Ontario Securities Commission | Commission des valeurs mobilières de l'Ontario | 22nd Floor, 20 Queen Street West, Toronto ON M5H 3S8 | 22e étage, 20, rue queen ouest, Toronto ON M5H 3S8

IN THE MATTER OF
NICHOLAS AGAR and PAUL UNGERMAN

SETTLEMENT AGREEMENT
(Nicholas Agar and Paul Ungerman)

PART I. INTRODUCTION

1. Companies that issue misleading or untrue statements in their promotional materials deprive investors of the ability to make informed investment decisions and result in harm to them. Retail investors can be particularly vulnerable as they often have little knowledge of crypto securities. In promoting the Axia Project's (defined below) offerings of crypto security tokens, Nicholas Agar ("**Agar**") and Paul Ungerman ("**Ungerman**", together the **"Founders"** or **"Respondents"**) made misleading or untrue statements on behalf of the Axia Project that represented Axia to be a safe and sophisticated investment opportunity. Axia investors in Ontario and around the world have suffered significant financial loss.

2. This matter should also serve as a reminder that all persons who deal in crypto securities with Ontario investors, wherever the business is domiciled, must comply with Ontario securities law or face regulatory action.

PART II. JOINT SETTLEMENT RECOMMENDATION

3. The Enforcement Branch of the Ontario Securities Commission (the "**Branch**") recommends settlement of the proceeding ("**Proceeding**") against the Respondents commenced by the Notice of Hearing, in accordance with the terms and conditions set out in Part V of the

Settlement Agreement. The Respondents consent to the making of an order (the "**Order**") in the form attached as **Schedule "A"** to this Settlement Agreement based on the facts set out herein.

4. For the purposes of this Proceeding and any other regulatory proceeding commenced by a Canadian securities regulatory authority only, the Respondents agree with the facts set out in Part III of this Settlement Agreement and the conclusion in Part IV of this Settlement Agreement.

PART III. AGREED FACTS

A. Overview

5. Beginning in or around April 2018, and continuing to at least October 2022 (the **"Solicitation Period"**),[1] the Founders and the entities they controlled (together the "**Axia Project"** or **"Axia"**), created crypto assets called "LinkCoin" and later "Axia Aion Network Token" and later "Axia Aion Network ERC 777 Token" and later "Axia ERC 20 Token" and finally "Axia Network Coin" or "AXC Coin" (collectively, the **"Axia Coin"**), which are securities, and sold millions of dollars' worth of them to Ontarians. Throughout the Solicitation Period, the Founders facilitated the raising of approximately US$9 million for the Axia Project through the distribution of Axia Coin to over two hundred Ontario investors. Approximately US$41 million was raised from investors worldwide on behalf of the Axia Project.

6. The Founders disseminated promotional materials which contained misleading or untrue statements, including statements that Axia held over US$29 billion dollars' worth of audited "hard" or "real-world" assets (e.g., real property, precious minerals and gems) in a reserve to support the value of the Axia Coin. In fact, the existence, ownership and value of the assets had not been adequately verified and the conditions for transfer of the assets to Axia Project were never

[1] All activities described occurred during the Solicitation Period unless otherwise indicated.

satisfied. In addition, beginning in February 2021, the Founders received compensation in fiat currency from the Axia Project as described below, contrary to repeated representations starting in 2021 that they would not draw any form of fiat currency compensation from the Axia Project.

7. No prospectus was filed by any Axia Entity (defined below) with respect to the distribution of the Axia Coin. None of Ungerman, Agar or any Axia Entity obtained the necessary registration with the Ontario Securities Commission (**"OSC"** or the **"Commission"**) to engage in continuous trading activities regarding the Axia Coin. By selling the Axia Coin to investors without complying with those requirements, the Founders and the Axia Entities deprived investors of important regulatory safeguards in place to foster investor protection and maintain confidence in Ontario's capital markets.

8. Finally, in early 2020, the Founders made misleading, incomplete or untrue statements to the Commission about the nature and extent of the business activities of the Axia Project. These misleading statements prevented early detection of the Founders' unlawful conduct and thus interfered with the Commission's ability to enforce compliance with Ontario securities laws and protect Ontario investors.

B. Detailed Facts

i. The Axia Project Overview

9. Agar and Ungerman are residents of Ontario.

10. In 2018, the Founders started the Axia Project with a vision of creating a decentralized blockchain network on which participants could store and transfer value and that would provide utility on an online platform with access to applications and services using the Axia Coin as digital currency (the "**Axia Ecosystem**").

11. During the Solicitation Period, the Founders worked full time on the Axia Project. They had no other sources of employment or work.

12. Initially, the Founders operated the Axia Project through an Ontario company. Axia Operations Ltd. (**"Axia Operations"**) was incorporated under the Ontario *Business Corporations Act*, on February 26, 2018. At the time of incorporation, the company's name was LinkCoin Ltd., but its name was changed to Axia Operations on November 6, 2018. Axia Operations was dissolved on February 10, 2022. The Founders were the sole shareholders, directors and officers of Axia Operations.

13. Beginning in or around early 2019, the Founders moved the Axia Project offshore. In total, the Founders created or acquired, or caused to be created or acquired, approximately thirty entities worldwide that were involved in the Axia Project, with several Axia entities involved in promotional activities for the Axia Project (the "**Axia Entities**"). During the Solicitation Period, the Founders were the controlling minds, directly or indirectly, of the Axia Entities and the Axia Project as a whole, including but not limited to the Foundation and Issuer entities defined below.

14. Once the Axia Project moved offshore, the Founders developed a governance structure whereby a foundation entity oversaw the operations of the other Axia Entities, including the promotion, generation, distribution and sale of the Axia Coin. All funds raised from the sale of the Axia Coin were held by various Axia Entities on behalf of the foundation entity, and the foundation would direct the Axia Project's use of funds. Over the course of the Axia Project, Axia had multiple foundation entities, including in particular (collectively, the **"Foundation"**):

i. Axia Capital Ltd. was a foundation company incorporated in the Cayman Islands on February 6, 2019. At the time of incorporation, the company's name was Axia Foundation, but its name was changed to Axia Capital Ltd.

on June 22, 2021. The Founders held the majority of votes and were the sole directors of Axia Capital Ltd. Axia Capital Ltd. was struck from the Cayman Islands Companies Registry on December 21, 2021.

ii. Axia Foundation Inc. was incorporated on or about February 23, 2021 in the Commonwealth of Dominica. The Founders are the sole equal shareholders and are also directors of Axia Foundation Inc; and

iii. Axia Network Foundation ("**ANF**") was incorporated in the Cayman Islands in April 2022 as an exempted foundation company limited by guarantee without a share capital and with two independent directors. Beginning on approximately April 27, 2022, proceeds of sales of the Axia Coin were for the benefit of ANF. The initial independent directors resigned on September 15, 2022, and subsequent independent directors were appointed on or about November 16, 2022.

15. Under the supervision of the Foundation, an issuer entity was responsible for the issuance of Axia Coin for distribution. Over the course of the Axia Project, Axia had two issuer entities (together, the **"Issuer"**):

i. Axia Issuer Inc. was incorporated on April 12, 2019 in the British Virgin Islands (**"BVI"**). The Foundation[2] was the sole shareholder of Axia Issuer Inc. Axia Issuer Inc. was the issuer of Axia Coin until April 2022; and

[2] Axia Capital Ltd. (Cayman Islands) was the sole shareholder between April 12, 2019 and May 25, 2021. Axia Foundation Inc. (Dominica) was the sole shareholder beginning May 25, 2021.

ii. AXC Issuer Corp. was incorporated on April 19, 2022 in the BVI. ANF was the sole shareholder of AXC Issuer Corp. AXC Issuer Corp. was the issuer of Axia Coin from April 2022 until the end of the Solicitation Period.

16. Axia Systems Inc. (**"Axia Systems"**) was incorporated on December 31, 2019 in BVI. During the Solicitation Period, a foundation entity was the sole shareholder of Axia Systems. The Founders were also the sole directors and the directing minds of Axia Systems until on or about April 26, 2022. Axia Systems is responsible for software and technological services to the entire Axia Project, including the maintenance of the **"Axia Websites**":

i. From in or around December 2019 to mid-2020, the Axia Project maintained a website with the URL axiacoin.com.

ii. From in or around August 2020 to January 2022, the Axia Project maintained a website with the URL axiacoin.org.

iii. Finally, beginning January 2022, the Axia Project has maintained a website with the URL axia.global.

17. Each of the Axia Websites was owned by Ungerman, through his wholly-owned company BXB Family Corp., and maintained by Axia Systems with support from the other Axia entities.

18. Each of the Axia Websites was freely accessible to any user of the internet; there was no password requirement or similar portal restricting public access. The Axia Websites were accessible to investors in Ontario**.**

19. During the Solicitation Period, the Founders were the legal or *de facto* controlling minds of the Axia Entities.

20. Following the resignation of the initial independent directors of ANF on September 15, 2022, the Founders engaged, or caused to be engaged, a third-party governance and compliance firm headquartered in the Cayman Islands to conduct a review of the Axia Project and act as independent directors of ANF. As described below, upon completion of their review of the Axia Project, the governance and compliance firm recommended that Axia be wound down.

ii. The Sale of Axia Coin

21. The Founders directed the creation of the Axia Coin, a blockchain digital token. Axia Coin was traded on third party exchanges, with promises of listings on further exchanges, and purported or future utility in the Axia Ecosystem. The Founders developed the idea for the Axia Coin and were the directing minds of the Axia Project. The Founders established, or arranged for the establishment of, the Axia Entities to carry out the software development and deployment activities required to issue Axia Coin and accept proceeds of sales of Axia Coin.

22. The particulars of the Axia Coin being developed and offered to Ontario investors changed over the course of the Project:

i. The digital currency was initially called LinkCoin. In November 2018, the Founders changed the name of the digital currency to Axia Coin.

ii. Beginning in early 2019, Axia partnered with Aion Foundation (**"Aion"**) to develop and launch its token on the Aion blockchain network that it was developing, later called the Open Application Network. In December 2019, the Axia Ecosystem mobile application was released. Although Axia Coin was not issued at that time, early investors could view the number of Axia Coins to which they were entitled in the application.

iii. In January 2021, the first version of Axia Coin was issued as a token built on the Open Application Network ("**Axia ERC 777 Tokens**"). Axia ERC 777 Tokens were delivered to early-stage investors who opened accounts with Axia Capital Bank Ltd., a licensed bank governed under the laws of the Commonwealth of Dominica ("**Axia Bank**"). Early-stage investors were required to complete a know-your-client (**"KYC"**) process to open their accounts, but as part of this KYC process, Axia did not collect any information pertaining to investors' or their spouses' net income, financial assets and liabilities. Axia ERC 777 Tokens were held in "cold storage" custody by a service provider to Axia Bank. Holders could see the balances of their Axia ERC 777 Tokens through the mobile application but could not transfer the tokens to a wallet outside the Axia Ecosystem.

iv. In mid-January 2021, the core developers of the Open Application Network announced that they were abandoning development of that network, and the Founders then moved the Axia Project to the Ethereum Network. In March 2021, all Axia ERC 777 Tokens were replaced with ERC 20 Tokens ("**Axia ERC 20 Tokens"**). This conversion occurred within holders' accounts at Axia Bank and through the mobile application.

v. On or about April 9, 2022, the Axia Project launched its mainnet network and all Axia ERC 20 Tokens were converted into a new digital coin maintained on the new network.

23. The Founders, through the Axia Entities, facilitated the sale of Axia Coin and/or future entitlements to Axia Coin in three different offerings (together, the **"Offerings"**):

i. Simple Agreements for Future Tokens (the **"SAFTS"**); between April 2018 and September 2019, twenty-four Ontario investors entered into SAFTs with Axia Operations in exchange for future tokens and options to purchase future tokens. Axia Operations raised approximately US$2.5 million through SAFTs with Ontario investors.

ii. Token Subscription Agreements (**"Subscription Agreements"**); between May 2020 and September 2021, approximately thirty-nine Ontario residents invested a total of approximately US$2 million in the Axia Project through Subscription Agreements with the Issuer.

iii. Axia Bank Sale; between June 2021 and October 2022, Ontario investors were able to purchase Axia Coin from the Issuer through Axia Bank. Axia Bank holds a banking licence in the Commonwealth of Dominica. At all material times, Ungerman was the sole shareholder and director of the Axia Bank. On behalf of the Axia Project, Axia Bank onboarded token purchasers and credited Axia Coin into the purchasers' Axia Bank accounts. Approximately 157 Ontario investors purchased approximately US$4.6 million worth of Axia Coin through Axia Bank.

24. Pursuant to the first two offerings – the SAFTs and Subscription Agreements – purchasers agreed to contribute money in exchange for a right to receive tokens at a future date.

25. After the Axia Coin was developed, holders were required to keep their Axia ERC 777 Tokens in cold storage custody with Axia Bank. When Axia Coins were replaced with Axia ERC 20 Tokens in March 2021, Axia Coin holders could take their Axia Coins out of the Axia Ecosystem for self-custody but would be charged a fee.

26. Nearly all of the Axia Project's funds were derived from the sale of the Axia Coin. In total, Axia raised approximately US$41 million worldwide, of which over US$9 million was raised from approximately 215 Ontario investors.

27. On or about October 5, 2022, Axia announced the suspension of all Axia Coin sales pending a review of the Axia Project by the third-party governance and compliance firm with the support of forensic accounting professionals.

28. On or about March 10, 2023, Axia announced that the review of the Axia Project was complete and Axia was beginning efforts to wind down the project. The wind-down process is ongoing. Axia subsequently announced a clarification that the decision to wind down was based on a recommendation by the third-party governance and compliance firm. The recommendation was driven primarily by the Axia Project's potential compliance issues related to various applicable legal and regulatory regimes.

29. Of the approximately US$41 million dollars raised, less than US$10 million remains for distribution to investors as part of the wind down.

iii. Promotion of Axia Coin as an Investment

30. During the Solicitation Period, the Founders continuously disseminated or caused to be disseminated promotional materials with respect to the Axia Coin in a variety of ways, including by:

i. Distributing a LinkCoin White Paper, dated April 2018, directly to SAFT purchasers and prospective SAFT purchasers;

ii. Beginning no later than June 2021, distributing at least nineteen versions of Axia White Papers to investors and prospective investors, including by posting them to the Axia Websites;

iii. Sending email announcements to subscribers for the Axia Websites and/or Axia Coin holders;

iv. Issuing press releases through third parties;

v. Making posts on social media platforms, such as Telegram and Medium, including through third parties;

vi. Hosting meetings with prospective investors to promote the Axia Coin and Axia Project; and

vii. Engaging and paying significant amounts to third parties for their services identifying and soliciting purchasers of the Axia Coin.

31. Initially, the Founders solicited investments from their friends and family, or from persons introduced to them through their friends or family. In late 2019, Axia launched its first Axia Website and thereafter, the Axia Websites were freely accessible to prospective investors worldwide. The Founders continuously created, or caused to be created, and posted, or caused to be posted, promotional information about the Project and the Axia Coin on the Axia Websites through among other things, blog posts, news releases and White Papers posted to the Axia Websites.

32. In addition, the Founders, through the Axia Entities, engaged the services of and/or partnered with over ninety persons or entities for marketing, business development and/or investor relations services. These included public and media relations firms, social media marketing

services, and individuals engaged to solicit prospective investors. The Axia Project spent over US$1 million on these services.

33. The Founders actively and regularly promoted Axia Coin as a means to profit or obtain increased value. The Founders solicited investors both in person and online, making representations that the Axia Coin had the potential to increase in value over time. Indeed, the SAFTs required purchasers to agree to a representation that the purchaser enters into the SAFT with the "predominant expectation that he, she or it, as the case may be, will profit…"

34. The Founders promoted the unique "tokenomics" that purported to give the Axia Coin increasing value over time. Initially, the Axia Coin was promoted as deflationary (referring to a finite coin supply that Axia claimed would never increase) and stable (because of its purported asset support or backing, discussed in greater detail below). The concept of coin burning was introduced in or around August 2021 and the Founders promoted the Axia Coin as the first ever "hyper-deflationary" (diminishing supply and asset support or backing) digital currency.

35. Throughout the Solicitation Period, promotional materials, including project descriptions and blogs on the Axia Websites and white papers distributed or caused to be distributed by the Founders on behalf of the Axia Project represented that these "tokenomics" created or increased Axia Coin value and made the Axia Coin a "safe haven" for purchasers. The Founders made or caused to be made statements in Axia promotional materials that the Axia Coin provided an "unmatched" value proposition in the global marketplace and would become the "preferred global medium of exchange" and/or the "new reserve currency for the world".

36. Promotional materials also represented that demand for Axia Coin would rise and Axia Coin would be tradeable on a trading platform to be built on the Axia network (AXchange) – which never became operational – as well as through third party crypto asset exchanges. The Axia ERC

20 Token was eventually listed on two third-party crypto asset exchanges (KuCoin and Bitmart) between July 2021 and March 2022. Although the Founders made or caused to be made representations that the Axia Coin would be listed on other exchanges and/or re-listed on KuCoin following the launch of the mainnet Axia network, the Axia Coin was never re-listed on KuCoin or listed for trading on any other exchanges.

iv. The Asset Reserve Misleading or Untrue Statements

37. One of the Axia Coin's key "tokenomics" features that the Founders promoted, was its purported asset reserve. Indeed, throughout the Axia Project, the Founders promoted the Axia Coin as the world's first asset supported or backed global crypto currency.

38. The asset supported feature was represented to create or deliver "unprecedented" or "fundamental" value for the Axia Coin by, among other things:

i. providing unsurpassed, clear, and/or unprecedented levels of transparency, clarity and trust with respect to the asset-backing and asset holdings;

ii. providing security, stability and sustained value by not correlating Axia Coin to any one currency, commodity, market or economy;

iii. safeguarding against the depreciation, market volatility, inflation and "central bank manipulation" to which other crypto currencies are vulnerable; and

iv. mitigating against and/or minimizing market volatility, thereby diminishing the investment market's associated difficulty in projecting the cryptocurrency's immediate or long-term value.

39. However, during the Solicitation Period, the Founders made, or caused to be made, misleading or untrue statements on behalf of the Axia Entities in promotional materials regarding the asset supported feature of the Axia Coin, including:

i. The Axia Project had established a proprietary "Asset Acquisition Algorithm", "transaction link" and/or other technology to automate Axia's asset purchasing strategy and maintain Axia's asset base, through which asset acquisitions and holdings would be recorded on blockchain and visible to investors in real time;

ii. The Axia Project had established an "Axia Reserve" which held over US$29 billion worth of audited tangible assets including precious metals, gemstones, real estate, art and more; and

iii. In early 2022, the Axia Reserve was being replaced with the "Axia Treasury" that would serve the same purpose as the Axia Reserve.

40. In reality,

i. No automated or public asset acquisition or reporting on blockchain: No assets were acquired or maintained via any algorithm. No asset holdings or acquisitions were maintained by any automated or smart contract process. No asset acquisitions or holdings were reported on any blockchain.

ii. No Axia Reserve: The Axia Reserve was never properly established and the assets were not transferred to any Reserve. Between late 2019 and early 2021, the Founders unsuccessfully attempted to establish reserve trusts in the Cayman Islands. When that failed, the Founders incorporated, or caused to be

incorporated, Axia Trust Corporation in Dominica. The Founders were the sole shareholders and directors of Axia Trust Corporation. Axia Issuer Inc. entered into trust agreements with third party "**Asset Contributors**" who represented that they had millions or billions of dollars' worth of assets to contribute to Axia (the "**Trust Agreements**"). The Founders signed the Trust Agreements. The Founders did not, however, conduct or cause to be conducted adequate due diligence to verify the existence, ownership or value of the assets. Nor did they engage any accredited third party to conduct an audit of the purported assets. Axia engaged a third-party accounting firm with an examination mandate to opine on whether the Schedule of Investments (a high-level summary table prepared by Axia) accurately recorded the asset values listed in the Trust Agreements. The limited mandate did not involve scrutiny of the asset values set by the Asset Contributors in the Trust Agreements.

In any event, the conditions of transfer of the assets to Axia, as prescribed in the Trust Agreements signed by the Founders, were not satisfied. As such, there were no assets transferred to the Axia Project, and the Axia Trust Corporation was wound up. Axia never held legal or beneficial title to any of the assets contemplated under the Trust Agreements and, at all times, the assets contemplated under the Trust Agreements – to the extent they existed as represented in the Trust Agreements – remained in the custody and control of the Asset Contributors. Although the Founders decided to abandon the Axia Reserve concept no later than October 2021, it was not until December

31, 2021 that they announced to Axia Coin holders that the Axia Reserve was "no more" (not that it had never been) and in January 2022 the Founders announced the Axia Reserve was being "phased out" and replaced by the Axia Treasury. Despite this, the Founders continued to make, or caused to be made, representations about the existence of the Axia Reserve for the remainder of the Solicitation Period.

iii. No Axia Treasury. No formal structure or accounting was established for the Axia Treasury and no purported Axia Treasury funds were separated from operating funds. Although the Founders made or caused to be made representations describing the Axia Treasury with substantially similar and, at times, identical language as the Axia Reserve, the concept behind the purported Axia Treasury was fundamentally different from the Axia Reserve concept that it was supposedly replacing. In particular, the value of the Axia Treasury was limited to, at best, Axia's cash and digital asset position with necessary reductions to account for overhead and operating costs. In January 2022, when the Founders represented that the Axia Treasury was established, Axia's total global cash position, before any reductions for operating costs, was less than US$14 million.

Despite making representations during the Solicitation Period that stablecoins, such as USDT and USDC, were "massive" or "extreme" investment risks, beginning in December 2021 the Founders converted, attempted to convert, or caused to be converted or attempted to be converted, approximately US$10 million of funds from the sale of Axia Coins to USDT

and USDC for the purported Axia Treasury. Of this, US$250,000 was converted to USDT and US $3 million was lost in failed transactions with two entities that did not deliver USDT or USDC as agreed. The Founders did not disclose these transactions or stablecoin holdings to investors.

v. Undisclosed Fiat Compensation to Founders

41. During the Solicitation Period, the Founders made, or caused to be made, misleading or untrue statements in promotional materials for the Axia Project, stating or otherwise suggesting that none of the Founders or senior members of the Project team would take any form of fiat currency compensation from the Axia Project.

42. In particular, each of Axia's White Papers since June 2021 stated:

> The founding team has also made the early decision that they would not draw any form of fiat currency compensation from this project. They, along with other senior members of the project team and advisors, have agreed and preferred to only accept AXIA coins, symbolizing the fact that the value proposition of AXIA exceeds that of their native currencies.

43. Contrary to these representations, the Founders authorized the payment of and received over CA$368,686.19 in fiat compensation in "Director's Fees" from the Axia Project between February 2021 and September 2022, as follows:

i. Ungerman received CA$318,686.19 between February 2021 and September 2022; and

ii. Agar received CA$50,000 between July 2021 and February 2022.

44. In addition, the Founders made or authorized over half a million dollars in fiat compensation to other senior members of the Axia Project team.

vi. Agar Indemnity Payment

45. In or about August 2022, Axia Foundation Inc. advanced US$1.2 million to Agar's legal counsel, in trust, further to a legal indemnity in favour of Agar (the **"Indemnity Funds"**). The Founders authorized, on behalf of Axia Foundation Inc., the payment of the Indemnity Funds. The Indemnity Funds have only been applied to pay for legal fees and disbursements of Agar's counsel to date, with the balance still held in trust.

vii. The Founders' Misleading Statements to the Ontario Securities Commission

46. On April 29, 2020, the Case Assessment Branch of the Ontario Securities Commission (**"Case Assessment"**) wrote to Axia Operations seeking information and records about Axia Operations' business activities. The Founders provided a response on behalf of Axia Operations in a letter dated May 11, 2020.

47. The Founders breached subsection 122(1)(a) of the *Securities Act,* RSO 1990, c S5, as amended (the "**Act**") because they made statements on behalf of Axia Operations that, in a material respect and at the time and in light of the circumstances under which they were made, were misleading or untrue or did not state a fact that was required to be stated or that was necessary to make the statements not misleading.

a) <u>Misleading Statement #1</u>

48. Case Assessment requested a detailed description of all of Axia Operation's business activities. The Founders wrote in response, "AXIA has currently developed a communications application for IOS and Android devices (similar to commonly used communications applications, e.g., WhatsApp). No other services are available." They also wrote that Axia Operations "is primarily in the conceptual stage at this time and tokens are not being offered to the public."

49. In reality, the communications application (AXchat) was not available until February 2021. The Founders also omitted any reference to their and Axia Operation's other extensive Axia Project business activities to that date, including:

i. distributing the LinkCoin White Paper to SAFT purchasers and prospective SAFT purchasers;

ii. raising approximately US$2.5 million through SAFTs;

iii. preparing for the initial coin offering (ICO) which began later that month when the Issuer began entering into Subscription Agreements;

iv. entering into Trust Agreements contemplating the transfer of purportedly billions of dollars' worth of tangible assets for the Axia Reserve;

v. applying for an offshore cryptocurrency bank account with a bank in Comoros, in which application Axia Operations indicated it would offer or was planning to offer financial consultancy in assets/securities;

vi. applying for offshore banking license in Kazakhstan, in which application Axia described its business as including "securities token issuing and securities token trading";

vii. partnering with Aion to develop Axia Coin as the primary currency of the Open Application Network and undertaking significant work under that partnership towards the development of the Axia Coin (described in greater detail below);

viii. engaging numerous marketing and investor relations service providers towards the promotion of Axia Coin and the Axia Project to investors;

ix. entering in an agreement with a digital asset custodian for the custody of Axia Coins; and

x. undertaking efforts to move the Axia Project offshore.

b) Misleading Statement #2

50. Case Assessment requested a copy of the white paper referenced on the website and particulars of all proceeds raised in connection with the white paper, including the total amount of proceeds raised, the amount of the proceeds raised from residents in Ontario, and a complete list of the types of information collected from the investors. The Founders responded, "The Whitepaper is under development and has not been released to the public. The link on the website has never been active and has been taken down. No proceeds have been raised through the Whitepaper".

51. In reality, Axia Operations had been distributing the LinkCoin White Paper to SAFT purchasers and prospective SAFT purchasers since in or around April 2018. Section 2 of the SAFTs refers to and defines "White Paper" as a "document pursuant to which the Company [Axia Operations] has more fully described the Token [Axia Coin], its utility and various other related matters, ***a copy of which has been furnished to the Purchaser prior to the execution of this agreement.***" [emphasis added]

52. Axia Operations had also raised approximately US$2.5 million through the sale of SAFTs, which funds were being used to support Axia's extensive business operations.

c) Misleading Statement #3

53. Case Assessment requested particulars about the real assets that Axia represented were backing the Axia Coin. The Founders stated, "No tokens are available to the public. The reference

to assets – that will or could back AXIA – is in respect of potential future initiatives that have not yet been determined".

54. In reality, the Founders had begun efforts on behalf of the Axia Project to establish the Axia Reserve in 2019 and, by May 11, 2020, had signed Trust Agreements with at least four Asset Contributors contemplating the transfer of purportedly nearly US$11 billion worth of assets.

d) Misleading Statement #4

55. Case Assessment requested a detailed description of Axia Operation's relationship with the Open Application Network. The Founders responded, "Should AXIA token be released, the Open Application Network is under consideration for the network upon which AXIA would be released".

56. In reality, Axia Operations had already entered into a partnership with Open Application Network, beginning in or around August 2018, and technical token development on the Open Application Network had begun in or around November 2018. Axia Operations and Open Application Network memorialized their partnership in an agreement dated March 8, 2019. By the May 11, 2020 letter, Axia had already expended considerable resources on work under that partnership.

viii. Unregistered Trading

57. None of the Axia Entities, nor either Founder, was registered with the Commission in any capacity under the Act. No exemptions from the registration requirement were sought or granted to any of Axia Operations, the Foundation, the Issuer or the Founders, and none were available under Ontario securities law.

58. Through their conduct described above, the Founders and various Axia Entities – Axia Operations, the Foundation, and the Issuer – engaged in numerous activities that come within the definition of "trade" in the Act with regularity and for a business purpose. They therefore engaged in, or held themselves out as engaging in, the business of trading in Axia Coin without the necessary registration or an applicable exemption from the registration requirement, contrary to subsection 25(1) of the Act.

ix. Illegal Distribution

59. Each of the Offerings were trades in securities not previously issued and were therefore distributions.

60. No preliminary prospectus or prospectus was filed for the distribution of the SAFTs, Subscription Agreements or Axia Coin. While some efforts were made to determine whether SAFT investors qualified as accredited investors, the Founders did not take adequate steps to determine whether investors qualified as accredited investors. Many did not. Their investments did not qualify for any other exemption from the prospectus requirements set out in section 53 of the Act and none of the Founders or their entities filed reports of exempt distribution, including Form 45-106F1, with the OSC.

61. By engaging in the conduct described above, Axia Operations, the Foundation, the Issuer and the Founders engaged in a distribution of securities without filing a preliminary prospectus or a prospectus and without an applicable exemption to the prospectus requirement, contrary to section 53 of the Act.

x. Authorizing, Permitting, or Acquiescing in Breaches of Ontario Securities Law

62. The Founders, as legal or *de facto* directors and officers of Axia Operations, the Foundation, the Issuer and Axia Systems, authorized, permitted or acquiesced in the conduct described above. As a result, the Respondents are deemed not to have complied with Ontario securities law pursuant to section 129.2 of the Act.

xi. Mitigating Factors for the Respondents

63. The Respondents have no prior disciplinary record with any Canadian securities regulatory authority, including the Commission, and have not previously been found to have breached the Act.

64. The Respondents have not been registered with the Commission, or any other Canadian securities regulatory authority, in any capacity.

65. Ungerman had no prior experience in the securities industry or the crypto asset sector nor any experience or involvement in capital raising. Prior to his involvement with the Axia Project, Ungerman's work had been in public policy, corporate strategy and marketing.

66. Other than the undisclosed funds set out above, the Respondents did not receive a salary or any other compensation from the Axia Project.

67. Ungerman borrowed funds from a family member and used those funds to provide a loan of approximately CA$350,000 to the Axia Entities to fund the regulatory fees to obtain the license for Axia Bank. The Axia Entities did not repay the loan in fiat, nor pay any interest in fiat pursuant to the terms of the loan.

68. As noted above, in the Fall of 2022 the Founders suspended Axia Coin sales in light of the Commission's investigation. The Founders also facilitated an independent review of the Axia Project by a third-party governance and compliance firm with the support of forensic accounting professionals, which led to an independent orderly wind-down process that is well underway.

69. The Respondents cooperated during the Commission's investigation and have voluntarily agreed to enter into this Settlement Agreement. The Respondents have accepted responsibility for their actions through detailed admissions without the need for protracted proceedings and took proactive steps to facilitate an independent review and orderly wind-down of the Axia Project.

PART IV. BREACHES OF ONTARIO SECURITIES LAW AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

70. The Respondents acknowledge and admit that, during the time of the conduct referred to above:

i. Axia Operations, Axia Foundation Inc., Axia Capital Ltd., Axia Issuer Inc., AXC Issuer Corp., and Axia Systems and the Respondents made statements that they knew or ought to have known, in a material respect and at the time and in light of the circumstances under which they were made, were misleading or untrue and would reasonably be expected to have a significant effect on the perceived value of the Axia Coin; contrary to subsection 126.2(1) of the Act;

ii. Axia Operations, Axia Foundation Inc., Axia Capital Ltd., Axia Issuer Inc., AXC Issuer Corp., and the Respondents engaged in, and held themselves out as engaging in, the business of trading in securities without being registered

to do so and without an applicable exemption from the registration requirement, contrary to subsection 25(1) of the Act;

iii. Axia Operations, Axia Foundation Inc., Axia Capital Ltd., Axia Issuer Inc., AXC Issuer Corp., and the Respondents engaged in distributions of securities without filing a preliminary prospectus or prospectus and without an applicable exemption from the prospectus requirement, contrary to section 53 of the Act;

iv. The Respondents and Axia Operations made four statements to Case Assessment that were misleading, untrue and/or did not state a fact that was required to be stated or that was necessary to make the statements not misleading, contrary to section 122(1)(a) of the Act;

v. The Respondents authorized, permitted or acquiesced in Axia Operations, Axia Foundation Inc., Axia Capital Ltd., Axia Issuer Inc., AXC Issuer Corp., and Axia Systems' non-compliance with Ontario securities law, contrary to section 129.2 of the Act; and

vi. The Respondents engaged in conduct that is contrary to the public interest.

PART V. TERMS OF SETTLEMENT

71. The Respondents agree to the terms of the settlement set forth below.

72. In order to help facilitate the Commission's objective of investor loss redress, Agar will immediately provide to the Commission a copy of an executed, irrevocable direction to his counsel providing for the transfer to Axia Foundation Inc., or such other entity as may be designated by the independent directors of ANF to receive funds for collection and distribution as part of the

Axia Project wind down, of US$500,000 of the balance of the Indemnity Funds held in trust by his legal counsel forthwith upon (and conditional upon) approval of this Agreement at the Settlement Hearing.

73. The Respondents consent to the Order substantially in the form attached as Schedule "A", that:

i. this Settlement Agreement is approved;

ii. pursuant to paragraph 2 of subsection 127(1), the Respondents be permanently prohibited from trading in any securities or derivatives, or acquiring any securities, except that they may trade

a. securities or derivatives and acquire securities in a registered retirement savings plan, registered retirement income fund, registered disability savings plan, and tax-free savings account, as defined in the *Income Tax Act*, R.S.C. 1985, c.1, as amended, in which only the Respondents, their spouse or children are the sole or joint legal and beneficial owners; and

b. solely through a registered dealer in Ontario, to whom the Respondents must have given a copy of this Settlement Agreement and order;

only after the amounts described in subparagraphs 73.viii through 73.xii have been paid in full;

iii. the Respondents immediately resign any position they may hold as directors or officers of any issuer and are permanently prohibited from becoming or

acting as directors or officers of any reporting or non-reporting issuer pursuant to paragraphs 7 and 8 of subsection 127(1) of the Act, except that

a. Ungerman may continue as director and officer for Faith-Ungerman Holdings Inc., a non-reporting issuer that serves only as a personal family holding company, provided that none of the securities of Faith-Ungerman Holdings Inc. are owned by or offered for sale to anyone other than members of his immediate family; and

b. this order does not preclude Agar from becoming or acting as a director or officer (or both) of a single, non-reporting issuer that serves only as a personal family holding company and none of the securities of which are owned or offered for sale to anyone other than members of his immediate family;

iv. the Respondents immediately resign any positions they may hold as directors or officers of any registrant, pursuant to paragraph 8.1 of subsection 127(1) of the Act;

v. the Respondents be prohibited from becoming or acting as directors or officers of any registrant permanently, pursuant to paragraph 8.2 of subsection 127(1) of the Act;

vi. the Respondents be prohibited permanently from becoming or acting as registrants, including as investment fund managers, or as promoters pursuant to paragraph 8.5 of subsection 127(1) of the Act;

vii. any exemptions contained in Ontario securities law do not apply to them permanently, pursuant to paragraph 3 of subsection 127(1) of the Act;

viii. each of the Respondents shall pay an administrative penalty of CA$550,000, pursuant to paragraph 9 of subsection 127(1) of the Act;

ix. Ungerman shall disgorge to the Commission CA$318,686.19, pursuant to paragraph 10 of subsection 127(1) of the Act;

x. Agar shall disgorge to the Commission CA$50,000, pursuant to paragraph 10 of subsection 127(1) of the Act;

xi. each of the Respondents shall pay costs of the investigation in the amount of CA$50,000, pursuant to section 127.1 of the Act;

xii. the amounts payable under subparagraphs 73.viii–xi are payable forthwith upon approval of this settlement, except that Agar shall pay CA$200,000 forthwith upon approval of this settlement with the balance of the funds payable by him to be paid in nine monthly payments of CA$50,000 by the last business day of each subsequent calendar month; and

xiii. the Respondents shall be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act.

A. Reciprocal Orders

74. The Respondents consent to a regulatory order made by any provincial or territorial securities regulatory authority in Canada containing any or all of the sanctions set out in paragraph 72. These sanctions may be modified to reflect the provisions of the relevant provincial or territorial securities law.

75. The Respondents acknowledge that this Settlement Agreement and the Order may form the basis for orders of parallel effect in other jurisdictions in Canada. The securities laws of some other Canadian jurisdictions allow orders made in this matter to take effect in those other jurisdictions automatically, without further notice to the Respondents. The Respondents should contact the securities regulator of any other jurisdiction in which the Respondents intend to engage in any securities – or derivatives – related activities, prior to undertaking such activities.

PART VI. FURTHER PROCEEDINGS

76. If the Capital Markets Tribunal (the **"Tribunal"**) approves this Settlement Agreement, no enforcement proceeding will be commenced or continued against the Respondents under Ontario securities law based on the misconduct described in Part III of this Settlement Agreement, unless the Respondents fail to comply with a term in this Settlement Agreement, in which case enforcement proceedings may be brought under Ontario securities law against the Respondents that may be based on, among other things, the facts set out in Part III of this Settlement Agreement as well as the breach of this Settlement Agreement.

77. The Respondents waive any defences to a proceeding referenced in paragraph 75 that are based on the limitation period in the Act, provided that no such proceeding shall be commenced later than six years from the date of the occurrence of the last failure to comply with this Settlement Agreement.

PART VII. PROCEDURE FOR APPROVAL OF SETTLEMENT

78. The parties will seek approval of this Settlement Agreement at the Settlement Hearing before the Tribunal, which shall be held on a date determined by the Tribunal's Governance and Tribunal Secretariat in accordance with this Settlement Agreement and the Tribunal's *Rules of Procedure and Forms*.

79. Agar and Ungerman will attend the Settlement Hearing by video conference or in person.

80. The parties confirm that this Settlement Agreement sets forth all of the agreed facts that will be submitted at the Settlement Hearing, unless the parties agree that additional facts should be submitted at the Settlement Hearing.

81. If the Tribunal approves this Settlement Agreement:

i. Ungerman and Agar irrevocably waive all rights to a full hearing, judicial review or appeal of this matter under the Act; and

ii. no party will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the Settlement Hearing.

82. Whether or not the Tribunal approves this Settlement Agreement, the Respondents will not use, in any proceeding, this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any attack on the Commission or the Tribunal's jurisdiction, alleged bias, alleged unfairness or any other remedies or challenges that may be available.

PART VIII. DISCLOSURE OF SETTLEMENT AGREEMENT

83. If the Tribunal does not approve this Settlement Agreement or does not make an order substantially in the form of the Order attached as Schedule "A" to this Settlement Agreement:

i. this Settlement Agreement and all discussions and negotiations between the parties before the Settlement Hearing will be without prejudice to any party; and

ii. the parties will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations

contained in the Statement of Allegations in respect of a Proceeding. Any such proceedings, remedies and challenges will not be affected by this Settlement, or by any discussions or negotiations relating to this Settlement Agreement.

84. The parties will keep the terms of this Settlement Agreement confidential until the Tribunal approves the Settlement Agreement, except as is necessary to make submissions at the Settlement Hearing. If, for whatever reason, the Tribunal does not approve the Settlement Agreement, the terms of the Settlement Agreement shall remain confidential indefinitely, unless the parties otherwise agree in writing or if required by law.

PART IX. EXECUTION OF SETTLEMENT AGREEMENT

85. This Settlement Agreement may be signed in one or more counterparts which together constitute a binding agreement.

86. A facsimile copy or other electronic copy of any signature will be as effective as an original signature.

DATED at Toronto, Ontario this 8th day of January, 2024.

"*Militza Boljevic*"	"*Nicholas Agar*"
Witness: Militza Boljevic	**NICHOLAS AGAR**
"*Natalie V. Kolos*"	"*Paul Ungerman*"
Witness: Natalie V. Kolos	**PAUL UNGERMAN**

DATED at Toronto, Ontario this 10th day of January, 2024.

ONTARIO SECURITIES COMMISSION

By: "*Jeff Kehoe*"

Name: Jeff Kehoe
Title: Director, Enforcement Branch

Ontario Securities Commission | Commission des valeurs mobilières de l'Ontario | 22nd Floor, 20 Queen Street West, Toronto ON M5H 3S8 | 22e étage, 20, rue queen ouest, Toronto ON M5H 3S8

Schedule "A" – Form of Order

IN THE MATTER OF
NICHOLAS AGAR and PAUL UNGERMAN

File No. [#]

Adjudicators: [ ]

January 11, 2024

ORDER

(Subsection 127(1) and section 127.1 of the
Securities Act, RSO 1990, c S.5)

WHEREAS on January 11, 2024, the Capital Markets Tribunal held a hearing at 20 Queen Street West, 17th Floor, Toronto, Ontario, to consider the Joint Request for a Settlement Hearing filed by Nicholas Agar and Paul Ungerman and the Enforcement Branch of the Ontario Securities Commission for approval of a settlement agreement dated January 8, 2024 (the **"Settlement Agreement"**);

ON READING the Joint Request for a settlement hearing, including the Settlement Agreement dated January 8, 2024, the written submissions, and on hearing the submissions of the representatives for each of the parties, and on considering that Agar has made an irrevocable direction for the immediate payment of US$500,000 to Axia in accordance with the terms of the Settlement Agreement, and on being advised by the Enforcement Branch of the Ontario Securities Commission that they have received payment from Ungerman of CA$918,686.19 and the initial payment from Agar of CA$200,000;

IT IS ORDERED THAT:

1. The Settlement Agreement is approved; and

2. Pursuant to subsection 127(2) of the Act, the approval of the Settlement Agreement is subject to the following terms and conditions:

    (a) trading in any securities or derivatives, and the acquisition of any securities, by the Respondents cease permanently commencing on the date of the Order, pursuant to

paragraph 2 and paragraph 2.1 of subsection 127(1) of the Act, except that the Respondents shall be permitted to trade;

i. securities or derivatives and acquire securities in a registered retirement savings plan, registered retirement income fund, registered disability savings plan, and tax-free savings account, as defined in the *Income Tax Act*, R.S.C. 1985, c.1, as amended, in which only the Respondents, their spouse or children are the sole or joint legal and beneficial owners; and

ii. solely through a registered dealer in Ontario, to whom the Respondents must have given a copy of the Settlement Agreement and this order;

only after the amounts ordered in subparagraphs 2(h) through 2(l) have been paid in full;

(b) the Respondents immediately resign any positions that they hold as directors or officers of any issuer, pursuant to paragraph 7 of subsection 127(1) of the Act;

(c) the Respondents are prohibited permanently from becoming or acting as directors or officers of any reporting or non-reporting issuer, pursuant to paragraph 8 of subsection 127(1) of the Act, except that

i. Ungerman may continue as director and officer for Faith-Ungerman Holdings Inc., a non-reporting issuer that serves only as a personal family holding company, provided that none of the securities of Faith-Ungerman Holdings Inc. are owned by or offered for sale to anyone other than members of his immediate family; and

ii. this order does not preclude Agar from becoming or acting as a director or officer (or both) of a single, non-reporting issuer that serves only as a personal family holding company and none of the securities of which are owned or offered for sale to anyone other than members of his immediate family;

(d) the Respondents immediately resign any positions that they may hold as directors or officers of any registrant, pursuant to paragraph 8.1 of subsection 127(1) of the Act;

(e) the Respondents are prohibited from becoming or acting as directors or officers of any registrant permanently, pursuant to paragraph 8.2 of subsection 127(1) of the Act;

(f) the Respondents are prohibited permanently from becoming or acting as registrants, including as an investment fund manager, or as a promoter pursuant to paragraph 8.5 of subsection 127(1) of the Act;

(g) any exemptions contained in Ontario securities law do not apply to the Respondents permanently, commencing on the date of the Order, pursuant to paragraph 3 of subsection 127(1) of the Act;

(h) Agar disgorge to the Commission the amount of CA$50,000, pursuant to paragraph 10 of subsection 127(1) of the Act;

(i) Ungerman disgorge to the Commission the amount of CA$318,686.19, pursuant to paragraph 10 of subsection 127(1) of the Act;

(j) each of the Respondents pay an administrative penalty in the amount of CA$550,000, pursuant to paragraph 9 of subsection 127(1) of the Act;

(k) each of the Respondents pay costs of the investigation in the amount of CA$50,000, pursuant to section 127.1 of the Act;

(l) the amounts payable under subparagraphs 2(h) through 2(k) are payable forthwith, except that Agar shall pay CA$200,000 forthwith with the balance of funds payable by him to be paid in nine monthly payments of CA$50,000 by the last business day of each subsequent calendar month; and

(m) the Respondents are reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act.

_____

[Adjudicator]

_____ _____

[Adjudicator] [Adjudicator]