



Ontario
Securities
Commission
3S8

Commission des
valeurs mobilières
de l'Ontario

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

- and -

**IN THE MATTER OF
LANCE KOTTON**

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

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

A. Overview

1. This matter concerns the misleading statements and fraudulent conduct of Lance Kotton (“Kotton”), the founder and directing mind of the Titan Equity Group Ltd. (“TEG”), contrary to sections 44(2) and 126.1(1)(b) of the *Securities Act*, RSO 1990, c S5, as amended (the “Act”), respectively. The conduct in question is in connection with the solicitation and sale of securities of a number of issuers within a larger corporate structure that was controlled and managed by Kotton (the “Titan Group”).

2. Between April 2011 and November 2015 (the “Material Time”), the Titan Group raised an aggregate of approximately \$40 million from 394 investors, mostly in Ontario. As of March 2017 and following the sale of assets by the Receiver (as defined below), the shortfall to individual investors and other unsecured creditors of the Titan Group is approximately \$24 million. This amount remains outstanding.

B. The Respondent

(i) Lance Kotton

3. During the Material Time, Kotton was a resident of Vaughan, Ontario. Kotton has never been registered with the Commission in any capacity.

4. Kotton was the president (“President”) and chief executive officer (“CEO”) and sole shareholder of Titan Equity Group (“TEG”). Kotton owned, directly or indirectly, most of the entities in the Titan Group (the “Titan Entities”) described below. Kotton was also the President as well as the sole officer and director of some of them.

The Titan Group

5. TEG was formed in March 2012. The primary purpose of TEG was to market and sell securities to individual investors in order to acquire and develop real estate projects, including:

- (a) A retirement residence known as “Villa Del Sole”, located in Woodbridge, Ontario;
- (b) The property known as “Oxford on Bathurst”, located in Richmond Hill, Ontario;
and
- (c) The property known as “Kotton Cachet”, also located in Richmond Hill, Ontario;
(collectively, the “Properties”).

6. In summary, the roles performed by each of the Titan Entities are as follows:

Titan Group Entity	Role
TEG	Solicited investments from investors, primarily in Ontario. Owned by Lance Kotton, directly.
Executive Leasing Inc. (“Executive”)	Received and disbursed investor funds from 2011 to 2014.
Executive Leasing Capital Corp. (“ELCC”)	Acted as the manager and administrator of the Properties, and received and disbursed investor funds. ELCC solicited investments from investors prior to the formation of TEG.

Shan-Kael Group Inc. (“Shan-Kael”)	The registered owner and operator of Villa Del Sole.
2216296 Ontario Inc.	Kotton’s personal company for a pre-Titan project and held 65.6% of Shan-Kael, which owned Villa Del Sole.
Titan 10703 Bathurst Inc. (“10703 Bathurst”)	The registered owner of the Oxford on Bathurst.
Titan 10703 Bathurst Holdings Inc. (“10703 Bathurst Holdings”)	Owned 100% of the Class B Common shares of 10703 Bathurst, which owned the Oxford on Bathurst, and raised investor funds through the issuance of preferred shares.
Titan Real Estate Acquisition & Development Corp.	Owned by TEG directly. Owned 100% of the common shares of TREAD Finance Corp., 230 Major Mack Holdings Inc., and Titan 10703 Bathurst Inc.
Titan 230 Major Mack Inc. (“230 Major Mack”)	The registered owner of Kotton Cachet.
230 Major Mack Holdings Inc. (“MM Holdings”)	Owned 100% of the shares of 230 Major Mack, which owned Kotton Cachet, and raised investor funds through the issuance of preferred shares.
Tread Finance Corp. (“TREAD”)	Issued promissory notes to investors to raise funds for the Properties.

7. All of the Titan Entities were incorporated in Ontario, with the exception of TREAD, which is an Alberta company. None of the Titan Entities have ever been reporting issuers in Ontario nor have they ever been registered with the Commission in any capacity.

8. In addition to selling securities to individual investors, Kotton, through the Titan Group, raised funds by way of secured mortgages from institutional lenders.

The Receivership in 2015

9. In November 2015, a receiver was appointed (the “Receiver”) over the assets of the Titan Group and Kotton, personally, pursuant to section 129 of the Act. Through the

receivership proceeding (the “Receivership”), all of the Titan Group’s assets and Kotton’s personal assets, including his house, were liquidated.

10. Although the Properties were sold by the Receiver for aggregate gross proceeds of over \$40 million, almost \$17 million in excess of their acquisition price, there were insufficient funds to fully repay all investors/creditors out of the recoveries on the Properties.

11. As of March 2017, the shortfall to individual investors and other unsecured creditors is approximately \$24 million. This amount remains outstanding.

C. Background to Allegations

(i) Titan Securities Issued

12. Kotton and TEG raised funds from investors through the sale and issuance of three main types of securities: syndicated or pooled mortgage investments (“PMIs”) issued in connection with Villa Del Sole, Oxford on Bathurst and Kotton Cachet, promissory notes and debentures issued by TREAD (“TREAD Notes”) issued in connection with each of the Properties, and non-voting Class A preferred shares (“Preferred Shares”) issued in connection with Kotton Cachet and Oxford on Bathurst.

13. During the Material Time, Kotton and TEG also offered participating equity agreements (“PEAs”) and short term loan agreements (collectively with the PMIs, TREAD Notes and Preferred Shares, the “Titan Securities”) to investors.

14. Each of the Titan Securities fall within one or more categories of “document, instrument or writing commonly known a security”, “evidence of indebtedness” and/or “investment contract” and are thereby “securities” as defined in subsection 1(1) of the Act.

(ii) Misleading Statements - The Titan Marketing and Promotional Material

15. During the Material Time, TEG, at the direction and instruction of Kotton, created marketing and promotional materials to promote the sale of Titan Securities, including brochures, term sheets and presentation materials (the “Titan Marketing and Promotional

Materials”) that contained representations regarding Kotton’s background and level of experience in the area of financial services and real estate development that overstated his actual experience in these areas.

16. Furthermore, from inception, TEG (and ELCC) purported to offer “stable generous returns”. Kotton made and directed the making of these representations knowing that, at the time of these representations, TEG had not successfully developed and sold a single real estate project, nor had any of the Properties generated any positive cash flow, profit or retained earnings. Any “return” or interest paid to investors during the Material Time was a return of investor capital or sourced from other financed funds.

17. In addition, TEG created and posted videos online which contained statements that the Commission had vetted and/or approved certain of TEG’s investment products and/or accounts. At no time during the Material Time, however, were any of the Titan Securities and/or accounts either vetted or approved by the Commission.

18. By making these representations, TEG made statements that a reasonable investor would consider relevant in deciding whether to enter into or maintain a trading or advising relationship, which statements were untrue or omitted information necessary to prevent the statements from being false or misleading in the circumstances in which they were made, contrary to subsection 44(2) of the Act.

(iii) Villa Del Sole – Fraudulent Conduct

19. During the Material Time, Kotton and TEG raised a total of approximately \$14.5 million in connection with Villa Del Sole, a retirement residence located in Woodbridge, Ontario, through the sale and issuance of PMIs, PEAs and TREAD Notes.

20. When the Receiver was appointed in November 2015, the obligations to investors and other lenders in respect of the property exceeded \$19.5 million, including a \$2 million third mortgage to ELCC.

21. Villa Del Sole was sold in 2016 during the course of the Receivership for approximately \$6 million, the net proceeds of which were paid to the first mortgagee of the property. Accordingly, none of the PMI investors or TREAD Note-holders in respect of Villa Del Sole who had obligations outstanding at the time of the Receivership received a distribution from the sale. Investor losses on Villa Del Sole exceed \$12.6 million.

22. During the Material Time, Kotton repeatedly deceived investors about the known appraised value of Villa Del Sole and knowingly sold securities in connection with Villa Del Sole that, together with the registered mortgages, exceeded any appraised value for the property. By deceiving investors in this manner, Kotton and TEG placed the pecuniary interests of investors at risk and thereby engaged in or participated in acts, practices or courses of conduct relating to securities that he knew, or reasonably ought to have known, would perpetrate a fraud on persons or companies contrary to section 126.1(1)(b) of the Act.

(iv) Oxford on Bathurst – Misleading Statements

23. During the Material Time, TEG, at the direction and instruction of Kotton, raised approximately \$12 million in respect of Oxford on Bathurst through the sale of PMIs, TREAD Notes, Preferred Shares and Short Term Loans.

24. Oxford on Bathurst was a development property located in Richmond Hill, Ontario, which remained undeveloped during the Material Time. The sale of Oxford on Bathurst was completed by the Receiver in November 2015. At the time of the sale, the equity in Oxford on Bathurst was insufficient to repay investors. Investor losses on the Oxford on Bathurst are at least \$6.6 million.

25. A key feature of TEG's branding in respect of both the PMIs and the TREAD Notes was the "security" offered by these investments and their "asset backed" nature. These characterizations as they related to the TREAD Notes were misleading in that a) there was insufficient credit support in place to effect the purported security and, when this became known to Kotton in 2015, he took no steps to remedy that deficiency with respect to individuals who had purchased TREAD Notes prior to that point, and b) in 2015, Kotton also caused the equity in Oxford on Bathurst to be eroded by costly short-term mortgage financings such that

there was insufficient equity upon the sale of Oxford on Bathurst to repay TREAD Noteholders from the proceeds.

26. By making representations about the “secured” and “asset backed” nature of the TREAD Notes, Kotton and TEG made statements that a reasonable investor would consider relevant in deciding whether to enter into or maintain a trading or advising relationship, which statements were untrue or omitted information necessary to prevent the statements from being false or misleading in the circumstances in which they were made, contrary to subsection 44(2) of the Act.

(v) Oxford on Bathurst - Short Term Loan Fraud

27. Between May 19, 2015 and July 6, 2015, Kotton raised a total of \$1.6 million by causing 10703 Bathurst to issue Short Term Loans to 8 investors, increasing the total obligations against the property to \$23.5 million.

28. In effecting the sales of the Short Term Loans, Kotton was aware that the most current appraised value for Oxford on Bathurst ranged from \$18-21 million, at its highest, and was aware that the issuance of the Short Term Loans created obligations on the property in excess of any known appraised value for the property. By soliciting investors and causing 10703 Bathurst to issue the Short Term Loans when, as Kotton knew, the appraised value did not support the obligations owing in connection with the property, Kotton dishonestly placed investors’ pecuniary interests at risk and, as such, engaged or participated in an act, practice or course of conduct relating to securities which he knew, or reasonably ought to have known, would perpetrate a fraud on investors contrary to s. 126.1(1)(b) of the Act.

(vi) Kotton Cachet – Preferred Share Fraud

29. Kotton Cachet consisted of four residential properties, each of which was occupied by a single-family detached home.

30. Kotton and TEG raised funds in respect of Kotton Cachet through the sale and issuance of a various securities, including PMIs, TREAD Notes, and Preferred Shares. During the Material Time, Kotton and TEG raised a total of approximately \$8 million from investors.

31. Although the Titan Group had completed its initial plans to remove the existing dwellings and to construct a series of detached and semi-detached homes, the property remained undeveloped during the Material Time.

32. Kotton Cachet was sold during the course of the Receivership for \$14.25 million. At the time of the sale, the equity in Kotton Cachet was insufficient to fully repay the TREAD Note-holders and Preferred Shareholders.

33. In total, Kotton and TEG caused MM Holdings to issue approximately \$3.1 million in Preferred Shares to approximately 18 investors. The Preferred Shares were sold on the basis that they could be redeemed upon maturity for the purchase price plus any accrued but unpaid dividends.

34. Due to the structure of the Titan Group, the manner in which it raised funds, and the use of investor funds within the Titan Group, all of which was directed by Kotton, MM Holdings had, at all times during the Material Time, a shareholders' deficit and was insolvent.

35. At no time during the Material Time did Kotton or TEG disclose to investors that MM Holdings was insolvent and could not fund dividends or redemptions. These were important facts that were not disclosed to investors. By not disclosing these facts to investors, Kotton and TEG dishonestly placed investors' pecuniary interests at risk and, as such, engaged or participated in an act, practice or course of conduct relating to securities which he knew, or reasonably ought to have known, would perpetrate a fraud on investors contrary to s. 126.1(1)(b) of the Act.

D. Breaches of Ontario Securities Law and Conduct Contrary to the Public Interest

36. The specific allegations advanced by Staff are:

- (a) During the Material Time, the Respondent made statements that a reasonable investor would consider relevant in deciding whether to enter into or maintain a trading or advising relationship, which statements were untrue or omitted information necessary to prevent the statements from being false or misleading in the circumstances in which they were made, contrary to subsection 44(2) of the Act;
- (b) During the Material Time, the Respondent engaged or participated in an act, practice or course of conduct relating to securities that the Respondent knew, or reasonably ought to have known, would perpetrate a fraud on investors contrary to section 126.1(1)(b) of the Act;
- (c) During the Material Time, the Respondent as an actual and/or *de facto* officer and director of each of the Titan Entities, authorized, permitted or acquiesced in the Titan Group's non-compliance with Ontario securities law and is responsible for same pursuant to section 129.2 of the Act; and
- (d) as set out in sub-paragraphs (a) to (c), above, the Respondent engaged in conduct contrary to the public interest.

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

DATED at Toronto, May 23rd 2017.