

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

- and -

IN THE MATTER OF ASIF KHAN

**SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION AND
ASIF KHAN**

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 Asif Khan ("Khan" 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 to be issued (the "Proceeding") against Khan according to the terms and conditions set out in Part VI of this Settlement Agreement. Khan 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, Khan agrees with the facts set out in this Part of this Settlement Agreement.
4. Between 2007 and 2010 (the "relevant time"), Khan was the Chairman of the Board ("Chairman") and the Chief Executive Officer ("CEO") of frontierAlt Capital Corp.

("FALT Capital"). He was also registered with the Commission as the Ultimate Responsible Person ("URP") of MAK Allen & Day Partners Inc. ("MAK") and held positions as director and officer of MAK including CEO. MAK was registered with the Commission as a limited market dealer ("LMD").

5. Khan was a founder of the FALT financial organization in 2003. It was comprised of, among other things;

(a) FALT Capital which is a holding and parent company controlled by Khan that participated in Ontario's capital markets as an investment fund manager for certain FALT investment funds.

(b) frontierAlt Funds Management Limited ("FALT Funds") which is an investment fund manager that managed a number of FALT public mutual funds. FALT Funds is a subsidiary of FALT Capital.

(c) a series of limited partnerships structured as public non-redeemable investment funds including FrontierAlt 2007 Energy & Precious Metals Flow-Through Limited Partnership ("FALT LP07") and FrontierAlt 2008 Precious Metals & Energy Flow-Through Limited Partnership ("FALT LP08"). FALT LP07 prepared and filed a prospectus and raised approximately \$15.2 million from the public in December 2007. FALT LP08 prepared and filed a prospectus and raised approximately \$8.2 million from the public in April 2008. The FALT LP07 and FALT LP08 (the "LPs") were active purchasers and sellers of securities of resource issuers, principally flow-through securities which generated income tax benefits for the LPs limited partners (the public purchasers of the LPs' units pursuant to prospectus offerings).

(d) the general partners of limited partnerships which were the investment fund managers for the limited partnerships including FrontierAlt Energy & Precious Metals Inc. ("FALT GP07") and FrontierAlt 2008 Energy & Precious Metals Inc. ("FALT GP08"). FALT GP07 and FALT GP08 were subsidiaries of FALT Capital.

(e) FrontierAlt Resource Capital Class Fund ("FALT Resource") which was a public mutual fund which was an active purchaser (and seller) of securities of resource

issuers and which received, from time to time, in-kind rollovers of the portfolio assets from limited partnerships, including FALT LP07 and FALT LP08, in exchange for freely redeemable mutual fund securities of FALT Resource. FALT LP07 rolled all of its assets, valued at \$3,736,180, to FALT Resource on November 30, 2009 and thereafter FALT LP07 dissolved. FALT LP08 rolled all of its assets, valued at \$4,669,179, to FALT Resource on April 23, 2010 and thereafter dissolved. FALT Resource is a class of shares of the mutual fund company FrontierAlt Capital Class Mutual Fund Limited, which is a subsidiary of FALT Funds. The rollovers occurred at market value at the expiry of the two year non redeemable period.

- (f) MAK which was a LMD whose market intermediation consisted almost entirely of facilitating the private placement purchases of securities of resource issuers by the FALT public investment funds. MAK is a subsidiary of FALT Capital.
 - (g) KeiData which provided fund accounting and other services to the FALT public investment funds. KeiData was a subsidiary of FALT Capital.
6. During the relevant period, the FALT investment fund managers retained an Investment Counsel and Portfolio Manager ("ICPM") for certain of the FALT public investment funds pursuant to portfolio management agreements.
 7. During the relevant period, the FALT investment fund managers of the FALT public investment funds retained control over the portfolio assets of the FALT LPs, which were held in custody with third-party brokers.
 8. In practice, investment recommendations to the ICPM were routinely made by representatives of MAK and the approval of the investments by the ICPM was routinely received by MAK verbally. No written trade instructions were received by MAK or the FALT investment fund managers and MAK and the FALT investment fund managers did not record trade instructions from the ICPM.
 9. During the relevant period, the activities of the FALT investment fund managers as directed by Khan and the activity of the LMD as directed by Khan were characterized by a failure to comply with Ontario securities law and conduct contrary to the public

interest.

10. During the relevant period, Khan failed to ensure that the FALT investment fund managers kept proper books and records respecting their fund manager activities for the FALT investment funds. In particular, the FALT investment fund managers failed to maintain adequate documentation including a complete record of all subscription agreements and records of trade instructions from the ICPM relating to the portfolios of the FALT investment funds. Khan also failed to ensure adequate books and records documenting the expensing of offering costs related to the public offerings of the FALT LPs were maintained.
11. Khan also failed to ensure that the investment fund managers had adequate internal controls respecting the safeguarding of the assets of the FALT LPs held in custody at brokers. In particular, he
 - (a) failed to ensure that the records with brokers were updated when the former President of the FALT investment funds managers resigned on or about December 12, 2008. That former President remained as an authorized trader on the brokers' accounts into 2009; and
 - (b) failed to implement effective policies and procedures to oversee the trading in the FALT LP's brokerage accounts.

There were no policies and procedures in place to monitor and document the use by individuals who were neither officers nor directors of FALT investment fund managers of trading authority in the brokerage accounts, including authority to direct brokers to issue cheques from the accounts.

12. During the relevant period, Khan failed to ensure that the investment fund managers provided adequate compliance and supervisory oversight of the FALT investment fund portfolios and failed to ensure that the investment funds adhered to the investment objectives and restrictions as disclosed in the prospectuses. In January, 2009, Khan authorized, permitted or acquiesced in the FALT investment funds holding over-concentrations of securities of specific issuers, exceeded early warning thresholds

without reporting these to the OSC on a timely basis and acquired a control position in the securities of a reporting issuer. Khan also failed to ensure disclosure of the risks of high concentrations of specific issuers in the prospectuses for FALT Resource as required under Part B, Item 9 of Form 81-101F1 *Contents of Simplified Prospectus* or to file early warning reports as required by section 102.1 of the Act and Part 7 of OSC Rule 62-504 *Take-Over Bids and Issuer Bids* or comply with requirements respecting Management Reports of Fund Performance as required by section 4.5 of NI 81-106 *Investment Funds Continuous Disclosure*.

13. In 2009, the designated compliance officer ("DCO") at MAK received compensation directly from a third party and "dealt away" from MAK. The DCO made arrangements with an issuer for which MAK acted as agent to privately place securities with a FALT investment fund and under those arrangements the DCO received compensation directly from the issuer in the form of warrants. Also in 2009, another issuer engaged the DCO personally, along with two others, to assist the issuer with a financing and the DCO received compensation directly from this issuer. In September, 2009, the DCO received shares directly from a third issuer relating to an engagement with MAK. Khan, the URP of MAK, authorized, permitted or acquiesced in these direct payments to the DCO and did not ensure the payments went through the books and records of the registrant.
14. During the relevant period, Khan failed to ensure that MAK kept proper books and records respecting its dealer activities. Khan failed to ensure that MAK maintained an adequate trading blotter, a record of trade instructions received from the ICPM of the FALT investment funds and a complete record of client documentation including subscription agreements.

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

15. During the relevant time period, Khan
 - (a) 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 entities were kept by the FALT investment fund managers contrary to subsection 19(1) of the Act;
- (b) 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;
 - (c) failed to comply with section 2.1 of OSC Rule 31-505 *Conditions of Registration* authorizing receipt of compensation by the DCO at MAK directly from third parties and "dealing away" from MAK;
 - (d) being a registrant, failed to keep such books, records and other documents as were necessary for the proper recording of the business transactions and financial affairs of MAK contrary to subsection 19(1) of the Act and section 113 of the General Regulation of the Act; and
 - (e) failed in his duty to provide adequate compliance oversight and supervision over the activities of MAK contrary to sections 1.3 and 3.1 of OSC Rule 31-505 *Conditions of Registration*.

By engaging in the above conduct, Khan acted contrary to Ontario securities law and contrary to the public interest.

PART V - TERMS OF SETTLEMENT

- 16. The Respondent agrees to the terms of settlement listed below.
- 17. 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 two years, pursuant to clause 1 of subsection 127(1), 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 mandatory supervision for a period of one year;
- (c) the Respondent cease trading in any securities for two years, pursuant to clause 2 of subsection 127(1), except for trading on his own behalf in his own account;
 - (d) the Respondent be prohibited from acquiring any securities for two years, pursuant to clause 2.1 of subsection 127(1), except for acquisitions on his own behalf in his own account;
 - (e) any exemptions contained in Ontario securities law do not apply to the Respondent for a period of two years commencing on the date of the Commission's order pursuant to clause 3 of subsection 127(1);
 - (f) the Respondent is reprimanded pursuant to clause 6 of subsection 127(1);
 - (g) the Respondent resign any position he holds as a director or officer of any issuer pursuant to clause 7 of subsection 127(1);
 - (h) the Respondent is prohibited from becoming or acting as a director or officer of any issuer for four years pursuant to clause 8 of subsection 127(1);
 - (i) the Respondent resign any position he holds as a director or officer of an investment fund manager pursuant to clause 8.3 of subsection 127(1);
 - (j) the Respondent is prohibited from becoming or acting as a director or officer of an investment fund manager for four years pursuant to clause 8.4 of subsection 127(1);
 - (k) the Respondent resign any position he holds as a director or Ultimate Designated Person or Chief Compliance Officer of a registrant pursuant to clause 8.1 of subsection 127(1);
 - (l) the Respondent is prohibited from becoming or acting as an investment fund manager for four years or promoter for two years pursuant to clause 8.5 of subsection 127(1);
 - (m) the Respondent pay an administrative penalty of \$25,000 pursuant to clause 9 of

- subsection 127(1) to be allocated under subsection 3.4(2)(b) of the Act to or for the benefit of third parties; and
- (n) the Respondent will pay the costs of the Commission's investigation in the amount of \$15,000 pursuant to section 127.1.

18. The Respondent agrees to personally make any payments ordered above by certified cheque within six months of the Commission approving this Settlement Agreement. The Respondent will not be reimbursed for, or receive a contribution toward, this payment from any other person or company.
19. 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 17(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

20. 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 21 below.
21. 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. In addition, if this Settlement Agreement is approved by the Commission and the Respondent fails to honour the financial terms of the Settlement Agreement, the Commission is entitled to bring any proceedings necessary to recover the amounts set out in subparagraphs 17 (m) and (n) above.

PART VII - PROCEDURE FOR APPROVAL OF SETTLEMENT

22. The parties will seek approval of this Settlement Agreement at a public hearing before the Commission scheduled for April 25, 2012 at 10:00 a.m. or on another 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.

23. 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.
24. 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.
25. 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.
26. 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

27. 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.

28. Both parties will keep the terms of the Settlement Agreement confidential until the Commission approves the Settlement Agreement. Any obligations of confidentiality shall terminate upon the commencement of the public hearing to obtain approval of this Settlement Agreement by the Commission. 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 IX - EXECUTION OF SETTLEMENT AGREEMENT

29. The parties may sign separate copies of this agreement. Together, these signed copies will form a binding agreement.

30. A fax copy of any signature will be treated as an original signature.

Dated this “13th” day of “April”, 2012.

“Asif Khan”
Asif Khan

“A.G. Formosa”
Witness

“Tom Atkinson”
“Tom Atkinson”
Director, Enforcement