Ontario Securities Commission | Commission des valeurs mobilières de l'Ontario | P.O. Box 55, 22nd Floor, 20 Queen Street West, Toronto ON M5H 3S8 | CP 55, 22e étage, 20, rue queen ouest, Toronto ON M5H 3S8

IN THE MATTER OF THE SECURITIES ACT
R.S.O. 1990, c. S.5, as amended

-and -

IN THE MATTER OF
KEITH MACDONALD SUMMERS,
TRICOASTAL CAPITAL PARTNERS LLC,
and TRICOASTAL CAPITAL MANAGEMENT LTD.

- and -

IN THE MATTER OF A SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION
and KEITH MACDONALD SUMMERS,
TRICOASTAL CAPITAL PARTNERS LLC,
and TRICOASTAL CAPITAL MANAGEMENT LTD.

PART I – INTRODUCTION

1. By Notice of Hearing dated February 27, 2014, the Ontario Securities Commission (the "Commission") announced that it proposed to hold a hearing, pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), to consider whether it is in the public interest to make orders, as specified herein, against Keith MacDonald Summers ("Summers"), Tricoastal Capital Partners LLC ("Tricoastal Partners") and Tricoastal Capital Management Ltd. ("Tricoastal Management") (collectively, the "Respondents"). The Notice of Hearing was issued in connection with a Statement of Allegations of Staff of the Commission ("Staff") dated February 27, 2014.

2. The Commission will issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to section 127 of the Act, it is in the public interest for the Commission to approve this Settlement Agreement and to make certain orders in respect of the Respondents.

PART II – JOINT SETTLEMENT RECOMMENDATIONS

3. Staff agree to recommend settlement of the proceeding initiated by the Notice of Hearing dated February 27, 2014 against the Respondents (the "Proceeding") in accordance with the terms and conditions set out below, the Respondents consent to the making of an order in the form attached as Schedule A, based on the Agreed Facts, as defined in this Settlement Agreement.

PART III – BACKGROUND TO THE SETTLEMENT

4. On June 4, 2014, Summers pled guilty to one count of fraud over $5,000 contrary to section 380 of the *Criminal Code*, R.S.C. 1985, C-46 (the "*Criminal Code*") and one count of uttering a forged document contrary to section 368 of the *Criminal Code* (the "Parallel Criminal Proceeding"), based on the same facts that underlie the allegations in this matter. The sentencing hearing is scheduled for September 22, 2014.

PART IV – AGREED FACTS

5. Schedule B to this Settlement Agreement is a document entitled, "Summary of Facts for Guilty Plea" that was filed as an exhibit in the Ontario Court of Justice on Summers's guilty plea.[1] Through counsel, Summers confirmed that the facts set out in Schedule B are accurate and the "Summary of Facts for Guilty Plea" were accepted by Ray J. of the Ontario Court of Justice as the basis for a finding of guilt on the charges of fraud and uttering a forged document. Schedule B forms part of this Settlement Agreement and it is intended that the Commission should rely on the whole of the Agreed Facts, as defined below and including Schedule B, in considering this matter.

6. For this Proceeding, and any other regulatory proceeding commenced by securities regulatory authorities in Canada, the Respondents agree with the facts as set out in Part IV of this Settlement Agreement, and as set out in Schedule B to this Settlement Agreement (collectively, the "Agreed Facts"). To the extent that the Respondents do not have direct personal knowledge of the Agreed Facts, the Respondents believe that the Agreed Facts are true and accurate.

[1] The names of the investors have been removed from the copy of the Summary of Facts for Guilty Plea attached as Schedule B and replaced by numbers.

The Respondents

7. Tricoastal Partners is an investment fund incorporated on April 24, 2004 as a limited liability company in the State of Delaware. Tricoastal Partners has a registered office located in Wilmington, Delaware and a mailing address located in Buffalo, New York. During the Relevant Period, Tricoastal Partners was not registered with the Commission in any capacity.

8. Tricoastal Management is a company incorporated on October 4, 2007 pursuant to the laws of Ontario. It has a registered address in Burlington, Ontario. During the Relevant Period, Tricoastal Management was not registered with the Commission in any capacity.

9. Summers was awarded a Masters of Business Administration ("MBA") from McMaster University and subsequently earned his Certified Financial Analyst ("CFA") designation in 2000. Previously, Summers was a registrant with the Commission with his most recent registration having been terminated on September 8, 2008.

10. During the Relevant Period, Summers was a resident of Burlington, Ontario. Summers is the sole officer and director of both Tricoastal Partners and Tricoastal Management. During the Relevant Period, Summers managed the Tricoastal Partners investment funds from his personal residence in Burlington, Ontario. Summers was not registered with the Commission in any capacity during the Relevant Period.

11. Summers never filed a prospectus or preliminary prospectus for either Tricoastal Partners or Tricoastal Management in relation to the Tricoastal securities, nor did he receive receipts.

Overview of the Agreed Facts

12. As set out more particularly in Schedule B to this Settlement Agreement, between July 2009 and July 2013 (the "Relevant Period"), Summers sold membership interests in Tricoastal Partners (the "Investment Fund"). The minimum investment required was $150,000. Investors owned the assets and liabilities of the Investment on a pro-rata basis according to their respective membership interest. Summers managed the Investment Fund and associated client services through Tricoastal Management.

13. Summers marketed the Investment Fund on the basis of a specific trading strategy (the "ETF Strategy"). He claimed to have developed a quantitative model for evaluating index-linked ETFs. His process was iterative. At the start of each month, Summers used his model to choose approximately seven ETFs in which to invest. He invested the assets of the Investment Fund equally between those ETFs. He did not buy or sell during the month. He sold all the ETFs at the end of the month. He then repeated the process.

14. Agreements signed with investors authorized a monthly management fee and, under certain circumstances, a performance fee (the "Permitted Withdrawals"). Investors received monthly statements reflecting the value of their investment.

15. During the Relevant Period, the Respondents raised a total of approximately US$4,690,000 from nine investors, eight resident in the United States and one resident in Canada, through the sale of membership units in the Investment Fund.

16. Beginning in July 2009, in order to attract new clients Summers significantly overstated the Assets Under Management (the "AUM") of the Investment Fund and held himself out as a successful fund manager. Summers continued to significantly overstate the Investment Fund's AUM to investors and potential investors throughout the Relevant Period.

17. In 2011, the Investment Fund began experiencing significant losses. Commencing in August 2011, Summers began underreporting the extent of the losses incurred by the Investment Fund to existing investors and in marketing materials.

18. In May 2012, Summers began losing faith in the ETF Strategy as the Investment Fund experienced a significant loss. In June 2012, some investors began to express their displeasure with the ETF Strategy. Summers recognized that although he had promised the investors the ETF Strategy, under the terms of the Offering Memorandum he had discretion to invest in other types of securities. Consequently, Summers began investing client monies in higher risk investments in derivatives, including futures and options on market volatility indices. A significant portion of the Investment Fund at this time was held in cash. Summers knew that this was a significant departure from the ETF Strategy and that he should not proceed without specifically consulting all of the investors.

19. The new trading strategy was unsuccessful and the Investment Fund continued to incur trading losses. To conceal these losses, beginning in July 2012 Summers began fabricating the monthly returns reported to investors based on what the results would have been had he continued with the ETF Strategy. During this period, Summers reported positive returns when the Investment Fund was actually experiencing significant losses.

20. In March 2013, the largest of the nine investors requested that the Investment Fund provide audited financial statements. To continue to conceal the substantial trading losses, Summers created a set of false audited financial statements for the year ended December 31, 2012 using the letterhead of a fictitious auditing firm. The forged audited financial statements contained an inflated AUM, false returns, and fabricated numbers in the statement of financial condition. Summers provided the false audited financial statements to the investor.

21. During the Relevant Period, the investor funds were dissipated as follows:

1. approximately US$572,000 was paid back to investors as a partial or total redemption of their investment;

2. approximately US$234,000 was withdrawn by Summers in the form of Permitted Withdrawals;

3. approximately US$918,000 was fraudulently withdrawn by Summers in excess of the Permitted Withdrawals and used to pay Summer's business and personal living expenses during the Relevant Period;

4. approximately US$1.6-million was lost in trading for the Investment Fund, of which approximately US$1.2-million was lost after the change in trading strategy;

5. approximately US$1.4-million remained in the fund at the time Summers self-reported, and is currently being held in an account in the US and the United States Securities and Exchange Commission (the "SEC") has placed a "soft freeze" on those funds.

22. On July 12, 2013, Summers self-reported the activities to the Commission after being confronted by the investor to whom he provided the false audited financial statements. The

Commission's Joint Serious Offences Team ("JSOT") commenced a joint investigation with the Royal Canadian Mounted Police ("RCMP"). Summers cooperated with that investigation and consented to information sharing between Canadian authorities and the SEC.

23. The Respondents' acts, solicitations, conduct or negotiations directly or indirectly in furtherance of the sale or disposition of previously unissued securities were for a business purpose and were undertaken without the benefit of an exemption from either the prospectus or dealer registration requirements under the Act.

24. The Respondents engaged in a course of conduct relating to securities that they knew would result in a fraud on investors, and made representations and provided information to investors that was false, inaccurate and misleading as follows:

1. misstating the AUM and historical performance of the Investment Fund, which induced individuals to invest and remain invested in the Investment Fund;

2. abandoning the ETF Strategy in favour of holding mostly cash and some high-risk investments without expressly notifying investors;

3. misrepresenting the performance of the Investment Fund to conceal trading losses through the creation of false investor statements and a fictitious auditor report; and

4. misappropriating investor funds through the withdrawals of fund in excess of the Permitted Withdrawals Summers was entitled to.

PART V – CONDUCT CONTRARY TO THE ACT AND CONTRARY TO THE PUBLIC INTEREST

25. By virtue of the conduct described in the Agreed Facts, the Respondents admit that:

1. During the Relevant Period, the Respondents engaged or participated in acts, practices or courses of conduct relating to securities that they knew or reasonably ought to have known perpetrated a fraud on persons or companies, contrary to subsection 126.1(b) of the Act;

2. During the Relevant Period, the Respondents engaged or held themselves as engaging in the business of trading in securities in Ontario without being registered to do so, in circumstances in which no exemption was properly relied upon, contrary to subsection 25(1)(a) of the Act for the period before September 28, 2009 and contrary to subsection 25(a) of the Act for the period on and after September 28, 2009; and

3. During the Relevant Period, the Respondents traded in Ontario in previously unissued securities without a preliminary prospectus and prospectus having been filed and receipts issued for them by the Director, and without an exemption from the prospectus requirements, contrary to subsection 53(1) of the Act; and

4. During the Relevant Period, Summers authorized, permitted or acquiesced in the breaches of Ontario securities law by Tricoastal Partners and Tricoastal Management, contrary to section 129.2 of the Act.

26. The Respondents admit and acknowledge that they acted contrary to the public interest by contravening Ontario securities law as set out in this Settlement Agreement.

PART VI – RESPONDENTS' POSITION

27. The Respondents request that the settlement hearing panel consider the following mitigating circumstances:

1. The Respondents self-reported to the Commission that they breached Ontario securities law;

2. The Respondents fully cooperated in the investigation conducted by Staff;

3. The Respondents openly discouraged and refused investment from Ontario residents due to the lack of registration;

4. While having the qualifications for registration, the Respondents lacked the required working capital to register the fund in Ontario; as a result, the Respondents did not solicit funds from Ontario residents, and only solicited funds

from US investors in reliance on an exemption to the registration requirement available in the US;

5. Summers lost his job in 2008, in the wake of the financial crisis. Attempts to find alternative employment were unsuccessful. As a result, in July 2009, Summers commenced his investment activity with the Investment Fund to earn an income; and

6. Consistent with his remorse, Summers has pled guilty to the criminal offences of fraud and uttering a forged document in connection with his conduct in this matter.

PART VII – TERMS OF SETTLEMENT

28. The Respondents agree to the terms of settlement below.

29. The Commission will make an order, pursuant to subsection 127(1) of the Act, that:

1. the Settlement Agreement is approved;

2. pursuant to clause 2 of subsection 127(1) of the Act, that trading in any securities by the Respondents shall cease permanently, with the exception that Summers is permitted to trade in securities for the account of a registered retirement savings plan (as defined in the *Income Tax Act*, R.S.C., 1985, c. 1, as amended) ("RRSP") and/or a tax-free savings account ("TFSA") in which he and/or his spouse have sole legal and beneficial ownership only after complying with any disgorgement or restitution order made in connection with the Parallel Criminal Proceeding, provided that:

(i) the securities are listed and posted for trading on the Toronto Stock Exchange, the New York Stock Exchange or NASDAQ (or their successor exchanges) or are issued by a mutual fund that is a reporting issuer;

(ii) Summers does not own legally or beneficially (in the aggregate, together with his respective spouse) more than one percent of the outstanding securities of the class or series of the class in question; and

(iii) Summers carries out any permitted trading through a registered dealer and through trading accounts opened in his name or the name of his spouse only (and he must close any trading accounts that are not in his name or the name of his spouse only);

3. pursuant to clause 2.1 of subsection 127(1) of the Act, the acquisition of any securities by the Respondents is permanently prohibited, except to allow trading in securities permitted by and in accordance with paragraph 2 of this Order;

4. pursuant to clause 3 of subsection 127(1) of the Act, any or all exemptions contained in Ontario securities law do not apply to the Respondents permanently, except to allow trading in securities permitted by and in accordance with paragraph 2 of this Order;

5. pursuant to clause 6 of subsection 127(1) of the Act, Summers is reprimanded;

6. pursuant to clauses 7, 8.1, and 8.3 of subsection 127(1) of the Act, Summers shall resign all positions he holds as an officer or director of any issuer, of any registrant, or of any investment fund manager, except that Summers may retain any position he holds as a director or officer of a private issuer in which he or his spouse are the only shareholders; and

7. pursuant to clauses 8, 8.2, and 8.4 of subsection 127(1) of the Act, Summers is permanently prohibited from becoming or acting as an officer or director of any issuer, of any registrant, or of any investment fund manager, except that Summers may act as an officer or director of a private issuer in which he or his spouse are the only shareholders; and

8. pursuant to clause 8.5 of subsection 127(1) of the Act, Summers is permanently prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter.

30. The Respondents undertake to 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 29 above.

PART VIII – STAFF COMMITMENT

31. If this Settlement Agreement is approved by the Commission, Staff will not initiate any other proceeding under the Act against the Respondents in relation to the Agreed Facts, as defined herein, subject to the provisions of paragraphs 32 and 33, below.

32. If this Settlement Agreement is approved by the Commission, and at any subsequent time the Respondents fail to comply with any of the terms of the Settlement Agreement, Staff reserve the right to bring proceedings under Ontario securities law against the Respondents based on, but not limited to, the facts set out in the Agreed Facts, as well as the breach of the Settlement Agreements.

33. If, at any time following the approval of this Settlement Agreement, Summers initiates an appeal of his conviction or sentence in the Parallel Criminal Proceeding, this Settlement Agreement is null and void and Staff reserve the right to bring proceedings under Ontario securities law against Summers based on, but not limited to, the facts set out in the Agreed Facts, as well as the breach of the Settlement Agreement.

34. If, for any reason, Summers is convicted, but a restitution order is not made in the Parallel Criminal Proceeding, as set out above, at paragraph 4, Staff may apply to the Commission for a variance of the order arising from this Settlement Agreement and adding such terms as are necessary to require the Respondents to disgorge the amounts obtained as a result of their non-compliance with Ontario securities law, which amounts shall be determined by the Commission based on the facts as set out in the Agreed Facts. The Commission remains entitled to bring any proceedings necessary to recover any amounts that the Respondents are ordered to pay as a result of any order imposed pursuant to this Settlement Agreement.

35. The Respondents hereby undertake to consent to an application to vary the order arising from this Settlement Agreement to add a disgorgement order, as set out in paragraph 34, above.

PART IX – PROCEDURE FOR APPROVAL OF SETTLEMENT

36. Approval of this Settlement Agreement will be sought at a hearing of the Commission scheduled on a date to be determined by the Secretary to the Commission, or such other date as may be agreed to by Staff and the Respondents for the scheduling of the hearing to consider the Settlement Agreement.

37. Staff and the Respondents agree that the Agreed Facts, as defined in this Settlement Agreement, will constitute the entirety of the facts to be submitted at the settlement hearing regarding the Respondents' conduct in this matter, unless the parties agree that further facts should be submitted at the settlement hearing.

38. If this Settlement Agreement is approved by the Commission, the Respondents agree to waive all rights to a full hearing, judicial review, or appeal of this matter under the Act.

39. If this Settlement Agreement is approved by the Commission, neither Staff nor the Respondents will make any public statement that is inconsistent with this Settlement Agreement or inconsistent with any additional agreed facts submitted at the settlement hearing.

40. Whether or not this Settlement Agreement is approved by the Commission, the Respondents agree that they will not, in any proceeding, refer to or rely upon this Settlement Agreement or the settlement negotiations as the basis of any attack on the Commission's jurisdiction, alleged bias or appearance of bias, alleged unfairness or any other remedies or challenges that may otherwise by available.

PART X – DISCLOSURE OF SETTLEMENT AGREEMENT

41. If, for any reason whatsoever, this Settlement Agreement is not approved by the Commission or the order attached as Schedule A is not made by the Commission:

1. this Settlement Agreement and its terms, including all settlement negotiations between Staff and the Respondents leading up to its presentation at the settlement hearing, shall be without prejudice to Staff and the Respondents; and

2. Staff and the Respondents shall be entitled to all available proceedings, remedies, and challenges, including proceeding to a hearing on the merits of the allegations in the Notice of Hearing and Statement of Allegations of Staff, unaffected by the Settlement Agreement or the settlement discussions and negotiations.

42. The terms of this Settlement Agreement will be treated as confidential by all parties hereto, but such obligations of confidentiality shall terminate upon commencement of this public hearing. The terms of the Settlement Agreement will be treated as confidential forever if the Settlement Agreement is not approved for any reason whatsoever by the Commission, except with the written consent of the Respondents and Staff or as may be required by law.

PART XI – EXECUTION OF SETTLEMENT AGREEMENT

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

44. A facsimile copy of ay signature will be effective as an original signature.

Dated this 20th day of August, 2014.

STAFF OF THE ONTARIO SECURITIES COMMISSION

"Tom Atkinson"

Tom Atkinson
Director, Enforcement Branch
Ontario Securities Commission

*"Keith McDonald Summers"*_____

Keith MacDonald Summers
Tricoastal Capital Partners LLC
Tricoastal Capital Management Ltd.

*"Kenneth Summers"*_____

Witness

SCHEDULE A

IN THE MATTER OF THE SECURITIES ACT
R.S.O. 1990, c. S.5, as amended

-and -

IN THE MATTER OF
KEITH MACDONALD SUMMERS,
TRICOASTAL CAPITAL PARTNERS LLC,
and TRICOASTAL CAPITAL MANAGEMENT LTD.

- and -

IN THE MATTER OF A SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION
and KEITH MACDONALD SUMMERS,
TRICOASTAL CAPITAL PARTNERS LLC,
and TRICOASTAL CAPITAL MANAGEMENT LTD.

ORDER
(Section 127(1))

WHEREAS on February 27, 2014, the Commission issued a Notice of Hearing pursuant to section 127 of the Securities Act (the "Act") in respect of Keith MacDonald Summers ("Summers"), Tricoastal Capital Partners LLC ("Tricoastal Partners") and Tricoastal Capital Management Ltd. ("Tricoastal Management") (collectively, the "Respondents").

AND WHEREAS on February 27, 2014, Staff of the Commission filed a Statement of Allegations;

AND WHEREAS the Respondents entered into a Settlement Agreement dated August ●, 2014 (the "Settlement Agreement") in relation to the matters set out in the Statement of Allegations;

AND WHEREAS the Commission issued a Notice of Hearing dated August ●, 2014 setting out that it proposed to consider the Settlement Agreement;

UPON reviewing the Settlement Agreement, the Notice of Hearing, the Statement of Allegations, and upon considering submissions from the Respondents through their counsel and from Staff of the Commission;

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

IT IS HEREBY ORDERED:

1. the Settlement Agreement is approved;

2. pursuant to clause 2 of subsection 127(1) of the Act, that trading in any securities by the Respondents shall cease permanently, with the exception that Summers is permitted to trade in securities for the account of a registered retirement savings plan (as defined in the *Income Tax Act*, R.S.C., 1985, c. 1, as amended) ("RRSP") and/or a tax-free savings account ("TFSA") in which he and/or his spouse have sole legal and beneficial ownership only after complying with any disgorgement or restitution order made in connection with the Parallel Criminal Proceeding, provided that:

    (i) the securities are listed and posted for trading on the Toronto Stock Exchange, the New York Stock Exchange or NASDAQ (or their successor exchanges) or are issued by a mutual fund that is a reporting issuer;

    (ii) Summers does not own legally or beneficially (in the aggregate, together with his respective spouse) more than one percent of the outstanding securities of the class or series of the class in question; and

    (iii) Summers carries out any permitted trading through a registered dealer and through trading accounts opened in his name or the name of his spouse only (and he must close any trading accounts that are not in his name or the name of his spouse only);

3. pursuant to clause 2.1 of subsection 127(1) of the Act, the acquisition of any securities by the Respondents is permanently prohibited, except to allow trading in securities permitted by and in accordance with paragraph 2 of this Order;

4. pursuant to clause 3 of subsection 127(1) of the Act, any or all exemptions contained in Ontario securities law do not apply to the Respondents permanently, except to allow trading in securities permitted by and in accordance with paragraph 2 of this Order;

5. pursuant to clause 6 of subsection 127(1) of the Act, Summers is reprimanded;

6. pursuant to clauses 7, 8.1, and 8.3 of subsection 127(1) of the Act, Summers shall resign all positions he holds as an officer or director of any issuer, of any registrant, or of any investment fund manager, except that Summers may retain any position he holds as a director or officer of a private issuer in which he or his spouse are the only shareholders; and

7. pursuant to clauses 8, 8.2, and 8.4 of subsection 127(1) of the Act, Summers is permanently prohibited from becoming or acting as an officer or director of any issuer, of any registrant, or of any investment fund manager, except that Summers may act as an officer or director of a private issuer in which he or his spouse are the only shareholders.

DATED at Toronto this ● day of August, 2014.

SCHEDULE B

ONTARIO COURT OF JUSTICE
(Toronto Region)

B E T W E E N:

HER MAJESTY THE QUEEN

-and-

KEITH MACDONALD SUMMERS

SUMMARY OF FACTS FOR GUILTY PLEA

I. OVERVIEW

1. The Crown presents the following facts on the plea of guilty by Keith MacDonald Summers ("Summers") to a count of fraud over $5,000 and a count of uttering a forged document in relation to an investment fund that he operated through his company, Tricoastal Capital Partners LLC (the "TCP Fund") in Ontario, New York, and elsewhere, between July 1, 2009 and July 31, 2013.

2. In July 2009, Summers began investing his clients' money in index-linked Exchange Traded Funds ("ETFs"). He over-stated his assets under management ("AUM") to attract new clients. He presented himself as a successful fund manager who followed a quantitative model-driven investment strategy that generated consistent long-term profits. By May 2012, Summers lost faith in this strategy and abandoned it. Commencing in August 2011, Summers concealed the associated losses by falsifying monthly statements and tax forms, and ultimately, in April 2013, by forging an audited financial statement. While operating the fund, Summers

fraudulently withdrew a portion of the investors' money to pay his personal and business expenses in amounts exceeding the authorized management fees, performance fees and allowable expenses ("the permitted withdrawals"). The money was transferred from the fund to one of his other companies. Summers recorded these excess withdrawals in the Accrued Expenses account in the books and records of the TCP Fund. The account was a liability account with a negative balance; effectively, the withdrawals were recorded as an asset/loan receivable.

3. On July 12, 2013, Summers self-reported his illegal activities to the Ontario Securities Commission ("OSC"), who contacted the Securities and Exchange Commission ("SEC"). The Joint Serious Offences Team ("JSOT") of the OSC commenced a joint investigation with the Royal Canadian Mounted Police ("RCMP"). Summers cooperated with that investigation. He consented to information-sharing between Canadian authorities and the SEC. Summers submitted to two interviews with JSOT.

4. The investigation disclosed that Summers fraudulently obtained funds from three institutional victims and eight individuals, domiciled in the United States and Canada.

5. Summers raised a total of US$4,690,000 from the investors in the TCP Fund. He lost US$1,568,215 in trading, of which US$1,202,441 was lost after his change in strategy. He fraudulently withdrew US$918,995. He withdrew US$234,489 in permitted withdrawals, and repaid US$572,341.85 in redemptions. The fund had a balance of US$1,395,959 when the fraud was discovered.

6. Two of the investors engaged Summers to manage their online trading account. They contributed a total of US$570,130.15. Summers lost US$212,328.61 trading that account.

II. THE CHARGES

7. Summers is charged with one count of fraud over $5,000 on the following victims:

- [Investor 1 and an LLP;
- Investors 2 and 3 and a Family Trust;
- Investor 4 and an LLC;
- Investor 5;
- Investor 6;
- Investor 7 and a Family Trust;
- Investor 8 and Investor 9;
- Investor 10 and an Investment Fund; and
- Investor 11.]

8. Summers is also charged with uttering a forged document by knowingly attempting to cause [an Investment Fund] to act upon the document titled, "Tricoastal Capital Partners LLC Financial Statements for the year ended December 31, 2012 including Independent Auditors' Report", as if it were genuine.

9. All but two victims resided in the United States. Summers had a nominal office presence in Buffalo, NY and, until January 2010, maintained a mailing address in St. Paul, MN. He occasionally met with his victims in the US. However, Summers operated the TCP Fund, implemented the fraudulent trades, created and published the false documentation, and made the deceitful communications from his home office at 2164 Headon Forest Drive in Burlington, ON.

III. KEITH MACDONALD SUMMERS

10. Summers was born on May 29, 1965. He is married but currently separated with divorce pending. He has an adult son and two daughters currently in school; one daughter is attending university, the other is entering university next year. He has an undergraduate degree in political science and an MBA from McMaster University.

11. From 1993 to 2000, Summers was the Chief Investment Officer at Agricorp, an Ontario Crown corporation that delivered risk management services to the agricultural industry. He was awarded the Chartered Financial Analyst ("CFA") designation in 2000. He was registered as an Investment Counsel / Portfolio Manager with the OSC.

12. In 2000, Summers left Agricorp and joined the Workers' Compensation Reinsurance Association ("WCRA") in Minnesota. Summers managed their $1.4 billion investment portfolio. He grew comfortable conducting research across varied market sectors. He developed and employed a "sector-rotation model" that would become the prototype for his future operations.

13. On October 30, 2002, Summers' work visa expired. He returned to Canada. In September 2003, Summers joined CI Investments in Winnipeg as their Investment Counsel / Portfolio Manager and Chief Compliance Officer. He began at United Financial Corporation, a subsidiary with $10 billion under management. In 2005, he moved to Stonegate Private Counsel LLP, a subsidiary with more than $900 million under management. Summers lost his job in September 2008, in the wake of the financial crisis. Attempts to find alternative employment were unsuccessful. As a result, in July 2009, Summers commenced his investment activity with the TCP Fund to earn an income.

14. Summers was an active volunteer at the CFA Institute. He attended and spoke at hedge fund conferences. Around October 2008, Summers began providing market commentary on a Business News Network television broadcast ("BNN") about once a month.

IV. THE TRICOASTAL COMPANIES

15. Summers is the principal of the following corporate entities:

- Tricoastal Capital Partners LLC;
- Tricoastal Capital Management Ltd.;
- Tricoastal Capital American Partners LP; and
- Tricoastal Capital LLC.

16. Tricoastal Capital Partners LLC (the "TCP Fund") was incorporated in Delaware on April 24, 2004. Summers is the sole officer and director. The TCP Fund has a registered office in Wilmington, DE and a mailing address in Buffalo, NY. It had a UBS Financial Services brokerage account that allowed Summers to borrow on margin. In 2012, Summers opened a UBS futures account. Under US law, the TCP Fund was limited to 99 investors.

17. Tricoastal Capital Management Ltd. ("Tricoastal Management") was incorporated in Ontario on October 4, 2007. Its registered office is 2164 Headon Forest Drive in Burlington, ON. Summers owns 89% of the shares. The remaining shares are owned by his friend [Investor B] (10%), his son (0.5%), and his parents (0.5%).

18. Tricoastal Capital American Partners LP was incorporated in Delaware. Summers is the sole director and officer. He intended this entity to be a larger version of the TCP Fund. Under US law, it could accommodate up to 499 investors.

19. Tricoastal Capital LLC was incorporated in Delaware on March 1, 2013. It is a US subsidiary of Tricoastal Management. Summers is the sole director and officer. He intended this entity to be a global, off-shore version of the TCP Fund and Tricoastal Capital American Partners LP.

20. Summers and his companies were not registered with the OSC during the material time. In June 2009, Summers contacted the OSC about registering as an Investment Counsel/Portfolio Manager but was informed that he did not have the required minimum capital ($100,000) to establish an investment fund. Until 2012, Tricoastal Management was registered with the SEC as an Investment Adviser Firm in New York.

V. OVERVIEW OF THE FRAUD

21. Summers held himself out as a successful fund manager. He offered securities in the form of membership interests in the TCP Fund. Investors owned the fund's assets and liabilities on a basis directly proportionate to their membership interest. The minimum investment was $150,000. The TCP Fund Operating Agreement authorized a monthly management fee (one-twelfth of 2% of the AUM) and, under certain conditions, a performance fee (20% of the AUM). The Operating Agreement limited business expenditures to 1.5% of the AUM.

22. Summers marketed the TCP Fund on the basis of a specific trading strategy (the "ETF strategy"). He claimed to have developed a quantitative model for evaluating index-linked ETFs. His process was iterative. At the start of each month, Summers used his model to choose approximately seven ETFs in which to invest. He invested the assets of the TCP Fund equally between those ETFs. He did not buy or sell during the month. He sold all the ETFs at the end of the month. He then repeated the process.

23. Summers made a variety of documents available to prospective investors, including:

- an Investor Application Package, which included the Offering Memorandum ("OM") and the Operating Agreement;
- a Due Diligence Questionnaire;

- an Executive Summary or "tear sheet";
- marketing materials, including Powerpoint presentations and a "pitchbook";
- online postings, including a monthly "Investor Update", on investment websites such as Morningstar, Hedge Fund Net, CSFB, Hedge Connection, Mercer and Altura.

Generally speaking, these documents described the ETF strategy, the historical performance of the fund, and the fee-structure of the fund. They indicated that the fund was audited by an independent accounting firm, and administered by a third party.

24. Summers also provided documentation to his current investors. He generated annual US income tax forms ("K-1"s). He sent electronic monthly statements that set out the percentage gain/loss in the past month, and the value of the investment. Starting in May 2010, the statements were accompanied by Summers' monthly commentary on the state of the financial markets. As a marketing initiative, Summers sent those monthly commentaries to an e-mail distribution list of almost 3000 registered investment advisors in Canada and the US.

25. In summary, Summers employed the following fraudulent means to obtain and retain funds from his victims:

i. Misrepresenting the historical performance of the TCP Fund to prospective investors;

ii. Over-stating his Assets Under Management, both through personal representations and in the TCP Fund documentation;

iii. Misrepresenting in the TCP Fund documentation that the fund was audited, specifically by "[a]n accounting firm of national repute", Deloitte & Touche, LLP, when only 2009 was audited;

iv. Misrepresenting the performance of the TCP Fund to current investors to conceal trading losses;

v. Withdrawing monies in excess of the permitted withdrawals and recording them as a negative liability;

vi. Producing and sending monthly statements to his investors that inaccurately reported their gains, losses and balances;

vii. Producing and sending a fake audited financial statement to [an Investment Fund];

viii. Producing and sending income tax forms to his investors that inaccurately reported their unrealized gains, losses and balances for 2011 and 2012, and the overall size of the TCP Fund for all years. The Crown is not aware that these actions had any implications for the investors' tax liability that caused additional financial losses.

VI. SUMMERS' ADMISSION OF GUILT

26. On July 12, 2013, Summers disclosed his fraudulent activity to the OSC. He attended for interviews with JSOT on July 31, 2013 and November 12, 2013. The SEC monitored both interviews. Summers provided JSOT with documents relating to his dealings with his companies. He claims to have fully disclosed the extent of his personal assets. JSOT compared his disclosures against the information from the victims. They concluded that Summers' representations were substantially accurate.

27. Summers advised that he intended the TCP Fund to be a successful business but admits that he lied to secure investors for the TCP Fund and fraudulently withdrew funds from the TCP Fund that he was not entitled to under the terms of the OM.

(a) The early years of the TCP Fund: 2004 – 2008

28. Summers was unhappy working at CI Investments as he felt under-utilized. In 2004, he ruminated on the success he had at WCRA with his sector-rotation model. He began to do research. He developed the ETF strategy. To implement that strategy, he incorporated the TCP Fund in April 2004. However, Summers had insufficient assets to provide his own start-up capital. He reached out to his second cousin, [Investor A], and his best friend, [Investor B]. Between them, Summers received about $20,000.

29. Summers knew that a "typical fund size" was between $10 million and $20 million. He recognized that he needed $10 million in AUM for him to break even and for the TCP Fund to be viable.

30. Summers soon exhausted the $20,000 that he received from [Investor A] and [Investor B]. He was no longer able to purchase ETFs. Around 2007, he received an e-mail from R Capital Advisors ("R Capital"). For a $60,000 retainer, R Capital promised to find Summers enough investors to generate between $10 million to $15 million in AUM. Summers was interested, but did not have the money to retain them. He asked [Investor B] for help. [Investor B] agreed. On October 4, 2007, Summers incorporated Tricoastal Management and sold 10% of the shares to [Investor B] for $100,000. Summers "immediately" sent $60,000 to R Capital.

31. The TCP Fund was limited to 99 investors under the *Investment Company Act of 1940*. R Capital recommended that Summers incorporate a larger investment vehicle. He took their advice. He incorporated Tricoastal Capital American Partners LP, which could have up to 499 investors. It cost him $25,000 in legal fees.

(b) The R Capital incident: 2008 – 2009

32. Over the next year, R Capital and Summers worked on his marketing materials. Summers lost his job in September 2008. He received about $60,000 in severance pay. He did not find new employment. He trusted R Capital to find the promised investors. His faith was misplaced. No investors materialized. Without notice, R Capital went out of business in 2010. Summers was subsequently informed that the principal of R Capital was indicted for mail fraud in the United States and that the TCP Fund was one of the victims of that fraud.

33. The TCP Fund and the ETF strategy were generating online interest from potential investors. Their interest quickly fell away when Summers advised that he only had $20,000 in AUM. The true state of affairs was worse: he had no AUM at all. By June 2009, Summers was in dire financial straits. He had spent his severance pay. In July 2009, Summers generated $10,000 by selling 1% of the Tricoastal Management shares to his son (0.5%) and his parents (0.5%).

(c) The fraud begins: July 2009 – December 2009

34. Summers began significantly overstating his AUM in July 2009, when he received a phone call "out of the blue" from [Investor 1]. [Investor 1] expressed interest and asked about his AUM. Summers explained,"[A]fter getting shut down every time I had been honest, I said $2 million". [Investor 1] decided to invest. Over the next couple of months, Summers received calls from [Investors 2 and 3], [Investor 4], and [Investor 5]. Summers told them the "same two-million-dollar story". By November 2009, this simple lie had brought his AUM from zero to just under $1 million. In November 2009, apart from managing the TCP Fund, Summers agreed to manage a US resident trust account holding US$1 million for [Investor C]. From July 2009 to August 2011, Summers sometimes "smoothed" the reported monthly performance by over-reporting or under-reporting as necessary.

35. From the outset, Summers withdrew money from the fund for "general living expenses". He made monthly withdrawals that reflected "what I thought we needed to live on". He also withdrew money to reimburse himself for business expenses in excess of the amount permitted by the Operating Agreement. All of the withdrawals were recorded in the Accrued Expenses account in the books and records of the TCP Fund. The Accrued Expenses account was a

liability account. It had a negative balance, effectively converting it into an asset/loan receivable account that reflected the amount owed by Summers to the fund. Summers borrowed on margin against the ETFs held in the TCP Fund UBS brokerage account; the interest owing on these withdrawals was added to the margin balance. Summers asserted that he intended to repay this debt when his income, which was tied to his AUM, permitted him to do so.

36. By December 2009, Summers had about $2 million in AUM but understood that to be successful he would need $10 million in AUM. He knew he would have to lie to investors to attract that amount.

(d) The fraudulent withdrawals begin: January 2010 – December 2010

37. The ETF strategy worked well over 2009 and into 2010. Investors were infusing capital into the TCP Fund. By the third quarter of 2010, Summers had between $3.5 - $4.5 million in AUM, including [Investor C's] managed account. The $10 million goal seemed attainable.

38. Summers sought to legitimize the TCP Fund's operations. He retained Deloitte & Touche in Philadelphia to audit the TCP Fund. Although the Due Diligence Questionnaire identified an independent administrator of the fund, none was ever retained because the administrator's fees were higher than permitted under the Operating Agreement. The Deloitte audit was completed on October 4, 2010. This was the first and only time the TCP Fund was audited. A clean audit opinion was issued by Deloitte and the financial statements were distributed to investors. The actual amount of the AUM was reported in the financial statements distributed to investors.

39. The Deloitte audit cost $60,000. The Operating Agreement authorized a maximum expense of $15,000. Summers had no income apart from his monthly management fee. He could not pay the outstanding amount. He decided to "borrow [$45,000] from the fund to pay the auditor".

40. As of July 2010 Summers had $3.1 million in AUM, including [Investor C's] managed account. However, as many prospective investors were declining to invest in such a small fund, leading into 2011, Summers began telling prospective investors that he had $10 million in AUM.

(e) The market downturn: January 2011 – December 2011

41. In Spring 2011, the TCP Fund started to experience significant losses. By Summer 2011, [Investor C] – who represented half of Summers' AUM – had discharged Summers and redeemed his investment.

42. The markets did not improve. The US debt-ceiling crisis came to a head in the third quarter of 2011. Commencing in August 2011, Summers significantly under-reported his losses. The TCP Fund had a "terrible" month in September 2011. After [Investor C's] departure, Summers could not afford any further depletion of his AUM. Summers deliberately under-reported the loss suffered by the TCP Fund.

43. Summers started to recognize the severity of his conduct, but hoped that the TCP Fund would perform well over the fourth quarter and into 2012. His hopes were not realized.

(f) The change in strategy: January 2012 – December 2012

44. Around January 2012, Summers obtained a pay-as-you-go cell phone with a 716 area code in order to conduct business in New York. Around this time, [Investor 10] from [an

Investment Fund] called Summers and expressed interest. [Investor 10] asked Summers about his AUM. Summers said he had about $15 million in AUM.

45. Around April 2012, [Investor 10] invested about $2.5 million. Summers was optimistic. Other parties, cumulatively representing a further $30 million to $40 million, had inquired about investing in the TCP Fund. Summers believed that he could use that new money to repair the "hole" that he had created.

46. However, in May 2012, the TCP Fund experienced a significant loss. JSOT calculates a 13% loss; Summers asserts that the 10.46% loss he reported to investors is accurate. In either event, Summers lost faith in the ETF strategy.

47. In June 2012, some of the victims had e-mail exchanges with Summers in which they expressed their displeasure with the TCP Fund's performance and their inclination to withdraw their funds. Summers interpreted those e-mails as an invitation to change his strategy. He recognized that although he had promised the investors a certain ETF-investment strategy, under the OM he had discretion to invest in other types of securities. The diversified ETF strategy was much lower risk but Summers opted to abandon this model in favour of higher risk investments in derivatives, including futures and options on market volatility indices. These investments were essentially a "be[t] on a market selloff". During this period, a significant portion of the fund's assets were held in cash. Although this change in strategy was not prohibited by the OM, Summers knew that it was a significant departure from the basis upon which the victims decided to invest, and that he should not proceed without consulting them.

48. Contrary to his "bet", in July 2012, the market rebounded. The TCP Fund took further losses. Summers decided that he could not report the negative returns. He continued to hope that the market would crash and everything would "get back on track". These hopes were also not realized.

49. From July 2012 onwards, Summers began fabricating the monthly returns, based on what the results would have been if he had maintained the original ETF strategy. He described this as a "double hit": he reported positive returns, but the TCP Fund was actually experiencing significant losses. The real balance and the reported balance diverged dramatically. Summers advised that if he had "stuck to the stupid program", the TCP Fund would have retained 80% of its capital.

50. Summers continued to hope for "new money" that would permit him to "[r]ide out the storm". He fielded expressions of interest from prospective clients and attempted to locate new investors, paying third-party marketers and recruiters to assist in his search.

(g) The fraud is discovered: January 2013 – July 2013

51. In January 2013, Summers sold e-mini futures contracts on the belief that the market was overpriced. He thought the market would correct itself and that prices would fall. He was wrong.

52. In March 2013, [Investor 10] from [an Investment Fund] asked Summers for audited financial statements. Summers decided, "I've got to make up an audited financial statement to show not only assets that aren't there, but returns that aren't there." Using the Deloitte audit as a template, Summers forged an Independent Auditors' Report under the fabricated name of "D.

Fisher & Company, Certified Public Accountants". The document was dated April 5, 2013. On the letterhead, Summers used an address of a virtual office in Buffalo, NY. He intended to use the number of his pay-as-you-go cell phone, but accidentally transposed the last two digits.

53. The forged audited financial statements contained an inflated AUM, the false 2012 returns, and "made up" numbers in the statement of financial condition. Summers provided the audited financial statements to [the Investment Fund].

54. Rothstein & Kass was [the Investment Fund's auditor]. Around June 2013, they followed up with "D. Fisher" and quickly discovered irregularities. They contacted Summers and advised that they could not contact his auditor. Summers was surprised because his cell phone had not rung. He checked the forged audit and realized his mistake. A week later, [Investor 10] called Summers and advised that D. Fisher was not registered with the American Institute of CPAs ("AICPA"). Summers realized that "this is over". Summers asserts that he contemplated suicide but chose instead to self-report to the authorities, put an end to any further losses and accept the consequences of his illegal conduct.

55. On July 12, 2013, Summers sent [Investor 10] an e-mail advising that he could no longer manage the TCP Fund, and that he had referred the matter to the OSC. On July 26, 2013, Summers sent essentially the same e-mail to the remainder of his investors. Later that day, Summers sent a second e-mail setting out contact details for the OSC and the SEC.

56. Summers acknowledged that if this "audit thing hadn't blown up", he would have continued "trying to grow the fund and reverse this, dig a way out of this hole" until he was caught.

VII. WHERE THE MONEY CAME FROM

57. Summers had no capital of his own to invest in the TCP Fund. He sourced money from 14 individuals or legal entities, 11 of whom can be properly characterized as victims.

(a) The three other investors

58. [Investor A], [Investor B] and [Investor C] provided Summers with funds to invest on their behalf. Their interactions with Summers do not support classifying them as victims. However, their narratives are integral to understanding the manner in which Summers operated the TCP Fund, sourced monetary contributions and spent the money that he received.

- **Investor A**

59. [Investor A] lives in Bel-Air, California. He is an elderly gentleman. He is Summers' second cousin. He declined to provide a statement to JSOT. The following summary is taken from Summers' disclosures.

60. [Investor A] was the first investor. In 2004, he provided Summers with approximately $10,000. [Investor A] never asked about his investment. He assumed that the money was lost. He was correct. His capital had been depleted by the end of 2007.

61. Summers was very fond of [Investor A]. In 2010, when the TCP Fund was performing well, Summers sent [Investor A] a false statement purporting to reflect the value of his investment. Unbeknownst to Summers, [Investor A] needed money. He asked to redeem half the investment. Summers felt compelled to follow through with his misrepresentation. On November 2010, Summers paid [Investor A] $15,000. On January 10, 2013, [Investor A] "redeemed" the remainder of his purported investment and received a further $21,000.

- **Investor B**

62. [Investor B] lives in Toronto. He and Summers have been friends for more than 20 years. [Investor B] has a business degree. [Investor B] worked in the financial industry, including as a floor trader at the Toronto Stock Exchange, before his retirement. He provided a statement to JSOT.

63. [Investor B] was the second investor. Summers told him about the ETF strategy. In 2005, [Investor B] provided Summers with approximately $10,000 as seed capital with which to implement that strategy. [Investor B] never inquired after this money. He assumed it had been lost.

64. In October 2007, Summers asked [Investor B] to invest in Tricoastal Management. Summers wanted to set up an investment fund. On October 17, 2007, [Investor B] invested $100,000 for a 10% ownership interest. [Investor B] took no part in the business and had minimal knowledge about its operations. He merely wanted to give Summers, whom he regarded as intelligent and able, the opportunity to succeed. [Investor B] recognized the likelihood of failure and, indeed, expected to lose the entire amount.

65. The TCP Fund performed well in 2010. On December 10, 2010, Summers paid [Investor B] a dividend of $5,000.

66. In mid-July 2013, shortly after he reported himself to the authorities, Summers disclosed his fraudulent activities to [Investor B]. [Investor B] was shocked. He expected Summers to fail, but to “fail honourably”. He “didn’t expect a moral failure”.

- **Investor C**

67. [Investor C] is a physician and CEO of a research organization. He lives in Mississauga. He invests his own money and considers himself a "fairly sophisticated" investor. He gave a statement to JSOT.

68. [Investor C] was browsing the Internet for investment ideas. He came across the TCP Fund on Morningstar. He was impressed by its historical performance. He contacted Summers for more information. On November 2, 2009, [Investor C] and Summers spoke on the phone. Summers explained the ETF strategy. He claimed to have $1 million - $2 million in AUM.

69. [Investor C] was intrigued. He was looking for a personal wealth advisor. They agreed that Summers would manage [Investor C's] trading account as proof of concept. Around November 26, 2009, [Investor C] deposited $1 million into his Interactive Brokers account and gave Summers trading access. Several months later, [Investor C] deposited a further $1 million. During this time, [Investor C] paid Summers a 2% management fee and a 20% incentive fee.

70. [Investor C] monitored the trading activity. Around Summer 2011, he lost faith in the ETF strategy. He discharged Summers and withdrew his funds.

(b) The victims

71. The following chart sets out the chronology, the source and the amount of money invested and redeemed by the victims for the TCP Fund, and by [Investors 2 and 3] for their managed account, during the period of the fraud:

		TCP FUND	INVESTORS 2 & 3 ACCOUNT
Date	**Investor**	**Amount**	**Amount**
07/27/2009	[LP (Investor 1)]	US$250,000	
09/28/2009	[LP (Investor 1)]	US$82,000	
10/01/2009	[Investor 7 and Family Trust]	US$250,000	
10/01/2009	[Investors 2 and 3]	US$150,000	
11/02/2009	[LLC (Investor 4)]	US$158,000	
01/21/2010	[Investor 6]	US$450,000	
02/26/2010	[LP (Investor 1)]	(US$80,000)	
04/14/2010	[Investor 5]	US$50,000	
05/28/2010	[LP (Investor 1)]	(US$60,000)	
08/16/2010	[Family Trust (Investors 2 and 3)]	US$100,000	
08/17/2010	[Investor 5]	US$50,000	
08/18/2010	[Investor 2 and Investor 3]	US$150,000	
11/26/2010	[Investor 8 and Investor 9]	US$150,000	
12/28/2010	[Family Trust (Investors 2 and 3)]	(US$255,000)	
01/03/2011	[Family Trust (Investors 2 and 3)]	(US$15,130.15)	
01/2011	[Family Trust (Investors 2 and 3)]		US$250,000
01/2011	[Family Trust (Investors 2 and 3)]		US$255,000
01/2011	[Family Trust (Investors 2 and 3)]		US$15,130.15
03/27/2011	[Family Trust (Investors 2 and 3)]		US$20,000
08/03/2011	[Family Trust (Investors 2 and 3)]		US$30,000
11/02/2011	[Investor 8 and Investor 9]	(US$112,211.70)	
03/29/2012	[Investor 10]	US$2,200,000	
04/11/2012	[Investor 11]	US$150,000	
04/27/2012	[Investor 10]	US$500,000	
09/2012	[Family Trust (Investors 2 and 3)]		(US$357,801.54)
06/28/2013	[LLC (Investor 4)]	(US$50,000)	
	TOTAL INVESTED:	**US$4,690,000**	**US$570,130.15**
	TOTAL REDEEMED:	**US$572,341.85**	**US$357,801.54**

72. The following is a brief summary of the victims' accounts.

- **Investor 1 and an LP**

73. [Investor 1] lives in Connecticut. He is the principal of [an "LP"]. He previously worked as a financial advisor, including at UBS. He has a decade of experience in fund management. He gave a statement to JSOT.

74. [Investor 1] wanted to minimize volatility by diversifying his fund across asset classes and management styles. He came across the TCP Fund in Spring 2009 and contacted Summers in July 2009. Summers explained the ETF strategy.

75. Summers sent [Investor 1] the investor application package. [Investor 1] reviewed the documents. He took particular note of the historical performance of the TCP Fund, which demonstrated the low-volatility nature of the ETF strategy. He also took comfort from the fact that UBS was the custodian of the funds. He asked Summers for his AUM. On July 17, 2009, Summers sent [Investor 1] an e-mail advising that he had received commitments of $15 million for the fund. This was untrue, although Summers hoped that those commitments would arise from his relationship with R Capital.

76. On July 27, 2009, [Investor 1] wired US$250,000 to Summers. He supplemented this investment with another US$82,000 on September 28, 2009. On February 26, 2010, [Investor 1] redeemed US$80,000. He was rebalancing his investment portfolio. He redeemed a further US$60,000 on May 28, 2010.

77. In Fall 2011, [Investor 1] requested copies of the 2009 and 2010 audits. Summers sent [Investor 1] a copy of the Deloitte audit. Since no audit had been performed in 2010, Summers

typed up a financial statement for 2010 and sent it to [Investor 1] on September 6, 2011. He did not represent that the statement had been audited. [Investor 1] did not follow up.

78. On July 26, 2013, Summers sent [Investor 1] the e-mails advising that he could no longer manage the fund, and directing further inquiries to the OSC and the SEC.

79. [Investor 1] and Summers met twice when Summers was in New York City. Summers sent [Investor 1] monthly statements and K-1 tax forms. [Investor 1] acted on these documents as though they were accurate. [The LP] remitted taxes in accordance with the information on the K-1.

80. [Investor 1] did not know that Summers was borrowing money from the TCP Fund. He did not know that Summers had deviated from the ETF strategy in May 2012.

81. In summary, [the LP] invested US$332,000 in the TCP Fund, and redeemed $140,000 of that investment. The loss is US$192,000.

- **Investor 2, Investor 3 and a Family Trust**

82. [G.S.] lives in New York. He is a young man. His grandparents are [Investor 2 and Investor 3]. They are in failing health. G.S. has power of attorney over his grandparents' finances and is the trustee of [the "Family Trust"]. He earned an economics degree in 2008. Given his family responsibilities, he has limited work experience. He gave a statement to JSOT.

83. G.S. came across the TCP Fund in Fall 2009. He was browsing the Internet for alternative investment opportunities. Through Hedge Fund Net, G.S. received a copy of the Due Diligence Questionnaire for Tricoastal Capital American Partners Fund LP. He was impressed

by the TCP Fund's historical performance. In October 2009, G.S. spoke with Summers on the phone, and met with him in person.

84. Summers explained the ETF strategy. He claimed that he had approximately $5 million in AUM. G.S. found both the ETF strategy and Summers himself to be impressive. He described Summers to be an "upstanding", "gregarious" and intelligent individual who was "incredibly well-versed in the financial markets". He contacted Deloitte and confirmed that they were auditing the fund.

85. G.S. decided to invest shortly after meeting Summers. On October 1, 2009, he invested US$150,000 of his grandparents' money. In April 2010, G.S. requested a copy of the Deloitte audit. On August 16, 2010, G.S. invested US$100,000 from [the Family Trust]. On August 18, 2010, G.S. invested a further US$150,000 for his grandparents. Summers sent the Deloitte audit to G.S. in October 2010.

86. As 2011 approached, G.S. asked Summers to manage a trading account using the ETF strategy. Summers required a minimum balance of US$500,000. On December 28, 2010, and January 3, 2011, G.S. redeemed US$255,000 and US$15,130.15 respectively, leaving the minimum investment of US$150,000 with the TCP fund.

87. G.S. deposited the redeemed funds and an additional $250,000 into an OptionsXpress brokerage account. He gave Summers the password. He paid Summers a 2% management fee and a 20% performance fee. On March 27, 2011 and August 3, 2011, G.S. deposited a further US$20,000 and US$30,000 respectively.

88. G.S. received statements for the managed account directly from OptionsXpress. In mid-2011, G.S. noticed that Summers was using the managed account to purchase products that did not conform to the ETF strategy. G.S. was particularly concerned by the purchase of VXX, which he understood to be a "legendary terrible investment". G.S. asked Summers for an explanation. Summers told G.S. that this was a short-term measure and that he anticipated volatility in the near future.

89. G.S. questioned this reasoning, but trusted Summers' judgment. He had spoken and met with Summers, in Buffalo and Toronto, numerous times to seek his advice on various financial matters. Summers was always helpful and kind. G.S. explained that he was "blinded by the fact that I had been having conversations and [was]…beginning to think of this guy as just a nice financial uncle always there for a talk."

90. In November 2011, G.S. noticed that the monthly statements from the TCP Fund were inconsistent with the statements for the online managed account. He discussed this discrepancy with Summers by phone and by e-mail. Summers told G.S. that there was a trading delay as between the TCP fund and the managed account; one day was sufficient for a surge of volatility to significantly affect the value of VXX. Again, G.S. set aside his misgivings and trusted that Summers' explanation was legitimate.

91. In January 2012, Summers told G.S. that he had acquired a large investor, increasing his AUM to approximately $25 million.

92. By April 2012, the managed account was at a 40% loss. 15% of the loss was attributable to VXX alone. The TCP Fund was showing a loss between 15% and 20%. G.S. closed the

managed account in August 2012, but left the investment in the TCP Fund intact. He wanted to build a long-term rapport and relationship with Summers. They remained in close contact up until July 26, 2013, when Summers sent G.S. the e-mails advising that he could no longer manage the fund, and directing further inquiries to the OSC and the SEC.

93. G.S. phoned Summers numerous times. Summers did not answer. Finally, G.S. e-mailed Summers, entreating him for an explanation. Summers replied that he was instructed not to have contact with any investors, but advised that it was not a complete loss.

94. Summers sent G.S. monthly statements for the TCP Fund and K-1 tax forms. G.S. acted on these documents as though they were accurate. He remitted taxes in accordance with the information on the K-1.

95. G.S. did not know that Summers was borrowing money from the TCP Fund. He did not know that Summers had deviated from the ETF strategy in May 2012.

96. In summary, [Investor 2 and Investor 3] invested US$400,000 in the TCP Fund and redeemed US$270,130.15. The resulting loss is US$129,869.85. [Investor 2 and Investor 3] also placed US$570,130.15 into the managed account. There was US$357,801.54 remaining in the account when it was closed in August 2012, for an additional loss of US$212,328.61. Their total loss is $342,198.46.

- **Investor 4 and an LLC**

97. [Investor 4] lives near Park City, Utah. He is the owner of [an "LLC"]. He is a practicing attorney. He is also a Certified Public Accountant and an investment advisor. He provided a written statement to JSOT.

98. [Investor 4] was researching hedge funds on the Internet. He came across the TCP Fund on Morningstar around October 11, 2009. On October 13, 2009, Summers responded by e-mail. He claimed to have $2.9 million in AUM and attached the Due Diligence Questionnaire. [Investor 4] found the documentation to be very impressive. He asked for and received subscription documents and marketing materials that he could forward to his clients.

99. [Investor 4] and Summers spoke briefly on the phone. Summers explained the ETF strategy. Shortly after this discussion, [Investor 4] decided to invest. On October 26, 2009, [Investor 4] sent a cheque for US$158,000 to Summers at his St. Paul, MN address. The cheque was stuck in transit. On November 2, 2009, [Investor 4] wired the money to Summers. The cheque was eventually returned to [Investor 4].

100. [Investor 4's] largest client was his brother, […]. In April 2010, [his brother] was considering investing US$168,200 with Summers. He ultimately decided against it.

101. On June 4, 2013, [Investor 4] requested a redemption of $50,000 in order to take advantage of another opportunity. He intended to replenish the amount later. On June 28, 2013, Summers returned US$50,000 to [Investor 4]. On July 26, 2013, Summers sent [Investor 4] the e-mails advising that he could no longer manage the fund, and directing further inquiries to the OSC and the SEC.

102. [Investor 4] met Summers once, in 2011, while Summers was visiting Salt Lake City. [Investor 4] described the meeting as "casual with no marketing pressure from him at all". Summers sent [Investor 4] monthly statements and K-1 tax forms. [Investor 4] acted on these

documents as though they were accurate. He remitted taxes in accordance with the information on the K-1.

103. [Investor 4] did not know that Summers was borrowing money from the TCP fund. He did not know that Summers had deviated from the ETF strategy in May 2012.

104. In summary, [Investor 4] invested US$158,000 and redeemed US$50,000 of that investment. The loss is US$108,000.

- **Investor 5, Investor 6, Investor 7 and a Family Trust**

105. [Investor 5] lives in San Francisco, CA. He has a degree in business administration and is a CFA. He works as an investment banker. He gave a statement to JSOT.

106. [Investor 6] lives in Santa Monica, CA. He is married to […]. He has a masters degree in physical oceanography. He works as a developer and property manager for commercial and industrial real estate. [Investor 6's] father, [Investor 7], passed away on July 6, 2010. [Investor 6] inherited the relevant interests.

107. Around 2008, [Investor 5] began managing [Investor 6's] and [Investor 7's] stock portfolio. [Investor 5] also advised [the "Family Trust"], which was controlled by [Investor 7]. In Fall 2009, [Investor 5] came across the TCP Fund on Morningstar. He requested and received more information. On September 4, 2009, Summers sent [Investor 5] the Private Offering Memorandum for Tricoastal Capital American Partners Fund LP. [Investor 5] forwarded this information to [Investor 6] and [Investor 7].

108. [Investor 5] was impressed by Summers' qualifications. He took particular note of Summers' CFA designation which, as a CFA himself, [Investor 5] associated with a "very high degree of ethics". He looked up Summers' LinkedIn profile, and discovered that they had mutual acquaintances. On September 15, 2009, [Investor 5] and [Investor 6] spoke with Summers on the phone. Summers explained the ETF strategy. He said the fund was audited by Deloitte, and that he had about $15 million in AUM.

109. [Investor 5] recommended to [Investor 6] and [Investor 7] that they invest in the TCP Fund. They agreed. [Investor 6] did minimal investigation into the TCP Fund. He trusted his son's judgment. On September 22, 2009, Summers sent [Investor 5] the Investor Application Package for the TCP Fund and 'suggested' that he invest in that vehicle instead. On October 1, 2009, [Investor 7] invested US$250,000 for [the Family Trust]. On January 21, 2010, [Investor 6] invested US$450,000.

110. On April 14, 2010, [Investor 5] invested US$50,000. He invested a further US$50,000 on August 3, 2010.

111. [Investor 6] met with Summers numerous times, in a social capacity, when Summers was vacationing in Southern California. Summers did not try to solicit further funds. [Investor 6] liked Summers, who presented as a "refined, well-educated individual". Summers reciprocated the sentiment, exclaiming: "The […], oh my God. I had lunch with [Investor 6] so many times and they liked me. I liked them, you know and it's just – anyway, it's just awful."

112. On July 26, 2013, Summers sent [Investor 6] the e-mail advising that he could no longer manage the fund. [Investor 6] was shocked. He was "near tears" and "felt a physical illness that

I can't even describe, [partly] because I had met Keith several times on a social basis". He told his wife and apologized to her. He called [Investor 5]. [Investor 5] e-mailed Summers to ask for an explanation and copies of the audits. After Summers sent the second e-mail directing further inquiries to the OSC and the SEC, there was no further communication.

113. Summers sent [Investor 5], [Investor 6] and [Investor 7] monthly statements and K-1 tax forms. They acted on these documents as though they were accurate. They remitted taxes in accordance with the information on the K-1.

114. [Investor 5], [Investor 6] and [Investor 7] did not know that Summers was borrowing money from the TCP fund. They did not know that Summers had deviated from the ETF strategy in May 2012.

115. In summary, [Investor 6] invested US$450,000. [Investor 7] invested US$250,000, which [Investor 6] inherited upon [Investor 7's] passing. Neither [Investor 6] nor [Investor 7] redeemed any of part of their investments. The loss to [Investor 6] is US$700,000.

116. [Investor 5] invested US$100,000 and did not redeem any part of his investment. His loss is $100,000.

- **Investor 8 and Investor 9**

117. [Investor 8] lives in Vancouver. He is married to [Investor 9]. He has an MBA. He worked in the financial industry prior to his retirement. He invests his own money and has "fairly broad experience in the market". He gave a statement to JSOT.

118. [Investor 8] met Summers in Fall 2010 at a hedge fund conference in Niagara Falls. The meeting was brief. [Investor 8] was intrigued by the ETF strategy. Summers provided [Investor

8] with the TCP Fund documentation. [Investor 8] was particularly impressed by the due diligence questionnaire, which set out Summers' credentials and the historical performance of the TCP Fund. They exchanged e-mails and had several phone conversations, during which Summers explained the ETF strategy in greater detail. Around October 28, 2010, Summers told [Investor 8] that he had $4 million in AUM. He also told [Investor 8] that he had about ten clients, and his financial statements would be audited by Deloitte. [Investor 8] was concerned that the fund was "pretty small" but, on November 26, 2010, invested US$150,000.

119. In 2011, the TCP Fund experienced significant losses. [Investor 8] found Summers' explanations, contained in the covering e-mail and commentary attached to the monthly statements, to be reasonable. However, in November 2011, [Investor 8] decided to withdraw his money. On November 2, 2011, Summers returned US$112,211.70 to [Investor 8]. [Investor 8] and Summers stayed in e-mail contact. In May 2013, Summers e-mailed [Investor 8] with an update on the performance of the TCP Fund and an invitation to re-invest. On July 26, 2013, Summers sent [Investor 8] the e-mails advising that he could no longer manage the fund, and directing further inquiries to the OSC and the SEC.

120. Summers sent [Investor 8] monthly statements and K-1 tax forms. He acted on those documents as though they were accurate. He remitted taxes in accordance with the information on the K-1. [Investor 8] did not know that Summers was borrowing money from the TCP fund.

121. In summary, [Investors 8 and 9] invested US$150,000 and redeemed US$112,211.70 of [their] investment. The loss is US$37,788.30.

- **Investor 10 and an Investment Fund**

122. [Investor] 10 lives in Napa, CA. He is the principal of [an "LLC"], which operates a private investment fund [the "Investment Fund"]. He manages money for families in the area. He has a business degree. He worked in the financial industry for 31 years. He gave a statement to JSOT.

123. [Investor 10] wanted to start a fund of hedge funds. He wanted to diversify by reaching out to money managers of differing expertise. He was looking for low-volatility investments. In late 2011, [Investor 10] contacted Summers after seeing his monthly commentary, which Summers was sending out to a 3000-entry e-mail distribution list of registered investment advisory firms throughout the US and Canada as a marketing initiative.

124. [Investor 10] requested and received the application package, including the tear sheet and the Due Diligence Questionnaire. He was impressed with Summers' credentials and the historical performance of the TCP Fund. [Investor 10] felt that the ETF strategy was a good fit for [the Investment Fund's] focus on low volatility investments. [Investor 10] was also looking for funds with a well-known auditor and an independent custodian. The TCP Fund appeared to meet those criteria. [Investor 10] took the representations in the Due Diligence Questionnaire at face value.

125. [Investor 10] and his colleagues vetted Summers over the phone between late-2011 and early-2012. [Investor 10] asked Summers for his AUM. Summers told [Investor 10] that he was managing $15 million. They discussed the financial market. [Investor 10] "really liked" Summers, whom he took to be "a very smart guy". In late-March 2012, [the LLC] started their fund. The TCP Fund was one of five funds in which they invested, and received one of the larger apportionments. [Investor 10] believed Summers to be an "excellent manager" and

"totally on the up-and-up". He told Summers that the money had been sourced from [the Investment Fund's] "top clients".

126. On March 29, 2012, [the Investment Fund] invested US$2.2 million and, on April 27, 2012, invested another US$500,000.

127. Around March 2013, [the Investment Fund] began requesting audited financial statements from the funds in which they had invested. Their auditor, Rothstein & Kass could not issue K-1s for [the Investment Fund] until the underlying funds had been audited. In April or May 2013, Summers provided the auditor with a forged audit, entitled "Financial Statements for year ended December 31, 2012 including Independent Auditors' Report". The covering letter was dated April 5, 2013. It purported to enclose financial statements audited by "D. Fisher & Company, Certified Public Accountants". The forged audit represented that [the Investment Fund] had a balance of $2.89 million as of December 31, 2012, representing 15% of the TCP fund (for about $19.3 million in AUM).

128. [The Investment Fund's] audit began in June 2013. Around June 25, 2013, the auditor discovered that "D. Fisher" was not a member of the American Institute of CPAs. The phone number on the letterhead went to a cellular phone belonging to an unrelated individual. The auditor notified [Investor 10]. The next day, [Investor 10] spoke to Summers on the phone. Summers acted surprised. He told [Investor 10] that he met "D. Fisher" through a Chamber of Commerce mixer and had known him for years. [Investor 10] asked if Summers would agree to be audited by Rothstein & Kass. Summers agreed. He seemed cooperative. He told [Investor 10] that his AUM had increased to $23 million. He advised that he was thinking of starting an offshore fund, using Ernst & Young as his auditor and Equinox as his administrator.

129. Rothstein & Kass followed up with a request for further information. On July 5, 2013, Summers purported to provide them with that information by e-mail attachment. The file was corrupted and would not open. On July 8 and 9, 2013, [Investor 10] sent Summers follow-up e-mails. On July 12, 2013, Summers sent [Investor 10] an e-mail advising that he could no longer manage the fund and that he had referred the matter to the OSC. [Investor 10] described this as "the toughest weekend of my professional career." He felt "stupid", "violated" and "angry".

130. [Investor] 10 often spoke to Summers on the phone to seek his advice about various financial matters. They spoke quarterly about the progress of the fund. [Investor 10] received monthly statements from Summers. He believed the contents to be truthful and accurate.

131. [Investor 10] did not know that Summers was borrowing money from the TCP Fund. He did not know that Summers had deviated from the ETF strategy in May 2012.

132. In summary, [the Investment Fund] invested US$2,700,000 and did not redeem any part of their investment. The loss is US$2,700,000.

- **Investor 11**

133. [Investor 11] lives in California. He has a commerce degree and an MBA. He worked in the financial industry for 20 years. He is a partner in a financial company that specializes in taxation issues relating to the film industry. He gave a statement to JSOT.

134. [Investor 11's] friend met Summers at a conference and brought the TCP Fund to his attention. [Investor 11] liked the ETF strategy. In February 2012, [Investor 11] requested and received the TCP Fund documentation. He took particular note of the Due Diligence

Questionnaire. He "gained comfort" from the listed clearing agent (UBS) and auditor (Deloitte). He was impressed by the historical performance of the fund. Summers told [Investor 11] that he had between $15 million to $20 million in AUM.

135. [Investor 11] wanted to invest in the TCP Fund through his Individual Retirement Account, which was held at Morgan Stanley in New York. The logistics took a month to work out. On April 11, 2012, [Investor 11] invested US$150,000.

136. Summers met [Investor 11] for lunch in February 2013, in Los Angeles. Summers did not ask [Investor 11] for an additional investment. On July 26, 2013, Summers sent [Investor 11] the e-mails advising that he could no longer manage the fund, and directing further inquiries to the OSC and the SEC.

137. Summers sent [Investor 11] monthly statements. [Investor 11] acted on these documents as though they were accurate. Summers provided [Investor 11] with a K-1 tax form, but [Investor 11] did not have to remit taxes on his investment because he was investing through his IRA.

138. [Investor 11] did not know that Summers was borrowing money from the TCP fund. He did not know that Summers had deviated from the ETF strategy in May 2012.

139. In summary, [Investor 11] invested US$150,000. He did not redeem any part of his investment. His total loss is US$150,000.

VIII. WHERE THE MONEY WENT

140. The balance of the TCP fund was US$1,395,959 as of July 31, 2013. The SEC placed a "soft freeze" on this money. As of October 31, 2013, there was US$1,396,032 in the account.

141. Summers asserts that he has no assets apart from the proceeds of the sale of his marital home, amounting to C$77,953. He denies that he lived lavishly. The withdrawals were recorded as a negative balance in a liability account in the books of the TCP Fund. As well, his expenses were recorded in his personal accounts as well as in the company's books, although sometimes imprecisely or generically. All of his records were provided to JSOT. Between fees and other withdrawals, Summers spent about $300,000 a year during the relevant period, although he declared no taxable income in 2012 and 2011, and only C$52,943 in 2010.

142. The evidence reveals that Summers:

i. received/traded US$5,260,130.15 of his victims' money;

ii. used at least US$930,143.39 of that money to pay out investors who redeemed their investments;

iii. lost US$1,568,215 in trading for the TCP Fund, of which US$1,202,441 was lost after his change in trading strategy;

iv. lost US$212,328.61 in trading the managed account of [Investors 2 and 3];

v. withdrew US$234,489 in permitted withdrawals;

vi. fraudulently withdrew US$918,995 in excess of the permitted withdrawals;

vii. has the ability to repay US$1,396,032.