

**IN THE MATTER OF THE SECURITIES ACT  
R.S.O. 1990, c. S.5, AS AMENDED**

**- and -**

**IN THE MATTER OF TARAS HUCAL**

**SETTLEMENT AGREEMENT BETWEEN  
STAFF OF THE COMMISSION  
AND TARAS HUCAL**

**PART I - INTRODUCTION**

1. The Ontario Securities Commission (the "Commission") will issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S-5, as amended (the "Act"), it is in the public interest for the Commission to make certain orders in respect of Taras Hucal ("Hucal" or the "Respondent").

**PART II - JOINT SETTLEMENT RECOMMENDATION**

2. Staff of the Commission ("Staff") agree to recommend settlement of the proceeding commenced by a Notice of Hearing (the "Proceeding") against Hucal according to the terms and conditions set out in Part VI of this Settlement Agreement. Hucal agrees to the making of an order in the form attached as Schedule "A", based on the facts set out below.

**PART III - AGREED FACTS**

3. For this proceeding, and any other regulatory proceeding commenced by a securities regulatory authority, Hucal agrees with the facts set out in this Part of this Settlement Agreement.

4. Between January 2009 and January 2010 (the “Material Time”), Hucal was the President of certain investment fund managers namely, frontierAlt Funds Management Limited (“FALT Management”), the general partner of frontierAlt 2007 Energy & Precious Metals Flow-Through Limited Partnership (“FALT 2007 LP”) and the general partner of frontierAlt 2008 Precious Metals & Energy Flow-Through Limited Partnership (“FALT 2008 LP”). FALT Management, FALT 2007 LP and FALT 2008 LP were part of the frontierAlt (“FALT”) financial organization.
5. FALT Management was the investment fund manager for the public mutual fund frontierAlt Resource Capital Class Fund (“FALT Resource”). FALT 2007 LP and FALT 2008 LP (collectively the “FALT LPs”) were limited partnerships organized as public non-redeemable investment funds. The general partners for FALT 2007 LP and FALT 2008 LP respectively served as each FALT LP’s investment fund manager. FALT Management and the general partners of the FALT LPs (collectively the “FALT Investment Fund Managers”) were compensated by FALT Resource and the FALT LPs respectively (collectively the “FALT Investment Funds”) for the provision of investment management services.
6. During the Material Time, a third-party investment counsel and portfolio manager (the “ICPM”) had been retained and was acting as the ICPM for the FALT Investment Funds pursuant to portfolio management agreements.
7. During the Material Time, the general partners of the FALT LPs retained control over the portfolio assets of the FALT LPs, which were held in custody with third-party brokers. The general partners of the FALT LPs provided the ICPM information about the portfolio assets held by the FALT LPs through a back-office service provider affiliated with the FALT financial organization.
8. During the Material Time, Hucal failed to ensure that the FALT Investment Fund Managers kept proper books and records respecting fund manager activities for their respective FALT Investment Fund. In particular, the FALT Investment Fund Managers failed to maintain adequate documentation including a complete record of subscription agreements, trade instructions and, in the case of the FALT 2008 LP, records supporting

offering costs expensed to the FALT 2008 LP. Although the FALT 2008 LP did not make public offerings during the Material Time, the expensing of such offering costs were reflected in FALT 2008 LP financial statements authorised by Hucal. Hucal failed to ensure that there was adequate supporting documentation respecting such offering costs expensed and recorded in the financial statements filed with the Commission during the Material Time.

9. During the Material Time, Hucal, as President of the general partners of the FALT LPs, failed to ensure that there were adequate internal controls respecting the safeguarding of the public assets of the FALT LPs. In particular Hucal:

(a) failed to ensure that the records with brokers were updated when his predecessor in office resigned as President of the FALT Investment Fund Managers on or about December 12, 2008. The former President retained trading authorization for the brokers' accounts into 2009;

(b) failed to implement effective policies and procedures to oversee the trading in the FALT LPs' brokerage accounts. There were no policies and procedures in place to monitor and document the access to and trading in the brokerage accounts by individuals who were neither officers nor directors of the FALT LPs' investment fund managers, including authority to direct brokers to issue cheques from the accounts; and

(c) failed to implement effective policies and procedures and take adequate steps to oversee the investment process. During the Material Time, the FALT LPs' investment fund managers did not receive written trade instructions from the ICPM to conduct transactions in the FALT LPs in connection with private placement purchases of securities from issuers or in connection with secondary market purchases and sales of previously acquired securities held at brokers, and the FALT LPs' investment fund managers failed to maintain records of these instructions. Although Hucal was not actively involved in this investment process as other individuals at FALT facilitated these transactions, on a few occasions, Hucal signed private placement subscription agreements for the FALT LPs at the direction of other FALT representatives.

10. Staff asserts that, commencing in or about August 2009 and continuing through to December 2009, a principal of the FALT financial organization usurped the function of the ICPM and conducted purchases and sales of securities of reporting issuers in the FALT Investment Funds without the authorization, consent, approval or knowledge of the ICPM. Hucal denies knowledge of these trades but admits that as the President of the FALT Investment Fund Managers, he failed to ensure that there were adequate policies and procedures in place that were designed to prevent and detect unauthorized transactions.
11. During the Material Time, Hucal failed to provide adequate compliance and supervisory oversight of the FALT Investment Fund portfolios to ensure that the FALT Investment Funds adhered to their investment objectives and restrictions as disclosed in their prospectuses. In January 2009, FALT Investment Funds held over-concentrations of securities of specific issuers, exceeded early warning thresholds without reporting these to the Commission on a timely basis, and acquired a control position in the securities of a reporting issuer. Although Hucal discussed the over-concentration issue with the ICPM, Hucal failed to ensure that the FALT Investment Fund filed early warning reports as required by section 102.1 of the Act and Part 7 of Rule 62-504 *Take-Over and Issuer Bids*. Hucal also failed to ensure disclosure of the risks of high concentrations of specific issuers in the prospectuses for FALT Resource as required under Item 9 of Form 81-101F1 *Contents of Simplified Prospectus*. The FALT Investment Fund Managers filed Mutual Fund Reports on Fund Performance. Although Hucal sought approval from certain board members of the FALT Investment Fund Managers, he failed to comply with the board approval requirements respecting Mutual Fund Reports on Fund Performance for the FALT Investment Funds as required by section 4.5 of NI 81-106 *Investment Funds Continuous Disclosure*.

#### **PART IV - CONDUCT CONTRARY TO ONTARIO SECURITIES LAW AND CONTRARY TO THE PUBLIC INTEREST**

12. During the Material Time, Hucal, being a market participant, failed to ensure books, records and other documents as were necessary for the proper recording of the business transactions and financial affairs of the FALT Investment Funds were kept by the FALT Investment Fund Managers contrary to section 19(1) of the Act. Hucal also failed to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances respecting the management of the FALT Investment Funds contrary to section 116 of the Act. By engaging in this conduct as described in Part III, Hucal acted contrary to Ontario securities law and contrary to the public interest.

#### **PART V - TERMS OF SETTLEMENT**

13. The Respondent agrees to the terms of settlement listed below.
14. The Commission will make an order pursuant to section 127(1) and section 127.1 of the *Act* that:
  - (a) the settlement agreement is approved;
  - (b) the Respondent is prohibited from being registered under the Act in any capacity for one year and until the Respondent completes all proficiency requirements and the Conduct and Practices Handbook Course (the “CPH”) and upon such registration, the Respondent will be subject to close supervision for 6 months;
  - (c) the Respondent cease trading in securities for one year except for trading on his own behalf in his own account and on behalf of his father in his father’s own account;
  - (d) the Respondent is prohibited from acquiring securities for one year except for acquisitions on his own behalf in his own account and on behalf of his father in his father’s own account;
  - (e) any exemptions contained in Ontario securities law do not apply to the Respondent for one year except as permitted under this order respecting the trading of securities in

in his own account on his own behalf and on behalf of his father in his father's own account;

- (f) the Respondent is reprimanded;
  - (g) the Respondent resign any position he holds as a director or as a chief executive officer, a chief operating officer or a president of any issuer;
  - (h) the Respondent is prohibited from becoming or acting as a director or as a chief executive officer, a chief operating officer or a president of any issuer for three years;
  - (i) the Respondent resign any position he holds as a director or as an ultimate designated person of a registrant;
  - (j) the Respondent is prohibited from becoming or acting as a director or as an ultimate designated person of a registrant for three years and until he completes the PDO exam as defined in Part 3.1 of National Instrument 31-103 (the "PDO exam");
  - (k) the Respondent resign any position he holds as a director or as an ultimate designated person of an investment fund manager;
  - (l) the Respondent is prohibited from becoming or acting as a director or as an ultimate designated person of an investment fund manager for three years and until he completes the PDO exam;
  - (m) the Respondent is prohibited from becoming or acting as a promoter for one year;
  - (n) the Respondent pay an administrative penalty of \$5,000.00 to be allocated under section 3.4(2)(b) of the Act to or for the benefit of third parties; and
  - (o) the Respondent pay the costs of the Commission's investigation in the amount of \$10,000.00.
15. With respect to paragraph 14(n) and (o), the Respondent agrees to personally make a payment of \$3,500.00 by certified cheque within six (6) months of the date when the Commission approves this Settlement Agreement and the balance (\$11,500.00) by

certified cheque(s) within twenty-four (24) months subsequent to the \$3,500.00 payment. The Respondent will not be reimbursed for, or receive a contribution toward, this payment from any other person or company.

16. The Respondent undertakes to consent to a regulatory Order made by any provincial or territorial securities regulatory authority in Canada containing any or all of the prohibitions set out in sub-paragraphs 14 (b) to (d) above. These prohibitions may be modified to reflect the provisions of the relevant provincial or territorial securities law.

#### **PART VI - STAFF COMMITMENT**

17. If the Commission approves this Settlement Agreement, Staff will not commence any proceeding under Ontario securities law in relation to the facts set out in Part III of this Settlement Agreement, subject to the provisions of paragraph 18 below.
18. If the Commission approves this Settlement Agreement and the Respondent fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Ontario securities law against the Respondent. These proceedings may be based on, but are not limited to, the facts set out in Part III of this Settlement Agreement as well as the breach of the Settlement Agreement.

#### **PART VII - PROCEDURE FOR APPROVAL OF SETTLEMENT**

19. The parties will seek approval of this Settlement Agreement at a public hearing before the Commission to be scheduled on a date agreed to by Staff and the Respondent, according to the procedures set out in this Settlement Agreement and the Commission's Rules of Practice.
20. Staff and the Respondent agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing on the Respondent's conduct, unless the parties agree that additional facts should be submitted at the settlement hearing.
21. If the Commission approves this Settlement Agreement, the Respondent agrees to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.

22. If the Commission approves this Settlement Agreement, neither party will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the settlement hearing.
23. Whether or not the Commission approves this Settlement Agreement, the Respondent will not use, in any proceeding, this Settlement Agreement or the negotiation or process of approval of this agreement as the basis for any attack on the Commission's jurisdiction, alleged bias, alleged unfairness, or any other remedies or challenges that may otherwise be available.

#### **PART VIII - DISCLOSURE OF SETTLEMENT AGREEMENT**

24. If the Commission does not approve this Settlement Agreement or does not make the order attached as Schedule "A" to this Settlement Agreement:
  - (a) this Settlement Agreement and all discussions and negotiations between Staff and the Respondent before the settlement hearing takes place will be without prejudice to Staff and the Respondent; and
  - (b) Staff and the Respondent will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations contained in the Statement of Allegations. Any proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this agreement.
25. Both parties will keep the terms of the Settlement Agreement confidential until the Commission approves the Settlement Agreement. At that time, the parties will no longer have to maintain confidentiality. If the Commission does not approve the Settlement Agreement, both parties must continue to keep the terms of the Settlement Agreement confidential, unless they agree in writing not to do so or are required by law to disclose the terms.



**PART X - EXECUTION OF SETTLEMENT AGREEMENT**

26. The parties may sign separate copies of this agreement. Together, these signed copies will form a binding agreement.
27. A fax copy of any signature will be treated as an original signature.

Dated this 26<sup>th</sup> day of *October*, 2011

          "*Taras Hucal*"            
Taras Hucal

          "*Tracy Pratt*"            
Witness

          "*Tom Atkinson*"            
Tom Atkinson  
Director  
Enforcement Branch



## Schedule "A"

Ontario  
Securities  
Commission

Commission des  
valeurs mobilières  
de l'Ontario

P.O. Box 55, 19<sup>th</sup> Floor  
20 Queen Street West  
Toronto ON M5H 3S8

CP 55, 19<sup>e</sup> étage  
20, rue queen ouest  
Toronto ON M5H 3S8

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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 TARAS HUCAL**

**ORDER  
(Subsection 127(1) and section 127.1)**

**WHEREAS** the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") in respect of Taras Hucal (the "Respondent");

**AND WHEREAS** the Respondent and Staff of the Commission ("Staff") entered into a Settlement Agreement (the "Settlement Agreement") in which they agreed to a settlement subject to the approval of the Commission;

**AND UPON** reviewing the Settlement Agreement and upon hearing submissions from counsel for Staff and counsel for the Respondent;

**AND WHEREAS** the Commission is of the opinion that it is in the public interest to make this Order;

**IT IS HEREBY ORDERED THAT:**

- (a) the Settlement Agreement is approved;
- (b) the Respondent is prohibited from being registered under the Act in any capacity for one year and until the Respondent completes all proficiency requirements and the Conduct and Practices Handbook Course (the “CPH”) and upon such registration, the Respondent will be subject to close supervision for 6 months;
- (c) the Respondent cease trading in securities for one year except for trading on his own behalf in his own account and on behalf of his father in his father’s own account;
- (d) the Respondent is prohibited from acquiring securities for one year except for acquisitions on his own behalf in his own account and on behalf of his father in his father’s own account;
- (e) any exemptions contained in Ontario securities law do not apply to the Respondent for one year except as permitted under this order respecting the trading of securities in his own account on his own behalf and on behalf of his father in his father’s own account;
- (f) the Respondent is reprimanded;
- (g) the Respondent resign any position he holds as a director or as a chief executive officer, a chief operating officer or a president of any issuer;
- (h) the Respondent is prohibited from becoming or acting as a director or as a chief executive officer, a chief operating officer or a president of any issuer for three years;
- (i) the Respondent resign any position he holds as a director or as an ultimate designated person of a registrant;
- (j) the Respondent is prohibited from becoming or acting as a director or as an ultimate designated person of a registrant for three years and until he completes

the PDO exam as defined in Part 3.1 of National Instrument 31-103 (the “PDO exam”);

- (k) the Respondent resign any position he holds as a director or as an ultimate designated person of an investment fund manager;
- (l) the Respondent is prohibited from becoming or acting as a director or as an ultimate designated person of an investment fund manager for three years and until he completes the PDO exam;
- (m) the Respondent is prohibited from becoming or acting as a promoter for one year;
- (n) the Respondent pay an administrative penalty of \$5,000.00 to be allocated under section 3.4(2)(b) of the Act to or for the benefit of third parties; and
- (o) the Respondent pay the costs of the Commission’s investigation in the amount of \$10,000.00.

**DATED** at Toronto this      day of November, 2011.

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James E. A. Turner  
Vice-Chair