

# ALBERTA SECURITIES COMMISSION

## ORDER

Citation: Re Flahmingo Investments Inc., 2022 ABASC 69

Date: 20220615

### Flahmingo Investments Inc.

#### Background

1. Flahmingo Investments Inc. (the **Filer**) has applied to the Alberta Securities Commission (the **Commission**) for an order under section 15.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) exempting the Filer from:
  - (a) the requirement in subparagraph 13.2(2)(c) that a registrant must take reasonable steps to ensure that it has obtained sufficient information from a client to assess whether a trade is suitable for the client;
  - (b) the requirement in subparagraph 13.2.1(2) that a registrant must not purchase or sell securities for, or recommend securities to, a client unless the registered individual takes steps to understand the securities in the context of the client's circumstances;
  - (c) the requirement in section 13.3 that a registrant must take reasonable steps to ensure that, before it makes a recommendation to or accepts an instruction from a client to buy or sell a security, the purchase or sale is suitable for the client; and,
  - (d) the requirement in section 14.5.3(a) that a registrant must take reasonable steps to ensure that securities, or cash, of a client are held by a qualified custodian and that the information on the qualified custodian's books and records is sufficient to show that the beneficial ownership of the securities of the client is vested in that client.

(the **Exemptions Sought**).

#### Interpretation

2. Terms defined in the *Securities Act* (Alberta) (the **Act**), NI 31-103 and National Instrument 14-101 *Definitions* have the same meaning if used in this order unless otherwise defined.

#### Representations

3. This order is based on the following representations by the Filer to the Commission.

#### The Filer

- (a) The Filer is incorporated under the laws of Canada and is extra-provincially registered in the Province of Alberta, with its head office located in Calgary, Alberta, Canada.

- (b) The Filer seeks registration as a restricted dealer in the Province of Alberta, as the Filer proposes to offer services to Canadian investors that involve trades in securities through its Platform (defined below).
- (c) The Filer is a privately held corporation and a majority of its shareholders are Canadian residents.
- (d) The Filer is not registered under the securities legislation of any jurisdiction of Canada.
- (e) The Filer does not have any securities listed or quoted on an exchange or marketplace in any jurisdiction.
- (f) Subject to the Exemptions Sought, the Filer is not in default of securities legislation.

#### The Filer's Platform

- (g) The Filer has developed a mobile based trading platform (the **Platform**) that allows its retail customers (each, a **Customer**) to buy, sell and hold fractional securities available on publicly listed exchanges: Nasdaq Stock Exchange, the New York Stock Exchange (**NYSE**), NYSE American, NYSE Arca Equities, BATS Global Markets (each, a **Non-Canadian Exchange**).
- (h) The Filer will not offer Canadian inter-listed securities on its platform.
- (i) The Filer intends to commence operations of its Platform with Customers that:
  - (i) complete a New Account Application Form and enter into an Account Opening Agreement with the Filer,
  - (ii) are residents of the Province of Alberta, and
  - (iii) agree to hold their securities in a tax-free savings account provided by The RBC Royal Trust Company (**RBC Royal Trust**).
- (j) The Platform will operate as an order-execution-only system.
- (k) All Customer orders will be executed by Alpaca Securities LLC, (**Alpaca**) a U.S. broker registered with the U.S. Securities and Exchange Commission (**SEC**) and regulated by the Financial Industry Regulatory Authority (**FINRA**). All orders through Alpaca will be executed on a "National Best Bid and Offer" or better basis.
- (l) All Customer cash will be held by RBC Royal Trust in a designated trust account in accordance with the requirements in section 14.5.3(b) of NI 31-103. RBC Royal Trust meets the requirements of a qualified custodian under NI 31-103.
- (m) All exchanges of fiat from CAD to USD and from USD to CAD will be conducted utilizing the Filer's cash or through StoneX Markets LLC (**StoneX**), a swap dealer

that is a member of the National Futures Association, and that is provisionally registered with the U.S. Commodity Futures Trading Commission.

- (n) When StoneX's services are used, StoneX:
  - (i) has temporary custody of the Filer's customers' cash, for the purpose of foreign currency exchange;
  - (ii) holds the Filer's customers' funds in an account that is only used for StoneX's clients, and not for StoneX's operational purposes; and,
  - (iii) promptly wires the converted currency to the Filer, after StoneX confirms receipt of funds from the Filer.
- (o) Alpaca has an omnibus clearing and custody agreement with Velox Clearing LLC (**Velox**), a clearing broker-dealer registered with the SEC and a member of: FINRA, the National Securities Clearing Corporation, Deposit Trust Company (**DTC**) and the Securities Investor Protection Corporation.
- (p) All Customer securities will be held by Velox at DTC in an omnibus account.
- (q) Alpaca and Velox do not meet the definition of foreign custodian under NI 31-103, but they are both subject to asset handling controls and minimum capital requirements under FINRA regulation.
- (r) The Filer will maintain books and records that clearly identify the beneficial ownership of securities that belong to each Customer.
- (s) The Filer will not operate a "marketplace" as the term is defined in NI 21-101.
- (t) The Filer will not operate a "clearing agency" as the term is defined in the Act.

Account Appropriateness, Account Opening and Risk Disclosure

- (u) Before the Filer opens an account for a Customer, the Filer will determine, on a reasonable basis and putting the Customer's interest first, that this action is appropriate for the Customer.
- (v) For each Customer for which an account is opened with the Filer, the Filer will determine, on a reasonable basis and putting the Customer's interest first, that it is appropriate for the Customer to continue to have an account with the Filer.
- (w) The Filer's account opening procedures will include providing Customers with the following:
  - (i) New Account Application Form and Account Opening Agreement, including the Tax Free Savings Account Trust Agreement with RBC Royal Trust;

- (ii) Account Relationship Disclosure, including a description of the securities available on the Platform;
- (iii) Complaint Resolution Process;
- (iv) Best Execution and Fair Pricing Disclosure;
- (v) Fee Schedule;
- (vi) Conflict of Interest Statement; and
- (vii) Privacy Policy

(collectively, the **Disclosure Documents**).

- (x) Within the Disclosure Documents, the Filer will include a statement of risk that explains to the prospective Customer the risks of investing in securities, including investing through the Filer's Platform under this exemptive relief.
- (y) The Filer will require Customers to complete a New Account Application Form and Account Opening Agreement and to agree to be bound by their terms.
- (z) Under the New Account Application Form and Account Opening Agreement, via an automated process, the Filer will require a Customer to agree to open a tax free savings account with RBC Royal Trust and be bound by RBC Royal Trust's terms of service for the account.
- (aa) The New Account Application Form and Account Opening Agreement will set out that:
  - (i) the interest earned on Customer cash held by RBC Royal Trust is part of the fees owed to the Filer, is the property of the Filer and will be paid to the Filer by RBC Royal Trust, and
  - (ii) a flat fee of 2.5% will be charged by the Filer upon conversion of the Customer's cash from CAD to USD and from USD to CAD.
- (bb) All Customers must:
  - (i) successfully complete the Filer's know your client process which satisfies the requirements applicable to money services businesses under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17 and its regulations;
  - (ii) represent that they have the legal capacity to trade on the Platform, meaning that Customers (a) are natural persons, (b) have reached legal age in the Province of Alberta, (c) are under no legal incapacity, and (d) have

sufficient knowledge and experience to understand the nature and risks of the products to be traded; and

- (iii) confirm that they have read, understood and agreed to, or acknowledged, as appropriate, the Disclosure Documents.
- (cc) Customers must provide an electronic acknowledgment confirming that the Customer has received, read, and understood the Filer's Disclosure Documents.
- (dd) The Filer will not permit trades by a Customer unless the Customer successfully completes the New Account Application Form and Account Opening Agreement, and provides electronic acknowledgement confirming agreeing to the remainder of the Disclosure Documents.
- (ee) If changes are made to any of the Disclosure Documents the Filer will promptly provide the revised disclosure to each existing Customer explaining the changes that were made.

#### The Filer's Role

- (ff) The Filer will not:
  - (i) provide specific recommendations or advice to Customers about the suitability of any investments on its Platform; or
  - (ii) recommend or solicit any particular purchase or sale by a Customer regarding any investment on its Platform.
- (gg) The Filer will not act on a discretionary basis on behalf of Customers.
- (hh) The Filer will not offer trading on margin or leverage.
- (ii) The Filer will provide electronic access to the Disclosure Documents, including updates, and make the Disclosure Documents accessible to Customers.
- (jj) The Filer will impose an investment limit of \$30,000 CAD on the total amount of funds that a Customer can add to its Customer account in any 12-month period.

#### **Order**

4. The Commission, considering that it would not be prejudicial to the public interest to do so, orders that the Exemptions Sought are granted provided that:
  - (a) The representations made by the Filer remain true;
  - (b) The Filer's Chief Financial Officer takes and passes the Chief Financial Officer's Qualifying Examination through the Canadian Securities Institute (CSI) within twelve months of the date of this order;

- (c) For the duration of this relief, the Filer will only offer its services to Customers with respect to tax-free savings accounts offered through RBC Royal Trust;
- (d) The Filer will maintain books and records that clearly identify the cash and securities that belong to each Customer.
- (e) The Filer will seek prior approval from the Commission before making:
  - (i) additional securities available to Customers, other than those available through the Non-Canadian Exchanges, subject to paragraph 3(h);
  - (ii) material additions or amendments to the products and services that it offers to Customers;
  - (iii) a change to its relationship with RBC Royal Trust;
  - (iv) a new relationship with a Canadian financial institution;
  - (v) a change of custodian, or a change to its relationship with its custodian;
  - (vi) a change of executing broker, or a change to its relationship with its executing broker;
  - (vii) material changes to the features of the Platform;
  - (viii) any of the products or services described as “future features” items in the Filer’s business plan available to Customers;
  - (ix) material changes to the Filer’s business plan; or,
  - (x) material changes to the Filer’s policies and procedures.
- (f) The Filer will notify the Commission, as soon as practicable, of any cyber security events involving the Filer’s systems of Platform, or that of any entity with which it has a material business relationship, if that cyber security event could have an impact on the Filer’s systems or Platform.
- (g) The Filer will notify the Commission in writing, as soon as practicable, if it becomes aware of any change to the regulatory status of Alpaca or Velox.
- (h) The Filer will notify the Commission in writing, as soon as practicable, of any regulatory action, criminal charges, or civil actions initiated after the date of this decision with respect to the Filer, any specified affiliate of the Filer (as defined in Form 33-109F6 *Firm Registration*), or any of the principals of the Filer;
- (i) If changes are made to the following documents, the Filer will, as soon as practicable, provide the Commission with a copy of the revised document and an explanation of the changes made:

- (i) the Disclosure Documents; and,
  - (ii) material contracts with vendors that provide services that are integral to the operation of the Platform.
- (j) The Filer will provide the following information to the Commission within 30 days of the end of each March, June, September and December:
  - (i) the number of Customer accounts opened each month in the quarter;
  - (ii) the number of Customer accounts that have not been funded at the end of each month in the quarter;
  - (iii) the number of Customer accounts with no trades during the quarter;
  - (iv) the number of Customer accounts closed each month in the quarter;
  - (v) the number of trades conducted in each month of the quarter;
  - (vi) the average value of the trades in each month of the quarter;
  - (vii) the average value of assets under administration per Customer in each month of the quarter;
  - (viii) the average value of the fees and other charges paid to the Filer per Customer in each month of the quarter;
  - (ix) the number and average value of failed trades per quarter;
  - (x) the number and average value of trade errors per quarter; and
  - (xi) the details of any Customer complaints received by the Filer during the quarter, including a description of how the complaints were addressed.
- (k) The Filer will provide the following information to the Commission within 14 days of the end each month, for the first 6 months after the effective date of this order:
  - (i) a reconciliation of the Filer's securities ledgers against Alpaca's records, including copies of all supporting documentation used to complete the reconciliation;
  - (ii) a reconciliation of the Filer's Customer ledgers against the records of Alpaca and RBC Royal Trust, including copies of all supporting documentation used to complete the reconciliation;
  - (iii) a reconciliation of the Filer's Customer ledgers against the records of StoneX, including copies of all supporting documentation used to complete the reconciliation; and,

- (iv) any additional supporting information that is requested by the Commission in support of its review of these reconciliations.
  - (l) Upon request, the Filer will provide the Commission with aggregated or anonymized data about Customer demographics and activity on the Platform that may be useful to advance the development of the Canadian regulatory framework.
- 5. This order will expire on the earlier of:
  - (a) Two years from the date of this order; and
  - (b) The Filer becoming registered as an investment dealer and obtaining membership with the Investment Industry Regulatory Organization of Canada.

*“original signed by”*

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Lynn Tsutsumi CA  
Director Market Regulation