



Ontario  
Securities  
Commission

Commission des  
valeurs mobilières  
de l'Ontario

22nd Floor  
20 Queen Street West  
Toronto ON M5H 3S8

22e étage  
20, rue queen oust  
Toronto ON M5H 3S8

---

Citation: Nixon Lau (Re) 2017 ONSEC 28  
Date: 2017-06-26

**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.**

**REASONS AND DECISION FOR APPROVAL OF A SETTLEMENT  
(Sections 127 and 127.1 of the *Securities Act*, RSO 1990, c S.5)**

**Hearing:** June 26, 2017

**Decision:** June 26, 2017

**Panel:** Janet Leiper  
William J. Furlong

Chair of the Panel  
Commissioner

**Appearances:** Gavin Smyth

For Staff of the Commission

Janice Wright

For the Respondents

## REASONS AND DECISION

*The following reasons have been prepared for publication in the Ontario Securities Commission Bulletin, based on the reasons delivered orally in the hearing as edited and approved by the panel, to provide a public record.*

- [1] This was a hearing under section 127 of the *Securities Act*, RSO 1990 c S.5 (the **Act**), before the Ontario Securities Commission (the **Commission**) to consider whether it was in the public interest to approve a settlement agreement dated June 13, 2017, between the Enforcement Branch of the Commission and Nixon Lau, Income Strategix Holdings Ltd., Income Strategix L.P., Income Strategix A-Class L.P. and Income Strategix I-Class L.P., and to approve the terms set out in the settlement agreement.
- [2] This matter concerns a company incorporated in Ontario known as Income Strategix Holdings Ltd. (**Income Strategix**). Income Strategix is the general partner of the Income Strategix funds which are all Ontario limited partnerships. These funds were conceived of and set up by the respondent, Mr. Lau. Mr. Lau is a resident of Mississauga, Ontario, and at all times relevant to the proceedings before the Commission he was the directing mind of each of the Income Strategix funds, the sole officer and director for each of the entities, the sole signing authority on the bank accounts for Income Strategix. He was also the individual responsible for all trading decisions, execution of trades and wire transfers in and out of the Income Strategix funds' and company's bank accounts.
- [3] At all times relevant to this proceeding, none of the respondents were registered in any capacity with the Commission. Prior to the relevant period, Mr. Lau was registered as a mutual fund salesperson, between June 30th, 2004, and March 27th, 2006.
- [4] Mr. 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.
- [5] Investors were told by Mr. Lau and Income Strategix and in a limited partnership agreement entitled "The Club Charter", which was provided to investors by Mr. Lau, 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. Mr. Lau and Income Strategix also told investors that their principal investment was guaranteed.
- [6] In exchange for their investment in the Income Strategix funds, Mr. Lau and Income Strategix caused the Income Strategix funds to issue promissory notes to investors at the time of their investment. Mr. Lau signed all of the promissory notes. The promissory notes are securities as defined in the *Act*. The investors' funds were pooled in Income Strategix funds and the Income Strategix funds had full discretion to buy and sell investments made by the Income Strategix funds.
- [7] Between July 2007 and September 2012, over 70 individuals or family investors invested in the Income Strategix funds. Collectively, these investors invested approximately \$5.4 million in the Income Strategix funds. Beginning in 2010, Mr.

Lau and Income Strategix took steps to prevent discovery by and to not disclose to investors that the Income Strategix funds were losing money and were not producing actual returns, and to show that the Income Strategix funds were paying expected returns.

- [8] Despite the loss in value, Mr. Lau and Income Strategix paid distributions or reported an accrual of distributions to investors as though the Income Strategix funds were producing actual returns
- [9] By at least 2012, Mr. Lau and Income Strategix knew they were using funds raised from new investors to make distributions to earlier investors.
- [10] 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.
- [11] Mr. Lau and Income Strategix presented inaccurate information by way of the investors' online accounts on the Income Strategix Web site and in presentations that Mr. Lau gave to investors at annual meetings.
- [12] Additionally, Mr. Lau led some investors to believe that the reason for a cease trade order made by the Commission was because an investor requested a withdrawal, and when Mr. Lau did not provide it, the investor had complained.
- [13] Mr. Lau wrote e-mails to investors in the fall of 2013 which referred to investigations being conducted by an additional regulator. Mr. Lau knew these e-mails were not true. He sent the e-mails to hold off investors who were seeking redemptions.
- [14] After the Income Strategix funds stopped raising funds in September of 2012, Mr. Lau and Income Strategix did not provide investors a clear indication of what had happened to their money or that their money had been lost. When Mr. Lau and Income Strategix began to repay investors, they promised some investors additional future payments if they agreed to delay their request for the withdrawal of their investment.
- [15] The conduct of Mr. Lau and Income Strategix caused deprivation to investors in the Income Strategix funds. Some investors chose to not redeem their investments based on the representations made by Mr. Lau and Income Strategix. Others invested their money based on these misrepresentations.
- [16] From the moment of their investment, each investor's pecuniary interest was placed at risk. At least 22 individuals or family investors did not receive a return of their principal investment. As of the date of the Notice of Hearing, the amount of principal owing to investors was at least \$1,048,803.93.
- [17] During the relevant period, Mr. Lau, as director or officer of the Income Strategix group of funds, authorized, permitted or acquiesced in Income Strategix's non-compliance with Ontario securities law.
- [18] In addition, no prospectus or preliminary prospectus was filed with the Commission and no receipt 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 did not file a prospectus with the Commission. No exemption from the requirement of section 53 of the *Act* was available to the respondents.

- [19] Mr. Lau and Income Strategix admit and acknowledge that they breached Ontario securities law by contravening sections 25, 53 and 126.1(1)(b) of the *Act*. Mr. Lau admits and acknowledges that he breached Ontario securities law by contravening section 129.2 of the *Act* and the respondents acknowledge they have acted contrary to the public interest.
- [20] Staff of the Commission and the respondents have agreed to a settlement which accomplishes the following objectives:
- a. recognizes the serious nature of the conduct, including the commission of fraud on investors;
  - b. seeks to prevent future harm to members of the public and public markets;
  - c. allows for the continued repayment to harmed investors by Mr. Lau; and
  - d. recognizes the mitigating factors in this case, including Mr. Lau's prior efforts to repay investors and his acceptance of full responsibility for his conduct.
- [21] Mr. Lau and Income Strategix have real estate holdings which are anticipated to generate income and commissions which will be used to continue to repay harmed investors in the years ahead.
- [22] It is as a result of these facts that there are two novel features to the terms of settlement put before us today for approval. The first is the fact that the settlement agreement contemplates a limited ability for Mr. Lau to continue to act as a director and officer and retain assets in order for the respondents to use the real estate holdings to generate income for repayment to harmed investors.
- [23] Second, Staff of the Commission advised that they have not provided a full and final release for future prosecution related to these matters; it's because the respondents' books and records were not complete. In the event that additional harmed investors come to the attention of the Commission, Staff reserves the right to prosecute on the basis of this new information.
- [24] The settlement agreement before us contemplates the following elements:
- a. oversight of repayment by the respondents, conducted by Staff using a number of mechanisms as set out in detail in the settlement agreement;
  - b. the fact that a failure to abide by the terms of the settlement will trigger full disgorgement of the amounts obtained by the respondents; and
  - c. a set of sanctions which are commensurate with prior decisions of the Commission.
- [25] Mr. Lau gave a brief statement to the Commission in which he expressed remorse for his conduct and his commitment to repay the outstanding amounts.

[26] We have considered the settlement agreement, the record, and the case law provided by counsel. We find that, on the basis of the settlement agreement and the record before us, that the settlement is in the public interest and we approve it as filed.

Dated at Toronto this 26<sup>th</sup> day of June, 2017.

*"Janet Leiper"*

*"William J. Furlong"*

---

Janet Leiper

---

William J. Furlong