN RUSSELL WILSON**

**AMENDED STATEMENT OF ALLEGATIONS
OF STAFF OF THE ONTARIO SECURITIES COMMISSION**

1. This case revolves around David Charles Phillips, a founder and the directing mind of the First Leaside Group, who intentionally deceived investors by selling and overseeing the sales of almost \$19 million in securities while withholding important information.

Overview

2. David Charles Phillips (“Phillips”) was a founder and the directing mind of a group of at least 161 companies (the “First Leaside Group”). Phillips directed all significant aspects of the business and growth of the First Leaside Group from its inception in the late 1980s until at least November 2011. John Russell Wilson (“Wilson”) was a senior salesperson employed by First Leaside Securities Inc. (“FLSI”), an investment dealer and one of the companies in the First Leaside Group. Wilson worked closely with and reported directly to Phillips.
3. Between August 22 and October 28, 2011 (the “Sales Period”), Phillips directed and oversaw sales of First Leaside Group equity and debt offerings which raised about \$18.76 million from investors. Phillips and Wilson were directly responsible for about 66% of the sales. Phillips sold about \$3.38 million directly to investors, and Wilson sold about \$8.95 million directly to investors.

4. Phillips and Wilson effected these sales knowing that an independent accounting firm, Grant Thornton Limited (“Grant Thornton”), had conducted an extensive six month review of the First Leaside Group and had delivered a report on August 19, 2011 (the “Grant Thornton Report”). The Grant Thornton Report included findings that the future viability of the First Leaside Group was contingent on its ability to raise new capital and that there was a significant equity deficit.
5. The fact that Grant Thornton was reviewing the First Leaside Group, the existence of the Grant Thornton Report and the Grant Thornton Report were important facts investors should have known. During the Sales Period, Phillips did not disclose these important facts to the First Leaside Group salespeople, nor did Phillips and Wilson disclose them to investors to whom they sold directly. By concealing these facts while selling to investors, and in Phillips’ case, supervising the entire sales effort, Phillips and Wilson dishonestly placed investors’ pecuniary interests at risk.
6. Each of Phillips and Wilson breached subsection 126.1(b) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “*Securities Act*”) by directly or indirectly engaging or participating in an act, practice or course of conduct relating to securities which they each knew, or reasonably ought to have known, would perpetrate a fraud on investors. Each of Phillips and Wilson also breached subsection 44(2) of the *Securities Act*, section 2.1 of Ontario Securities Commission (the “Commission”) Rule 31-505, and acted contrary to the public interest.

The First Leaside Group

7. The First Leaside Group included First Leaside Wealth Management Inc. (“FLWM”), which owned FLSI and an exempt market dealer, F.L. Securities Inc. (“F.L. Securities”). FLWM has never been registered under the *Securities Act*.
8. FLSI was registered with the Commission as an investment dealer from March 1, 2004 until February 24, 2012, when its registration was suspended. FLSI was also registered as a dealer member with the Investment Industry Regulatory Organization of Canada (“IIROC”). FLSI’s IIROC membership was suspended on February 24, 2012.

9. F.L. Securities was registered with the Commission as a limited market dealer from March 1, 1991 until September 28, 2009, and as an exempt market dealer from September 28, 2009 until February 28, 2012, when its registration was suspended.

The Respondents

Phillips

10. Phillips is an Ontario resident, and has been registered with the Commission in various capacities since 1981. Phillips was the Chief Executive Officer, President, Secretary and a director of the investment dealer FLSI, and the President and a director of FLWM. Phillips owned 100% of the common shares of FLWM.
11. In respect of FLSI, Phillips was registered with the Commission in various capacities from March 1, 2004 to February 24, 2012, and was registered as the ultimate designated person from January 11, 2010 to February 24, 2012. In respect of F.L. Securities, Phillips was registered with the Commission in various capacities from April 14, 2000 to February 27, 2004, and was approved as a shareholder from March 17, 2004 to February 28, 2012.
12. Phillips' registration with FLSI and F.L. Securities was suspended on February 24 and 28, 2012, respectively, pursuant to subsection 29(2) of the *Securities Act*.

Wilson

13. Wilson is an Ontario resident, and has been registered with the Commission in various capacities since 2003. Wilson was a director of FLWM. Wilson commenced employment with FLSI in 2005 and was employed with FLSI until February 2012.
14. In respect of FLSI, Wilson was registered as a salesperson from April 12, 2005 to February 24, 2012 and approved as an officer and director from March 29, 2011 to February 24, 2012.
15. Wilson's registration with FLSI was suspended on February 24, 2012, pursuant to subsection 29(2) of the *Securities Act*.

First Leaside Group's Clients and Business

16. On or about August 19, 2011, the First Leaside Group had at least 1,000 clients, most of whom were residents of Ontario. The First Leaside Group sold proprietary equity and debt offerings that were invested directly or indirectly within the First Leaside Group, and offered full brokerage and financial planning services administered by a carrying broker.
17. The First Leaside Group's proprietary equity and debt offerings typically consisted of units in limited partnerships ("LPs") and funds ("Funds"). The LPs primarily held real estate, including multi-unit residential properties in Canada and Texas. The Funds primarily held promissory notes in LPs which, in turn, held real estate. The real estate included 10 properties held by a member of the First Leaside Group, the Wimberly Apartments LP ("WALP"), through its subsidiaries.
18. At all times during the Sales Period, Phillips continued to be the directing mind of the First Leaside Group. Until at least November 3, 2011, Phillips was responsible for all aspects of the First Leaside Group, including capital raises, deal origination, deal negotiation and structuring and internal administration.

The Grant Thornton Report

19. In the months leading up to the Sales Period, significant real estate assets were being appraised and the business and operations of the First Leaside Group were under review by independent third parties.
20. In November 2010, Staff of the Commission ("Staff") sought an accurate, third party market valuation for the WALP properties in Texas and an additional property held by First Leaside Partners LP. The First Leaside Group engaged CB Richard Ellis and Joseph J. Blake and Associates Inc., which delivered their valuation reports to the First Leaside Group by January 2011.
21. In February 2011, due to concerns stemming from the valuation reports, Staff urged the First Leaside Group to retain an independent accounting firm with recognized expertise

in restructuring and insolvency matters to conduct a viability study of the First Leaside Group.

22. In March 2011, Grant Thornton was retained by Cassels Brock & Blackwell LLP (“Cassels Brock”) to review, report on and make recommendations in respect of the business, assets, affairs and operations of the First Leaside Group. Cassels Brock was counsel to Phillips and to the First Leaside Group.
23. Between March and August 2011, Grant Thornton performed its review of the First Leaside Group, and on August 19, 2011, delivered its report. The Grant Thornton Report included the following findings:

The future viability of the [First Leaside] Group is contingent on their ability to raise new capital. One of the largest sources of revenue in the [First Leaside] Group is the fees it generates in FLWM on the raising of new capital. If the [First Leaside] Group was restricted from raising new capital, it would likely be unable to continue its operations in the ordinary course, as it would have insufficient revenue to support its infrastructure, staffing costs, distributions, and to meet their funding requirements for existing projects.

[...]

We have also reviewed the Asset Valuation of the [First Leaside] Group, using the highest third party valuation figures available for the WALP properties. In this regard, we have calculated an aggregate equity surplus (represented as asset FMV, less third party mortgages and investor debt) of approximately \$67M, while there is raised equity in the [First Leaside] Group of approximately \$200M. In this regard, there is a significant equity deficit based on the Asset Valuation.

24. Phillips and Wilson were aware that Grant Thornton had been retained to review the First Leaside Group, and each received the Grant Thornton Report on or shortly after August 19, 2011.
25. Despite knowing about the engagement of Grant Thornton, the existence of the Grant Thornton Report and having received the Grant Thornton Report, Phillips directed and oversaw a sales effort, and he and Wilson each sold securities directly to investors while concealing these important facts.

Phillips' and Wilson's Conduct During the Sales Period

26. During the Sales Period, about \$18.76 million was raised from investors through sales of units in the following offerings:

| Entity | Cost of Units Sold |
|-----------------------------------|---------------------|
| Special Notes LP | \$8,077,328 |
| First Leaside Expansion LP | 3,927,102 |
| Flex Fund – Class B and C | 3,029,990 |
| First Leaside Venture LP | 1,921,359 |
| FLWM Fund | 1,265,931 |
| First Leaside Primetime Living LP | 335,000 |
| First Leaside Beverages Group LP | 130,010 |
| Wimberly Apartments LP | 78,448 |
| Total | \$18,765,168 |

27. During the Sales Period, Phillips sold units directly to investors, supervised all of the salespeople and approved each sale, and Wilson sold units directly to investors. Phillips' direct sales totalled about \$3,388,626, and Wilson's direct sales totalled about \$8,945,865 for a combined total of \$12,334,491 or about 66% of sales.
28. Phillips and Wilson each sold units in the Special Notes LP, First Leaside Expansion LP, Flex Fund Class B and C, First Leaside Venture LP, FLWM Fund and WALP directly to investors. Wilson also sold units in First Leaside Primetime Living LP and First Leaside Beverages Group LP directly to investors.
29. Phillips did not disclose to the First Leaside Group salespeople, and Phillips and Wilson did not disclose to investors the fact that Grant Thornton had reviewed the First Leaside Group, the existence of the Grant Thornton Report or the Grant Thornton Report.
30. As registrants, each of Phillips and Wilson had an obligation to deal honestly, fairly and in good faith with their clients. In supervising and conducting sales in the circumstances described, Phillips failed to discharge this obligation. In conducting sales in the circumstances described, Wilson failed to discharge this obligation.

Companies' Creditors Arrangement Act Proceeding

31. On February 23, 2012, less than 4 months after the end of the Sales Period, FLWM, FLSI, F.L. Securities and other members of the First Leaside Group obtained an order from the Ontario Superior Court of Justice that the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 applies to them and they are now subject to a court-supervised wind-up.

Breaches of the *Securities Act* and Conduct Contrary to the Public Interest

32. Phillips and Wilson each directly or indirectly engaged or participated in an act, practice or course of conduct relating to securities which he knew, or reasonably ought to have known, would perpetrate a fraud on investors, contrary to subsection 126.1(b) of the *Securities Act*.
33. Phillips and Wilson each made statements a reasonable investor would consider relevant in deciding whether to enter into or maintain a trading or advising relationship, which statements were untrue or omitted information necessary to prevent the statements from being false or misleading in the circumstances in which they were made, contrary to subsection 44(2) of the *Securities Act*.
34. Phillips and Wilson each failed to deal fairly, honestly and in good faith with their clients, contrary to section 2.1 of Commission Rule 31-505.
35. Phillips and Wilson each engaged in conduct contrary to the public interest and harmful to the integrity of the capital markets.
36. Staff reserve the right to make such other allegations as Staff may advise and the Commission may permit.

DATED at Toronto this 25th day of April 2013.