



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
KEITH MACDONALD SUMMERS,
TRICOASTAL CAPITAL PARTNERS LLC,
and TRICOASTAL CAPITAL MANAGEMENT LTD.**

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

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

I. OVERVIEW

1. This proceeding concerns the fraudulent activities of Tricoastal Capital Partners LLC (“Tricoastal Partners”), Tricoastal Capital Management Ltd. (“Tricoastal Management”) (together, “Tricoastal”) and Keith MacDonald Summers (“Summers”) (collectively, the “Respondents”) in relation to the sale of securities of Tricoastal. From July 2009 to July 2013 (the “Relevant Period”), the Respondents raised approximately \$4,690,000 from nine investors located in the United States and Canada.

II. THE RESPONDENTS

2. Tricoastal Partners is an investment fund incorporated on April 24, 2004 as a limited liability company in the State of Delaware. Tricoastal Partners has a registered office located in Wilmington, Delaware and a mailing address located in Buffalo, New York. During the Relevant Period, Tricoastal Partners was not registered with the Commission in any capacity.

3. Tricoastal Management is a company incorporated on October 4, 2007 pursuant to the laws of Ontario. It has a registered address at 2164 Headon Forest Drive in Burlington, Ontario.

During the Relevant Period, Tricoastal Management was not registered with the Commission in any capacity.

4. Summers is a resident of Burlington, Ontario. He is the sole officer and director of both Tricoastal Partners and Tricoastal Management. During the Relevant Period, Summers managed the Tricoastal Partners investment fund from his former residence at 2164 Headon Forest Drive in Burlington, Ontario. Previously, Summers was a registrant with the Commission with his most recent registration terminated on September 8, 2008. During the Relevant Period, Summers was not registered with the Commission in any capacity.

III. BREACHES OF THE ACT AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

5. Investors were solicited to purchase membership interests in Tricoastal with the assets (and liabilities) of Tricoastal being owned by the members on a pro-rata basis according to their respective membership interest. Summers represented to investors that he would employ an exchange traded funds investment strategy (the “ETF Strategy”) to generate returns. Investors received monthly statements reflecting the value of their investment.

6. Prior to August 2011, Summers overstated the size of the Tricoastal Partners fund (“Assets Under Management” or “AUM”) to investors. Summers typically stated to investors that he had \$15-million to \$20-million under management when, in reality, there were substantially fewer Assets Under Managements in the fund.

7. In August 2011, the ETF Strategy experienced a period of volatility during which time Summers began significantly under-stating poor performance. To conceal the poor performance of Tricoastal Partners, Summers overstated the AUM and misstated the performance of the fund and produced false monthly statements that were sent to investors.

8. In May 2012, Summers changed the investment strategy of the fund and ceased employing the ETF Strategy, contrary to the representations made to investors. Investors were not advised of any change in investment strategy at any point during the Relevant Period. All positions held by Tricoastal in ETFs were closed out by August 2012.

9. After changing the investment strategy, the Respondents began experiencing heavy trading losses. To conceal these losses, Summers continued to produce false monthly statements that did not accurately reflect the actual investor holdings by reporting gains each month when the fund sustained losses or was not trading.

10. In March 2013, the largest of the nine investors requested that Tricoastal Partners provide audited financial statements. To continue to conceal the substantial trading losses in Tricoastal Partners, Summers created a false set of audited financial statements for the year ended December 31, 2012 on the letterhead of a fictitious auditor. Summers caused this fictitious auditor report to be delivered to the investor.

11. The investor funds were dissipated as follows:

- (a) approximately US\$572,000 was paid back to investors as a partial or total redemption of their investment;
- (b) approximately US\$920,000 was withdrawn and used primarily to pay Summers's business and personal living expenses, including mortgage payments, in excess of fees to which he was entitled as manager of Tricoastal Partners;
- (c) approximately US\$1.2-million was lost as a result of trading losses after Summers implemented his change in investment strategy;
- (d) approximately US\$1.4-million is held in brokerage accounts in the name of Tricoastal and is currently subject to a freeze by regulators; and
- (e) approximately US\$270,000 was withdrawn by Summers in management fees that he was legitimately entitled to during the Relevant Period.

12. The Respondents engaged in a course of conduct relating to securities that they knew or reasonably ought to have known would result in a fraud on investors, and made prohibited representations and provided information to investors that was false, inaccurate and misleading, as follows:

- (a) misstating the AUM, which induced individuals to invest in Tricoastal;

- (b) applying investor funds in a manner contrary to that represented to investors when the change in investment strategy occurred;
- (c) misrepresenting the performance of Tricoastal Partners to conceal trading losses through the creation of false investor statements and a fictitious auditor report; and
- (d) misappropriating investor funds through the withdrawal of funds excess of the fees to which Summers was entitled as manager of the investment fund.

13. Neither Tricoastal Partners nor Tricoastal Management had filed a preliminary prospectus or prospectus and receipts had not been issued for them by the Director. The securities of Tricoastal were not previously issued and therefore constituted a “distribution” within the meaning of the Act.

14. The Respondents’ acts, solicitations, conduct or negotiations directly or indirectly in furtherance of the sale or disposition of securities were for a business purpose and were undertaken without the benefit of an exemption from either the prospectus or dealer registration requirements under the Act.

IV. ALLEGATIONS

15. The specific allegations advanced by Staff are:

- (a) During the Relevant Period, the Respondents engaged or participated in acts, practices or courses of conduct relating to securities that they knew or reasonably ought to have known perpetrated a fraud on persons or companies, contrary to subsection 126.1(b) of the Act and contrary to the public interest;
- (b) During the Relevant Period, the Respondents engaged in the business of trading in securities without being registered in accordance with Ontario securities law, contrary to subsection 25(1) of the Act and contrary to the public interest;
- (c) During the Relevant Period, the Respondents traded in previously unissued securities when a preliminary prospectus and a prospectus had not been filed and

receipts had not been issued for them by the Director, contrary to subsection 53(1) of the Act and contrary to the public interest.

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

DATED at Toronto February 27, 2014