



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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

- and -

IN THE MATTER OF ASIF KHAN

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

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

I. OVERVIEW

1. Between 2007 and 2010 (the "relevant time"), Khan was the Chairman of the Board ("Chairman") and the Chief Executive Officer ("CEO") of frontierAlt Capital Corp. ("FALT Capital"). He was also registered with the Commission as the Ultimate Responsible Person ("URP") of MAK Allen & Day Partners Inc. ("MAK") and held positions as director and officer of MAK including CEO. MAK was registered with the Commission as a limited market dealer ("LMD").

II. THE RESPONDENT

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

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

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

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

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

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

(f) MAK which was a LMD whose market intermediation consisted almost entirely of facilitating the private placement purchases of securities of resource issuers by the FALT public investment funds. MAK is a subsidiary of FALT Capital.

(g) KeiData which provided fund accounting and other services to the FALT public investment funds. KeiData was a subsidiary of FALT Capital.

III. PARTICULARS OF ALLEGATIONS

3. During the relevant period, the FALT investment fund managers retained an Investment Counsel and Portfolio Manager ("ICPM") for certain of the FALT public investment funds pursuant to portfolio management agreements.

4. During the relevant period, the FALT investment fund managers of the FALT public investment funds retained control over the portfolio assets of the FALT LPs, which were held in custody with third-party brokers.

5. In practice, investment recommendations to the ICPM were routinely made by representatives of MAK and the approval of the investments by the ICPM was routinely received by MAK verbally. No written trade instructions were received by MAK or the FALT investment fund managers and MAK and the FALT investment fund managers did not record trade instructions from the ICPM.

6. During the relevant period, the activities of the FALT investment fund managers as directed by Khan and the activity of the LMD as directed by Khan were characterized by a failure to comply with Ontario securities law and conduct contrary to the public interest.

7. During the relevant period, Khan failed to ensure that the FALT investment fund managers kept proper books and records respecting their fund manager activities for the FALT investment funds. In particular, the FALT investment fund managers failed to maintain adequate documentation including a complete record of all subscription agreements and records of trade instructions from the ICPM relating to the portfolios of the FALT investment funds. Khan also failed to ensure adequate books and records documenting the expensing of offering costs related to the public offerings of the FALT LPs were maintained.

8. Khan also failed to ensure that the investment fund managers had adequate internal controls respecting the safeguarding of the assets of the FALT LPs held in custody at brokers. In particular, he

(a) failed to ensure that the records with brokers were updated when the former President of the FALT investment funds managers resigned on or about December 12, 2008. That former President remained as an authorized trader on the brokers' accounts into 2009; and

(b) failed to implement effective policies and procedures to oversee the trading in the FALT LP's brokerage accounts.

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

9. During the relevant period, Khan failed to ensure that the investment fund managers provided adequate compliance and supervisory oversight of the FALT investment fund portfolios and failed to ensure that the investment funds adhered to the investment objectives and restrictions as disclosed in the prospectuses. In January, 2009, Khan authorized, permitted or acquiesced in the FALT investment funds holding over-concentrations of securities of specific issuers, exceeded early warning thresholds without reporting these to the OSC on a timely basis and acquired a control position in the securities of a reporting issuer. Khan also failed to ensure disclosure of the risks of high concentrations of specific issuers in the prospectuses for FALT Resource as required under Part B, Item 9 of Form 81-101F1 Contents of Simplified Prospectus or to file early warning reports as required by section 102.1 of the Act and Part 7 of OSC Rule 62-504 Take-Over Bids and Issuer Bids or comply with requirements respecting Management Reports of Fund Performance as required by section 4.5 of NI 81-106 Investment Funds Continuous Disclosure.

10. In 2009, the designated compliance officer ("DCO") at MAK received compensation directly from a third party and "dealt away" from MAK. The DCO made arrangements with an

issuer for which MAK acted as agent to privately place securities with a FALT investment fund and under those arrangements the DCO received compensation directly from the issuer in the form of warrants. Also in 2009, another issuer engaged the DCO personally, along with two others, to assist the issuer with a financing and the DCO received compensation directly from this issuer. In September, 2009, the DCO received shares directly from a third issuer relating to an engagement with MAK. Khan, the URP of MAK, authorized, permitted or acquiesced in these direct payments to the DCO and did not ensure the payments went through the books and records of the registrant.

11. During the relevant period, Khan failed to ensure that MAK kept proper books and records respecting its dealer activities. Khan failed to ensure that MAK maintained an adequate trading blotter, a record of trade instructions received from the ICPM of the FALT investment funds and a complete record of client documentation including subscription agreements.

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

12. During the relevant time period, Khan

(a) being a market participant, failed to ensure books, records and other documents as were necessary for the proper recording of the business transactions and financial affairs of the FALT entities were kept by the FALT investment fund managers contrary to subsection 19(1) of the Act;

(b) failed to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances respecting the management of the FALT investment funds contrary to section 116 of the Act;

(c) failed to comply with section 2.1 of OSC Rule 31-505 Conditions of Registration authorizing receipt of compensation by the DCO at MAK directly from third parties and "dealing away" from MAK;

(d) being a registrant, failed to keep such books, records and other documents as were necessary for the proper recording of the business transactions and financial affairs of

MAK contrary to subsection 19(1) of the Act and section 113 of the General Regulation of the Act; and

(e) failed in his duty to provide adequate compliance oversight and supervision over the activities of MAK contrary to sections 1.3 and 3.1 of OSC Rule 31-505 Conditions of Registration.

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

14. Staff reserve the right to make such other allegations as Staff may advise and the Commission may permit.

Dated at the City of Toronto, this 17th day of April, 2012.