



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 -

ROY MICHAEL STEPLOCK

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

1. Further to a Notice of Hearing dated April 1, 2010, Staff of the Ontario Securities Commission (“Staff”) make the following allegations:

I. BACKGROUND

2. Retrocom Growth Fund (“Retrocom” or the “Fund”) is a reporting issuer in Ontario incorporated in 1995 as a labour-sponsored investment fund. In December 2005, Retrocom suspended redemptions because it did not have sufficient liquidity to meet outstanding redemption requests. In or about August 2006, Retrocom filed a Notice of Intention to make a Proposal under the *Bankruptcy and Insolvency Act* (Canada). RSM Richter Inc. (“Richter”) was named as trustee. It is not expected that any assets will be available for distribution to the Fund’s investors.

3. At all Material Times (defined to include all financial reporting periods between 2003 and 2005), approximately 90% of Retrocom’s holdings were comprised of direct and/or indirect investments in real property.

4. Retrocom Investment Management Inc. (“RIMI”) was, from June 2001, Retrocom’s manager. RIMI was incorporated in Ontario in 1995. RIMI was registered with the Commission as an Investment Counsel and Portfolio Manager (“ICPM”) on April 2, 1998 and as a Limited Market Dealer (“LMD”) on September 5, 2000. On

October 2, 2006, the Commission issued an Order accepting RIMI's surrender of registration.

5. The respondent, Roy Michael Steplock ("Steplock" or the "Respondent") was, at all Material Times, the *de facto* directing mind of RIMI. Between 1997 and 2005 Steplock was, at various times, the President, Chief Executive Officer and a Director of RIMI. Until resigning on January 31, 2005, Steplock was a member of Retrocom's Board of Directors and was at various times a member of its Audit, Valuation and Investment Committees.

II. FACTS AND ALLEGATIONS

(a) Write Down and Reversal for the Year-Ending August 31, 2004

6. For the year ending August 31, 2004, the Fund's auditor required a write-down of the value of the Fund's assets in the amount of \$8.5 million, \$6 million of which was attributed to the Fund's venture investments and \$2.5 million to receivables (the "Write-Down").

7. On February 2, 2005, less than one month after the Fund's approval of the Write-Down, the Fund's Valuation Committee authorized the reversal of the Write-Down in relation to the Fund's venture investments and a partial (\$1 million) reversal of the Write-Down for receivables (the "Reversal"), for a total of \$7 million. The Reversal was made retroactive to September 1, 2004. The Reversal in relation to the venture investments was approved by the Valuation Committee on the basis of information provided by RIMI that a land swap deal was anticipated to close at a purchase price which was in excess of the valuation ascribed to the related land in the Fund's 2004 year-end audit. Steplock attended the Valuation Committee meeting at which the Reversal was authorized.

8. Neither RIMI nor the Valuation Committee consulted with the Fund's auditors prior to recommending or approving the Reversal. It does not appear that any new information that would affect the project's value arose from the conclusion of the audit to the date on which the Reversal was authorized.

9. In or about June 2005, the Respondent and others at RIMI learned for certain that the land swap had failed to close. However, it appears that RIMI continued to receive management fees calculated on the basis of the Reversal until February 28, 2006 (the “Inflated Fees”).

10. RIMI’s conduct in recommending the Reversal absent consultation with the Fund’s external auditors, in failing to ensure that the Fund’s NAV was promptly adjusted, and in accepting the Inflated Fees, was in breach of its obligations pursuant to section 116 of the Act. The Respondent authorized, permitted or acquiesced in these non-compliances by RIMI with Ontario securities law and, accordingly, failed to comply with Ontario securities law, contrary to section 129.2 of the Act and the public interest.

(b) Additional Fees and Conflict of Interest

11. Pursuant to the Fund’s prospectus, RIMI was to receive an annual management fee calculated based on the Fund’s NAV and was permitted to receive fees directly from investee companies for services provided to them.

12. The management agreement between RIMI and the Fund (the “Management Agreement”) provided, among other things, that RIMI shall “exercise the powers granted hereunder and discharge the duties hereunder honestly, in good faith and in the best interests of the Fund and, in connection therewith, shall exercise the degree of care, diligence and skill that a reasonable prudent person performing similar functions would exercise in the circumstances.”

13. The Management Agreement also provided, among other things, that RIMI “shall not, and shall not permit its employees, directors or officers” to enter into any arrangement whereby they would receive “any fee, payment or benefit as a result of dealing with [any] Eligible Business or Investee Company or [persons related to them]” without obtaining the consent of the Fund.

14. During the Material Time, RIMI received payments totalling approximately \$3.5 million from companies/projects in which the Fund had invested on RIMI’s advice in respect of the provision of services (the “Additional Fees”).

15. A portion of the Additional Fees was paid, rather than to RIMI, by way of the transfer of a condominium unit to a numbered company controlled 50% by the Respondent and 50% by another RIMI employee (the “Condominium”). Based on the valuations of the Condominium received, it appears that the Respondent obtained a personal benefit in the amount of at least \$245,327.10 as a consequence of the transfer of the Condominium (the “Personal Benefit”).

16. A conflict of interest existed with respect to the Additional Fees and the Personal Benefit. However, the Respondent did not take steps to obtain the consent of the Fund prior to or after RIMI’s acceptance of the Additional Fees or his acceptance of the Personal Benefit.

17. RIMI’s failure to disclose to the Fund the intended and actual receipt of the Additional Fees (including the Personal Benefit) was in breach of its obligations pursuant to section 116 of the Act. The Respondent authorized, permitted or acquiesced in these non-compliances with Ontario securities law by RIMI and, accordingly, failed to comply with Ontario securities law contrary to section 129.2 of the Act and the public interest.

(c) Imprudent, Material Over-Valuations of Assets

18. It appears that the Fund’s assets were materially over-valued during, at least, the fiscal period between August 31, 2000 and August 31, 2004. Audited financial statements for the year ending August 31, 2005 were never completed.

19. RIMI, as manager, made investment recommendations to the Fund and provided ongoing asset valuations. RIMI’s valuation practices were significantly deficient in numerous ways, and therefore in breach of its obligations pursuant to section 116 of the Act. The Respondent authorized, permitted or acquiesced in these non-compliances with Ontario securities law and, accordingly, failed to comply with Ontario securities law contrary to section 129.2 of the Act and the public interest.

(d) Misleading Staff

20. In contravention of clause (a) of subsection 122(1) of the Act, the Respondent failed to promptly inform Staff of his receipt of the Personal Benefit during Staff's investigation of this matter.

**III. BREACH OF ONTARIO SECURITIES LAWS AND CONDUCT
CONTRARY TO THE PUBLIC INTEREST**

21. The conduct engaged in by the Respondent as set out above violated the Ontario securities laws as specified above. In addition, the conduct engaged in by the Respondent as set out above compromised the integrity of Ontario's capital markets, was abusive to Ontario's capital markets and was contrary to the public interest.

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

DATED AT TORONTO this 1st day of April, 2010