

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

-and-

**IN THE MATTER OF MICHAEL ANTHONY TIBOLLO
A.K.A. MICHELE-ANTONIO TIBOLLO**

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

Staff of the Ontario Securities Commission (“Staff”) make the following allegations:

THE RESPONDENT

1. The respondent, Michael Anthony Tibollo, also known as Michele-Antonio Tibollo (“Tibollo”), is a lawyer and businessperson. Tibollo was called to the Ontario Bar in 1987. Tibollo has never been registered with the Ontario Securities Commission (the “Commission”).

THE ILLEGAL DISTRIBUTIONS OF THE SAXTON SECURITIES

2. Saxton Investments Ltd. (“Saxton”) was incorporated on January 13, 1995. Allan Eizenga was Saxton’s registered director and president. Saxton and Eizenga established numerous other corporations. Eizenga was the president and a director of each of these companies (the “Offering Corporations”).

3. Between January 1995 and the summer of 1998, securities of one or more of the following Offering Corporations were sold to Ontario investors:

The Saxton Trading Corp.
The Saxton Export Corp.

The Saxton Export (II) Corp.
The Saxton Export (III) Corp.
The Saxton Export (IV) Corp.
The Saxton Export (V) Corp.
The Saxton Export (VI) Corp.
The Saxton Export (VII) Corp.
The Saxton Export (VIII) Corp.
The Saxton Export (IX) Corp.
The Saxton Export (X) Corp.
The Saxton Export (XI) Corp.
The Saxton Export (XII) Corp.
The Saxton Export (XIII) Corp.
The Saxton Export (XIV) Corp.
The Saxton Export (XV) Corp.
The Saxton Export (XVI) Corp.
The Saxton Export (XVII) Corp.
The Saxton Export (XVIII) Corp.
The Saxton Export (XIX) Corp.
The Saxton Export (XX) Corp.
The Saxton Export (XXI) Corp.
The Saxton Export (XXII) Corp.
The Saxton Export (XXIII) Corp.
The Saxton Export (XXIV) Corp.
The Saxton Export (XXV) Corp.
The Saxton Export (XXVI) Corp.
The Saxton Export (XXVII) Corp.
The Saxton Export (XXVIII) Corp.
The Saxton Export (XXIX) Corp.
The Saxton Export (XXX) Corp.
The Saxton Export (XXXI) Corp.
The Saxton Export (XXXII) Corp.
The Saxton Export (XXXIII) Corp.
The Saxton Export (XXXIV) Corp.
The Saxton Export (XXXV) Corp.
The Saxton Export (XXXVI) Corp.
The Saxton Export (XXXVII) Corp.
The Saxton Export (XXXVIII) Corp.

4. The Offering Corporations offered to the Ontario public two investment products:
- (i) a "GIC" which was later renamed a "Fixed Dividend Account"; and
 - (ii) an "Equity Dividend Account".

In either case, an investor purchased shares in the respective private company (the "Saxton Securities").

5. The "GIC" promised investors an annual return of 10.25%. The Fixed Dividend Account offered investors either a 10.25% annual return for a three year term compounded or a 12% annual return for a five year term compounded. Investors in the Equity Dividend Account product were told to expect 25% to 30% annual growth. Investors were told that their money funded the Saxton Group's operations. The rate of

return on, or the growth of, their investment resulted from the profitability and growth of the businesses (principally the Cuban operations).

6. The Saxton Securities were marketed as no, or low, risk notwithstanding that the Offering Memoranda described the Securities as "speculative. It was also represented to investors that Saxton intended to go public (by way of a reverse take-over) and be listed on a recognized stock exchange. This never occurred.

7. Although the Offering Corporations prepared Offering Memoranda, such Memoranda provided little information about the Offering Corporations or the Saxton operations other than the geographic locations in which they conducted business

8. The Offering Corporations were incorporated pursuant to the laws of Ontario. The sales of shares of the Saxton Securities constituted trades in securities of an issuer that had not been previously issued.

9. The distribution of the Saxton Securities contravened Ontario securities law. None of the Offering Corporations filed a preliminary prospectus or a prospectus with the Commission. No Offering Corporation was issued a receipt for a prospectus by the Commission. None of the Offering Corporations filed an Offering Memorandum or a Form 20 with the Commission.

10. The Offering Corporations purported to rely on the "seed capital" prospectus exemption contained in subparagraph 72(1)(p) of the *Securities Act*, R.S.O. 1990, c. S.5 (the "Act"). Neither this exemption, nor any other prospectus exemption, was available to them.

11. None of the exemptions from the registration requirements in Ontario securities law was available for the sale of the Saxton Securities.

12. On or about October 7, 1998, the Court appointed KPMG Inc. ("KPMG") as the custodian of Saxton's assets. In early 1999, KPMG reported that the Offering Corporations raised approximately \$37 million from Ontario investors. At that time, KPMG held the view that the value of the Saxton assets, at its highest (as reported by a related company, Sussex Group Ltd.), was approximately \$5.5 million. Sussex Group Ltd. ("Sussex") currently is being wound down by a court-appointed manager.

THE SAXTON BUSINESS

13. Saxton was part of a complicated corporate structure. The "Saxton Group" was a trade name that encompassed a complex network of related companies including Saxton, the Offering Corporations and Sussex.

14. The Saxton Group's core business was the development and manufacture of beverage and food products for the hospitality and tourist industries in Cuba. Sussex Admiral Group Limited (Barbados), later re-named Sussex, was the operating company. Among other things, Sussex held the Saxton Group's economic associations, operating contracts and supply agreements.

15. Each Offering Corporation's primary function was to raise investment capital for the Saxton Group's operations in Cuba, the Caribbean and elsewhere. Investor funds raised through the distributions of the Saxton Securities were pooled and transferred to Saxton. Saxton, in turn, transferred the money directly and indirectly (through 1125956 Ontario Inc.) to Sussex and elsewhere.

TIBOLLO'S CONDUCT

16. During the material time, Tibollo was a trained and practising commercial lawyer, with an emphasis on international transactions. He spoke Spanish fluently. Tibollo had important contacts and relationships with several Cuban government officials.

17. Tibollo initially became involved with Saxton through James Sylvester ("Sylvester"). Sylvester was involved with a number of companies with business interests in Cuba and elsewhere. Sylvester and Export Investors Group Ltd. ("Export") raised funds from Ontario investors. These monies, along with funds raised through the sale of the Saxton Securities, purported to be invested in the same Cuban and other operations. That is, Saxton and the Offering Corporations, and to a much smaller extent Export, funded/financed Sussex's activities.

18. In 1996, Sylvester retained Tibollo as a legal/business consultant. During 1997 and 1998, Tibollo also provided legal and business advice to Saxton.

19. Commencing in or about the fall of 1996, the relationship between Saxton's Eizenga and Export's Sylvester began to deteriorate. As a result, in July 1997, Tibollo also become Sussex's president. In this role, among other things, Tibollo ran the Cuban beverage and printing operations. He reported to Eizenga and Sylvester and was accountable to the Saxton and Export investors.

20. During 1996 through August 1998, Tibollo participated in the illegal distributions, and engaged in unregistered trading of and advising regarding the Saxton Securities by, among other things,

- (i) Marketing and promoting the sale of the Saxton Securities to the Ontario public by drafting promotional and investor relations material concerning the Saxton Securities, the Saxton Group and the Cuban operations;
- (ii) Soliciting the sale of, and encouraging the investment (or continued investment) in, the Saxton Securities through meetings with, and presentations to, Saxton sales representatives, prospective investors and investors; and
- (iii) Soliciting the sale of, and encouraging the investment (or continued investment) in, the Saxton Securities by participating in trips to Cuba with salespeople and investors.

21. Tibollo knew, or ought to have known, that the investing public and Saxton salespeople relied upon his representations concerning the Saxton Securities and their value and the financial health, profitability, potential growth and development of the Cuban operations. His professional status and strong links with the Cuban government gave credibility to the Saxton Securities and to the misleading claims that such Securities were a no, or low, risk investment that was increasing in value with significant growth potential.

22. Tibollo was an active participant in the going-public process. It was contemplated that, by way of a reverse take-over, Sussex's assets would be vended in to F.S.P.I Technologies Corp., an Alberta Stock Exchange listed company. Tibollo knew that investors who had purchased Saxton Securities (and to a much smaller extent Export investors) would become shareholders in the anticipated public company.

23. As Sussex's president, Tibollo was a member of the Saxton Group's management team. As such, he failed to conduct the appropriate due diligence and make the necessary inquiries concerning the financing received by the Sussex operations, including whether or not the corporate structure, the distribution of securities and sales representatives' conduct complied with Ontario securities law.

24. Further, in or about July 1997, concerns regarding the means by which the Saxton Securities were being distributed, the legality of such distributions and other securities law issues were brought to Tibollo's attention. Concerns also were raised respecting the accountability of funds raised through the Saxton Securities' distributions.

25. To Tibollo's knowledge and with his participation, in August 1997, the Saxton Group sought and received a legal opinion enumerating several serious violations of the Act in connection with the Saxton Securities. Notwithstanding the circumstances described in paragraphs 23 and 24, Tibollo failed to:

- (i) contact the Commission;
- (ii) take any steps to immediately curtail the securities violations; or
- (iii) refuse to accept any additional Sussex funding.

26. Rather, notwithstanding the legal opinion and counsel's advice that no further investor funds should be raised and all investor funds raised to date should be accounted for, Tibollo actively encouraged and solicited the continued distribution of the Saxton Securities to fund Sussex's on-going operations. He did so through discussions and meetings with Saxton Group management, salespeople and prospective investors. For example, Tibollo told salespeople that he needed them to raise certain funds in order for Sussex's printing business to get up and running.

27. In late spring 1998, Tibollo became aware that Eizenga might be diverting investor funds away from the Cuban operations. Accordingly, Tibollo solicited funds for Sussex's operations through the sale to Ontario investors of shares in Sussex International Ltd. (the "Sussex International Securities"). In this regard, he engaged in discussions

with certain Saxton Group salespeople including Richard Fangeat and Michael Hersey and met with investors and prospective investors. Again, Tibollo did not approach the Commission or any law enforcement agency.

28. Sussex International Ltd. ("Sussex International") offered investors similar products to those offered by the Offering Corporations. The sale of the Sussex International Securities raised in excess of \$1 million from Ontario investors. Investors did not receive a prospectus or an Offering Memorandum prior to purchasing the Sussex International Securities.

29. The sale of the Sussex International Securities financed Sussex's operations in Cuba as evidenced by, among other things, a June 30, 1998 promissory note in favour of Sussex International executed by Tibollo on behalf of Sussex in the amount of US\$685,175.36. Notwithstanding that this promissory note bore interest at an annual rate of 10.5% (payable commencing March 1, 1999), certain investors in Sussex International were promised a 12% annual interest rate.

30. In 1998, Tibollo participated in the illegal distributions, and engaged in unregistered trading, of the Sussex International Securities. The distribution of such Securities contravened Ontario securities law. Sussex International did not file a prospectus or preliminary prospectus with the Commission and no prospectus exemption was available to it. Sussex International did not file an Offering Memorandum or a Form 20 with the Commission.

31. No registration exemptions were available to Tibollo in connection with the Saxton or Sussex International Securities.

32. Tibollo benefited financially from his misconduct. Between January and October 1997 alone, Saxton paid him in excess of \$400,000 for legal and business services. Tibollo also was remunerated in his capacity as Sussex's President.

33. Tibollo's conduct was contrary to Ontario securities law and the public interest.

34. Such other allegations as Staff may make and the Commission may permit.

Date: August 26, 2005