



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
XI BIOFUELS INC., BIOMAXX SYSTEMS INC., XIIVA HOLDINGS INC. CARRYING
ON BUSINESS AS XIIVA HOLDINGS INC., XI ENERGY COMPANY, XI ENERGY
AND XI BIOFUELS, RONALD CROWE AND VERNON SMITH**

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

Staff of the Ontario Securities Commission (“Staff”) make the following allegations:

I. THE RESPONDENTS

1. Xiiva Holdings Inc. (“Xiiva”) was incorporated in Ontario on or about June 7, 1995. On or about June 25, 2005, Xiiva’s status with the Ministry of Government and Consumer Services was described as cancelled for failing to comply with the *Corporations Tax Act*. Xiiva was revived on or about September 24, 2007.
2. Biomaxx Systems Inc. (“Biomaxx”) was incorporated in Ontario on or about October 22, 2001.
3. XI Biofuels Inc. (“XI Biofuels”) was incorporated in Ontario on or about September 24, 2007.
4. Ronald Crowe (“Crowe”) and Vernon Smith (“Smith”) are residents of Barrie, Ontario. Staff allege that Crowe and Smith were the directing minds of each of Xiiva, Biomaxx and XI Biofuels during the Material Time (as defined below).

5. Crowe is a director and the president of Xiiva. Smith became a director of Xiiva on or about July 10, 2007 and resigned from that position on or about July 19, 2007. Smith signed treasury directions to Xiiva's transfer agent as a "director" of Xiiva from December 2005 to July 2006 and in August 2007.

6. Smith is a director of Biomaxx and since July 2007, has been the president and sole employee of Biomaxx. Crowe was an officer and director of Biomaxx from May 2005 to July 2007 and was the president of Biomaxx from February 2006 to July 2007.

7. Crowe is the sole officer and director of XI Biofuels.

8. On or about May 21, 2008, Xiiva, Biomaxx and XI Biofuels were petitioned into bankruptcy.

II. BACKGROUND TO ALLEGATIONS

- **Trading in Securities of Biomaxx and Xiiva**

9. Staff allege that between December 2004 and October 2007, Crowe, Smith and Biomaxx traded in securities of Biomaxx. Staff further allege that between December 2004 and November 2007, Crowe, Smith, XI Biofuels and Xiiva traded in securities of Xiiva. The period December 2004 to November 2007 will hereinafter be referred to as the Material Time.

10. Throughout the Material Time, none of the Respondents were registered in any capacity with the Commission.

11. The trades in securities of Biomaxx and Xiiva referred to herein were trades in securities not previously issued and were therefore distributions. No preliminary prospectus was filed and no receipts were issued for them by the Director to qualify the trading of Biomaxx and Xiiva securities.

- **Trading in Securities of Biomaxx**

12. Biomaxx purported to be a company that engaged in the design and construction of biofuel plants for the conversion of plant waste into bio-diesel. The company also purported to offer consulting services.

13. During the Material Time, the address found on Biomaxx's website was the address of a business centre providing, *inter alia*, mail and conference room services to third parties.

14. During the Material Time, more than 2,500,000 Biomaxx securities were issued to more than 200 investors (the "Biomaxx Investors").

15. The transfer agent used by Biomaxx to effect the trades in Biomaxx securities was Heritage Trust Company ("Heritage"), an Ontario corporation located in Toronto.

16. The treasury directions sent to Heritage by Biomaxx in connection with the issuance of Biomaxx securities were signed by either of Smith, Crowe or Crowe's son, Richard Farley Crowe. In each case, Heritage was provided with one of two addresses in Cyprus as the address for the Biomaxx Investors. In fact, some or all of the Biomaxx Investors reside in the United Kingdom and Australia.

17. Some or all of the Biomaxx Investors:

(a) were cold called by representatives of Pro Capital Asset Management and Trust LLC ("PCAMT") purportedly domiciled in Nicosia, Cyprus;

(b) were instructed to remit funds to pay for their shares to Alpha Bank located in Nicosia, Cyprus;

(c) were not aware that their registered address on the Biomaxx shareholder list was an address located in Cyprus; and

(d) paid between \$1.31 USD and \$3.96 USD per share for their shares.

18. During the period February 2006 to June 2007, one Biomaxx Investor paid over \$500,000 USD to PCAMT in a series of transactions and was issued securities from Biomaxx's treasury. However, during the Material Time, only approximately \$275,000 CDN and \$71,000 USD were deposited into the only known bank accounts for Biomaxx.

- **Trading in Securities of Xiiva**

19. During the Material Time, Xiiva carried on business under two different names, XI Energy and XI Biofuels.

20. According to its website, XI Energy professed to be developing "proprietary biotechnology" to improve the fermentation process related to the production of ethanol as an alternative fuel and providing environmental consulting services in the fields of biotechnology, biofuels and renewable energy.

21. During the period December 2005 to July 2006, approximately 41,000 Xiiva securities were issued to approximately 12 investors and the share certificates for these securities bore the name Xiiva "operating as XI Energy". In each case, Heritage was given one of two addresses, one in London, UK and the other in Barcelona, Spain as the address of the investor.

22. According to its website, XI Biofuels purported to "design and build small micro-refineries" to produce ethanol for fuel from wood waste. During the period July 2007 to November 2007, more than 200,000 Xiiva securities were issued to more than 60 investors (the "Xiiva Investors"). The share certificates for these securities bore the name Xiiva "operating as XI Biofuels".

23. During the Material Time, the addresses found on the websites for XI Biofuels and XI Energy were, in fact, the addresses of business centres providing, *inter alia*, mail and conference room services to third parties.

24. Heritage was the transfer agent used by Xiiva. The treasury directions sent to Heritage by Xiiva in connection with the issuance of Xiiva securities were signed by either of Smith or Crowe.

25. In addition to being used as a trade name for Xiiva, XI Biofuels is also the name of a separate corporation wholly owned by Xiiva which was incorporated in Ontario on or about September 24, 2007 through the efforts of Crowe.

26. Shortly after XI Biofuels was incorporated, Crowe opened three bank accounts in the name of XI Biofuels:

(a) A Canadian dollar bank account at Meridian Credit Union in Barrie, on or about September 25, 2007 (the “Meridian Account”);

(b) A Canadian dollar bank account at a National Bank of Canada branch in Barrie, on or about October 18, 2007; and

(c) A U.S. dollar account at the National Bank of Canada branch in Barrie, on or about November 1, 2007 (which account, along with the account in (b) above, to be referred to hereafter as the “National Accounts”).

27. Crowe was the only signatory to the Meridian and National Accounts.

28. During the period July 2007 to November 2007, at least seven different entities were marketing Xiiva treasury shares to potential investors:

(a) Some Xiiva Investors were cold called by representatives of XI Biofuels. Some or all of these Xiiva Investors were directed to remit funds for the purchase of their shares to one of the National Accounts;

(b) Other Xiiva Investors were cold called by an entity calling itself Venpar (Venture Alliance Partners) purportedly domiciled in Copenhagen, Denmark or by an entity calling itself VCPM (VC Private Management), purportedly operating from Switzerland, but domiciled and registered in the British Virgin Islands. Some or all of these Xiiva Investors were directed to remit funds for the purchase of their shares to one of the National or Meridian Accounts; and

(c) Other Xiiva Investors were cold called by entities calling themselves Emerging Equity Group and Strategic Investment Group, both purportedly domiciled in Barcelona, Spain and by Crickmore and Lutz and Prestige Asset Management, both purportedly domiciled in Luxembourg. Some or all of these Xiiva Investors were directed to remit funds for the purchase of their shares to one of two Bank of America accounts in favour of International Escrow Services, purportedly domiciled in Lakeland, Florida.

29. The investor funds deposited into the National and Meridian Accounts relate to the issuance of only 76,300 Xiiva securities. Funds for the payment of 127,596 Xiiva securities from 38 of the Xiiva Investors are not accounted for in any known bank accounts of Xiiva or XI Biofuels.

30. Similarly, funds for the payment of the 41,000 Xiiva securities in the name of Xiiva “operating as XI Energy” issued to 12 investors are not accounted for in any known bank accounts of Xiiva or XI Biofuels.

31. Virtually all of the money on deposit in the Meridian account was wire transferred to Timber Trace Investments, an entity located in Nassau Bahamas (“Timber Trace”). On or about November 7, 2007, Crowe attempted to wire transfer virtually all of the funds on deposit in the National Accounts at that time to Timber Trace.

32. Representatives of Xiiva made representations to at least one of the Xiiva Investors, in or about October, 2007, prior to the purchase of securities by that investor, to the effect that Xiiva securities were going to be listed on a stock exchange.

SUMMARY OF STAFF’S ALLEGATIONS

33. The specific allegations advanced by Staff are that during the Material Time:

- (a) The Respondents traded in securities of Biomaxx and/or Xiiva without being registered to trade in securities contrary to section 25(1)(a) of the *Securities Act*, R.S.O. 1990, c.S.5, (the “Act”) and contrary to the public interest;

- (b) The Respondents traded in securities of Biomaxx and/or Xiiva when a preliminary prospectus and a prospectus had not been filed and receipts had not been issued for either of Biomaxx or Xiiva by the Director, contrary to section 53(1) of the Act and contrary to the public interest;
- (c) The Respondents engaged or participated in acts, practices or courses of conduct relating to the distribution of and trading of Biomaxx and/or Xiiva securities that were contrary to the public interest and harmful to the integrity of the Ontario capital markets;
- (d) Representatives or agents of Xiiva and/or XI Biofuels made representations without the written permission of the Director, with the intention of effecting a trade in securities of Xiiva, that such security would be listed on a stock exchange or quoted on any quotation or trade reporting system, contrary to section 38(3) of the Act and contrary to the public interest;
- (e) Smith and Crowe, as directors and/or officers or *de facto* directors and/or officers of Biomaxx, authorized, permitted or acquiesced in the commission of the violations of sections 25 and 53 of the Act, set out above, by Biomaxx and, accordingly, failed to comply with Ontario securities law pursuant to section 129.2 of the Act; and
- (f) Smith and Crowe, as directors and/or officers of Xiiva and XI Biofuels, or *de facto* directors and/or officers of Xiiva and XI Biofuels, authorized, permitted or acquiesced in the commission of the violations of sections 25, 38 and 53 of the Act, set out above, by Xiiva and XI Biofuels and, accordingly, failed to comply with Ontario securities law pursuant to section 129.2 of the Act.

34. Staff reserve the right to make such other allegations as Staff may advise and the Commission may permit.

DATED at Toronto, December 30th, 2008