



Ontario
Securities
Commission

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
NIXON LAU, INCOME STRATEGIX HOLDINGS LTD.
INCOME STRATEGIX L.P., INCOME STRATEGIX A-CLASS L.P.
and INCOME STRATEGIX I-CLASS L.P.**

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

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

A. Overview

1. Between July 2007 and September 2012, the Respondents Nixon Lau (“Lau”) and Income Strategix Holdings Ltd. (“Income Strategix”) engaged in the business of trading, and acted as a dealer in respect of, securities of investment funds being the Respondents Income Strategix L.P., Income Strategix A-Class L.P., and Income Strategix I-Class L.P. (collectively, the “Income Strategix Funds”) without being registered in a category that permits such activity, and sold securities of the Income Strategix Funds through illegal distributions to investors in Ontario. As well, Lau and Income Strategix acted as the investment fund manager and portfolio manager of the Income Strategix Funds without being registered as was required in the circumstances with the requirement to register as an investment fund manager coming into place on September 28, 2009. This conduct was contrary to subsections 25(1), 25(3), 25(4), and 53(1) of the *Securities Act*, R.S.O. 1990, c. S-5, as amended (the “Act”) (and, if applicable, their predecessor section).

2. Lau and Income Strategix also engaged in conduct that they knew or reasonably ought to have known perpetrated a fraud contrary to clause 126.1(1)(b) of the Act (and its predecessor section). Among other things:

- a. by at least 2010, Lau and Income Strategix paid distributions or reported an accrual of distributions to investors as though the Income Strategix Funds were producing actual returns when they were not. By at least 2012, Lau and Income Strategix knew they were using funds raised from new investors to make distributions to earlier investors; and
- b. after the Income Strategix Funds stopped raising funds in September 2012, failing to provide investors a clear indication of what happened to their money or that their money had been lost, including promising some investors additional future payments should they agree to delay their request for the withdrawal of their investment.

B. The Respondents

3. Income Strategix is an Ontario corporation. Income Strategix is the general partner of the Income Strategix Funds, which are all Ontario limited partnerships (collectively, the “Income Strategix Entities”).

4. Lau is a resident of Mississauga, Ontario. At all times relevant to this proceeding, Lau was the directing mind of each of the Income Strategix Entities; Lau was the sole officer and director for each of the Income Strategix Entities; Lau was the sole signing authority on all of the Income Strategix Entities’ bank accounts; and, Lau was the sole individual responsible for all trading decisions, execution of trades and wire transfers in and out of the Income Strategix Entities’ trading accounts.

C. Conduct without appropriate registration

5. At all times relevant to this proceeding, none of the Respondents were registered in any capacity with the Commission. Prior to the relevant period, Lau was registered as a mutual fund salesperson from June 30, 2004 to March 27, 2006.

6. Lau conceived of and set up the Income Strategix Funds.

7. Lau and Income Strategix marketed the Income Strategix Funds to the public through a number of seminars held in the Greater Toronto Area, through one-on-one or small group meetings, and through a web page that was available to and accessed by the public.

8. Lau and Income Strategix dealt directly with all of investors who invested in the Income Strategix Funds.

9. Lau and Income Strategix marketed units of the Income Strategix Funds to the public on the basis that the investments made would be professionally managed by Lau and Income Strategix, and on the basis of a stated investment policy – primarily to hedge risk with publicly traded securities, options and futures. Investors were told among other things that, as a result of the investment strategy to be used by the Income Strategix Funds, the investors would “[m]ake money in any market condition, up, down, or sideways” and would be earning superior returns.

10. Investors were told by Lau and Income Strategix, and in a limited partnership agreement entitled “The Club Charter”, which Lau provided investors, that investors could redeem their investment at the net asset value per unit provided the investment was left in place for a minimum of four months. Lau and Income Strategix also told the investors that their principal investment was guaranteed.

11. In exchange for their investment in the Income Strategix Funds, Lau and Income Strategix caused the Income Strategix Funds to issue promissory notes (the “Promissory Notes”) to investors at the time of their investment. Lau signed all of the Promissory Notes. The Promissory Notes promised, among other things, that the investor was guaranteed upon withdrawal the greater of their principal investment or “the market value of the Security units” the investor purchased in the Income Strategix Funds.

12. The Promissory Notes are securities as that term is defined in subsection 1(1) of the Act including, but not limited to, that set out in clauses (e), (f), and (n) under the definition of “security” in subsection 1(1) of the Act.

13. The investors’ funds were pooled in the Income Strategix Funds. The Income Strategix Funds had full discretion to buy and sell investments made by the Income Strategix Funds.

14. The Income Strategix Funds investors were told by Lau and Income Strategix that their money would be professionally managed by Lau and Income Strategix rather than the investors having to make their own decisions about investing in individual securities. The Income Strategix Funds did not seek to obtain control of or become involved in the management of companies in which they invested.

15. Lau and Income Strategix received compensation as a result of selling units of the Income Strategix Funds to investors and for managing the Income Strategix Funds. Through the period up to September 2012, the efforts of Lau and Income Strategix were devoted primarily to these activities.

16. Between July 2007 and September 2012, over 70 individual or family investors invested in the Income Strategix Funds. Collectively, these investors invested approximately \$5.4 million in the Income Strategix Funds.

17. From at least between July 2007 and September 2012, Lau and the Income Strategix engaged in and held themselves out to be engaged in the business of trading in securities to the public. In marketing and selling the units of Income Strategix Funds to the public, Lau and Income Strategix were acting as a dealer.

18. Lau and Income Strategix acted as the portfolio manager for the Income Strategix Funds. They provided specific advice to the Income Strategix investors and the Income Strategix Funds. Lau caused and directed all trades in the Income Strategix Entities’ trading accounts. All of the investment decisions for the Income Strategix Funds were made and implemented by Lau and Income Strategix.

19. As such, Lau and Income Strategix engaged in and held themselves out to be engaged in the business of advising with respect to investing in, buying or selling securities. Among other things, the advisory activity took the form of exercising full discretion in the trading in the Income Strategix Funds trading accounts.

20. Lau and Income Strategix acted as the investment fund manager for the Income Strategix Funds. Lau and Income Strategix organized and directed the business, operations and affairs of the Income Strategix Funds. They organized the Income Strategix Funds and were responsible for their management and administration.

21. Lau and Income Strategix failed to meet any of the requirements, obligations, or duties of a dealer, adviser, or investment fund manager. Among other things, they maintained deficient and, in most instances, no books and records necessary for the proper recording of the Income Strategix Entities' business, trading, and financial transactions and financial affairs.

22. There was no exemption available to Lau or Income Strategix from the requirements of subsections 25(1), 25(3), or 25(4) of the Act or their predecessor sections.

23. Lau and Income Strategix told investors that they were going to participate in an investment club. The dealer registration exemption for a private investment club did not apply to the trades described above, because, among other things, the Income Strategix Funds had more than fifty beneficial security holders, they distributed their securities to the public, and they paid remuneration for investment management and administration advice in respect of the trades in the securities.

D. Conduct respecting illegal distributions

24. The Promissory Notes had not been previously issued.

25. No prospectus or preliminary prospectus was filed with the Commission and no receipt for them has ever been issued by the Director as required by subsection 53(1) of the Act with respect

to the trades of the Promissory Notes. During the period relevant to this proceeding, the Respondents never filed a prospectus with the Commission.

26. No exemption from the requirements of section 53 of the Act was available to the Respondents.

E. Conduct that the Respondents knew or reasonably ought to have known perpetrated a fraud

27. Beginning by at least 2010, Lau and Income Strategix took steps to prevent discovery by and to not disclose to Income Strategix Funds investors that the Income Strategix Funds were losing money and were not producing actual returns, and to show the Income Strategix Funds were paying expected returns. Despite the loss in value, Lau and Income Strategix continued to pay distributions or report an accrual of distributions to investors as though the Income Strategix Funds were producing actual returns. By at least 2012, Lau and Income Strategix knew they were using funds raised from new investors to make distributions to earlier investors.

28. Among other things, depending on the nature of their investment, investors were provided monthly distributions or statements showing an increase in the value of their units when in fact the Income Strategix Funds were incurring a loss. As well, Lau and Income Strategix presented inaccurate information in this respect by way of the investors' online accounts on the Income Strategix website and in presentations Lau gave to investors at annual meetings.

29. When Lau and Income Strategix did not have enough new investor funds to make distributions to existing Income Strategix Funds investors in September 2012, Lau sent emails to investors in which Lau told investors that Ontario regulators had frozen the accounts of the Income Strategix Funds. Lau led investors to believe that the reason for the cease trade/freeze was because an investor requested a withdrawal and when Lau did not provide it, the investor complained. Emails from Lau to investors in the fall of 2013 referred to investigations being conducted by an additional regulator. Lau knew these emails were not true. Lau sent the emails to hold off investors who were seeking redemptions.

30. After the Income Strategix Funds stopped raising funds in September 2012, Lau and Income Strategix did not provide investors a clear indication of what happened to their money or that their money had been lost. When Lau and Income Strategix began to repay the investors, they promised some investors additional future payments should they agree to delay their request for the withdrawal of their investment.

31. Lau's and Income Strategix's conduct described above caused deprivation to the investors in the Income Strategix Funds. Investors invested their money and some investors chose to not redeem their investments based on the representations made by Lau and Income Strategix as set out above. From the moment of their investment, each investor's pecuniary interests were at risk from then on, and, in fact, many lost their investments.

32. At least 22 individual or family investors have not received a return of their principal investment. The amount of principal owing to these investors at the date of the Notice of Hearing is at least \$1,048,803.93.

F. Liability of directors and officers

33. During the relevant period, Lau as a director and/or officer of the Income Strategix authorized, permitted or acquiesced in Income Strategix's non-compliance with Ontario securities law.

G. Conduct contrary to the public interest

34. The conduct described above was contrary to the fundamental purposes and principles of the Act found in subsections 1.1 and 2.1 of the Act. The Respondents engaged in unfair and improper practices, which harmed investors who invested in the Income Strategix Funds, and which impugned the integrity of Ontario's capital markets.

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

35. The specific allegations advanced by Staff are that, by engaging in the conduct described above:

a. Lau and Income Strategix engaged in the business of, or held themselves out as engaging in the business of trading in securities, being the Promissory Notes, without being registered in accordance with Ontario securities law as a dealer, contrary to section 25(1)(a) of the Act as that section existed at the time the conduct at issue commenced in July 2007, and contrary to subsection 25(1) of the Act, as subsequently amended on September 28, 2009, and where there were no exemptions available to Lau and Income Strategix under the Act;

b. Lau and Income Strategix engaged in the business of, or held themselves out as engaging in the business of advising the Income Strategix Funds' investors and the Income Strategix Funds with respect to investing in, buying or selling securities without being registered in accordance with Ontario securities law as an adviser, contrary to clause 25(1)(c) of the Act as that section existed at the time the conduct at issue commenced in July 2007, and contrary to subsection 25(3) of the Act, as subsequently amended on September 28, 2009, and where there were no exemptions available to Lau and Income Strategix under the Act;

c. Lau and Income Strategix acted as an investment fund manager for the Income Strategix Funds without being registered in accordance with Ontario securities law as an investment fund manager, contrary to subsection 25(4) of the Act as introduced on September 28, 2009, and where there were no exemptions available to Lau and Income Strategix under the Act;

d. The trading of the Promissory Notes as set out above constituted a distribution of securities by Lau and Income Strategix in circumstances where no preliminary prospectus and prospectus were filed and receipts had not been issued for them by the Director, and where there were no exemptions available to Lau and Income Strategix under the Act, contrary to subsection 53(1) of the Act;

e. Lau and Income Strategix directly or indirectly engaged or participated in an act, practice or course of conduct relating to the Promissory Notes and the Income Strategix Funds that they knew or reasonably ought to have known perpetrated a fraud on persons purchasing the Promissory Notes to acquire an interest in the Income Strategix Funds, contrary to subsection 126.1(b) of the Act as that section existed at the time the conduct at issue commenced in July 2007, and contrary to clause 126.1(1)(b) of the Act, as subsequently amended on June 21, 2013;

f. Lau as a director and/or officer of the Income Strategix authorized, permitted or acquiesced in the Income Strategix's non-compliance with Ontario securities law as set out above, and accordingly, failed to comply with Ontario securities law contrary to section 129.2 of the Act; and

g. The Respondents' conduct was contrary to the public interest and harmful to the integrity of the capital markets on Ontario.

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

DATED at Toronto, June 15, 2017.