



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF
ALAIN ARMAND THEROUX**

**STATEMENT OF ALLEGATIONS
(Subsections 127(1) and 127(10) of the *Securities Act*, RSO 1990 c S.5)**

1. Staff of the Enforcement Branch (**Staff**) of the Ontario Securities Commission (the **Commission**) elect to proceed using the expedited procedure for inter-jurisdictional proceedings as set out in Rule 11(3) of the Commission's *Rules of Procedure*.

A. ORDER SOUGHT

2. Staff request that the Commission make the following inter-jurisdictional enforcement order, pursuant to paragraph 1 of subsection 127(10) of the Ontario *Securities Act*, RSO 1990 c S.5 (the **Act**):
 - (a) against Alain Armand Theroux (**Theroux** or the **Respondent**) that:
 - i. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Theroux cease permanently;
 - ii. pursuant to paragraph 2.1 of subsection 127(1) of the Act, acquisition of any securities by Theroux be prohibited permanently;
 - iii. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Theroux permanently;

- iv. pursuant to paragraphs 7 and 8.1 of subsection 127(1) of the Act, Theroux resign any positions that he holds as a director or officer of any issuer or registrant;
 - v. pursuant to paragraphs 8 and 8.2 of subsection 127(1) of the Act, Theroux be prohibited permanently from becoming or acting as a director or officer of any issuer or registrant; and
 - vi. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Theroux be prohibited permanently from becoming or acting as a registrant or promoter;
- (b) such other order or orders as the Commission considers appropriate.

B. FACTS

Staff make the following allegations of fact:

(i) Overview

3. On April 19, 2018, Theroux pleaded guilty in the Ontario Court of Justice to five counts of fraud over \$5,000, contrary to section 380(1)(a) of the Criminal Code of Canada, RSC, 1985, c. C-46 (the **Criminal Code**). Theroux's guilty plea was accepted by the Court, and he was convicted and sentenced to 12 months imprisonment, to be followed by two years of probation.
4. The offences for which Theroux was convicted arose from transactions, business or a course of conduct related to securities.
5. Staff is seeking an inter-jurisdictional enforcement order reciprocating Theroux's conviction, pursuant to paragraph 1 of subsection 127(10) of the Act.

6. The conduct for which Theroux was sanctioned took place between August 21, 2008 and June 30, 2010 (the **Material Time**).

(ii) The Respondent

7. Theroux is a resident of Ontario.
8. Theroux was previously registered in various capacities, including as a mutual fund salesperson with PFSL Investments Canada Limited (**PFSL**) from March 1992 to July 2008, and as a branch manager with PFSL from November 2003 to April 2008. Theroux has not been registered in any capacity under the Act since July 2008.

(iii) The Ontario Court of Justice Proceedings

Conviction for Fraud

9. By Information dated August 16, 2016 (the **Information**), Theroux was charged with 11 various counts of contravening the Criminal Code.
10. On April 19, 2018, Theroux pleaded guilty before the Honourable Justice Gage of the Ontario Court of Justice to five counts of fraud over \$5,000, contrary to section 380(1)(a) of the Criminal Code, being counts 1, 3, 5, 7 and 9 of the Information.

The Findings

11. For the purpose of his guilty plea, Theroux, through his counsel, agreed with the following facts:
 - (a) During the Material Time, Theroux approached a number of his former PFSL clients and personal friends to invest in a biofuel venture with Organo Capital Incorporated (**Organo**), a Quebec-based company with which Theroux was associated.

- (b) Theroux assured investors that he had done his homework, and that the biofuel venture was a secure and low-risk investment.
- (c) Theroux solicited and accepted funds in excess of \$1 million from Ontario investors with respect to the investment. While the majority of the investors' funds were made payable to, and deposited directly into, Organo's account, some funds were made payable instead to Theroux Enterprises, and deposited into bank accounts controlled by Theroux.
- (d) Statements provided to investors reflected their investments in bonds, promissory notes and bridge financing, with generous returns of up to 100% for a one-year term.
- (e) During the Material Time, five of the investors (the **Five Investors**), to whom Theroux was either a friend or long-time financial advisor, provided Theroux with funds totalling \$445,000 for the purpose of investing with Organo and associated companies. However, only \$274,800 of those funds were invested with Organo. Theroux misappropriated the remaining balance of \$170,800, which he instead used for his own purposes, and to make payments to other investors.
- (f) Ultimately, the Five Investors did not receive returns on their investments as promised, nor the return of their initial investment funds from Theroux.

Theroux's Sentence

- 12. A sentencing hearing was subsequently held on July 24, 2018 before Justice Gage of the Ontario Court of Justice. Justice Gage sentenced Theroux to 12 months' imprisonment, followed by two years of probation.
- 13. Justice Gage also ordered Theroux to pay restitution to the Five Investors totalling \$170,800, and a fine in lieu of forfeiture of \$75,000 to be paid within 15 years of his release. Alternatively, Justice Gage further ordered

that in default of payment of the fine, Theroux be imprisoned for an additional two years.

C. JURISDICTION OF THE ONTARIO SECURITIES COMMISSION

14. Pursuant to paragraph 1 of subsection 127(10) of the Act, Theroux's convictions for offences arising from transactions, business or a course of conduct related to securities or derivatives may form the basis for an order in the public interest made under subsection 127(1) of the Act.
15. Staff allege that it is in the public interest to make an order against Theroux.
16. Staff reserve the right to amend these allegations and to make such further and other allegations as Staff deem fit and the Commission may permit.

DATED at Toronto this 26th day of March, 2019.

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