

**COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE SECRETARY OF THE COMMONWEALTH
SECURITIES DIVISION
ONE ASHBURTON PLACE, ROOM 1701
BOSTON, MASSACHUSETTS 02108**

IN THE MATTER OF:)
)
CARRIEREQ, INC. d/b/a AIRFOX,)
)
RESPONDENT.) Docket No. E-2017-0118

CONSENT ORDER

I. PRELIMINARY STATEMENT

This Consent Order (the “Order”) is entered into by the Massachusetts Securities Division (the “Division”) and CarrierEQ, Inc., doing business as AirFox (“AirFox”) to resolve any issues arising out of the Enforcement Section of the Division’s investigation (Docket No. E-2017-0118) into potential violations of MASS. GEN. LAWS ch. 110A, the Massachusetts Uniform Securities Act (the “Act”).

On November 2, 2018, AirFox submitted a signed Offer of Settlement (the “Offer”) to the Division. AirFox neither admits nor denies the Statement of Facts set forth in Section V and the Violations of Law set forth in Section VI herein, and consents to the entry of this Order by the Division, consistent with the language and terms of the Offer, settling the investigation (Docket No. E-2017-0118) hereby with prejudice.

II. JURISDICTION AND AUTHORITY

1. As provided for by the Act, the Division has jurisdiction over matters relating to securities. The Act authorizes the Division to regulate the offers and or sales of securities, as well as those individuals offering or selling securities within the Commonwealth.

2. The Offer was made and this Order is entered in accordance with the Act. Specifically, the acts and practices investigated by the Enforcement Section took place in Massachusetts and were directed toward Massachusetts investors.

III. RELEVANT TIME PERIOD

3. Except as otherwise expressly stated, the conduct described herein occurred during the approximate time period of July 2017 to the present (the “Relevant Time Period”).

IV. RESPONDENT

4. AirFox is a Delaware corporation with a principal place of business in Boston, Massachusetts. AirFox incorporated in Delaware on January 19, 2016 and registered as a foreign corporation in Massachusetts on May 12, 2016.

V. STATEMENT OF FACTS

5. As of August 2017, AirFox was a Massachusetts business that sold technology to mobile telecommunications companies in the U.S. AirFox’s technology enabled mobile telecommunications companies’ customers to earn free or discounted airtime or data by viewing advertisements.

6. In mid-2017, AirFox decided to launch a new, consumer-facing business line. In or before August 2017, AirFox released a “beta” version of an AirFox-branded internet browser application (the “AirFox App”) that could be downloaded from the Google Play store.

7. AirFox stated that users of Android-based smartphones could earn “AirTokens” by viewing advertisements in the AirFox app. According to AirFox, the AirTokens could be exchanged for free airtime or data from multiple prepaid telecommunications

providers. AirFox intended to facilitate such exchanges by purchasing mobile data in bulk from prepaid mobile carriers.

8. By August 2017, AirFox had developed a business plan that included raising capital through an initial coin offering (“ICO”) of AirTokens and introducing a mobile application that would allow users to earn AirTokens and/or exchange them for free or discounted mobile data (and, ultimately, other goods and services).

9. AirTokens are ERC20 tokens issued on the Ethereum blockchain. AirFox advertised its forthcoming offering of AirTokens by posting a whitepaper on its website and providing additional information via blog posts, social media posts, online videos, and discussion boards. AirFox’s advertisements described AirTokens, the offering process, how AirFox would use the offering proceeds to develop its business, the way in which AirTokens would increase in value, and the ability of AirToken holders to trade AirTokens on secondary markets.

10. At the time of the initial coin offering, AirFox represented to investors that the proceeds of the offering would be used to fund future development of the AirFox app and the AirToken ecosystem, to expand the service to international markets, to add a microloan component for AirToken holders, and to broaden the use of AirTokens outside of AirFox’s own applications. In September 2017, AirFox explained to prospective investors in a blog post that the “AirFox browser is still considered ‘beta’ quality and will continue to be improved over the coming months as we execute on the AirToken plan.” AirFox’s whitepaper represented that 50% of the proceeds of the offering would be used for engineering and research and development expenses, 20% would be used for sales and marketing expenses, 13% would be used for mobile data purchases, 12% would be

used for administrative and legal expenses, and 5% would be held in reserve by the company. In AirFox's whitepaper, it proposed a potential timeline of development milestones which covered from August 2017 through the second quarter of 2018.

11. On or about October 5, 2017, AirFox completed its initial coin offering, raising approximately \$15 million by selling 1.06 billion AirTokens to more than 2,500 investors. AirTokens were available for purchase by individuals in the United States and worldwide through websites controlled by AirFox.

12. The terms of AirFox's ICO purported to require purchasers to agree that they were buying AirTokens for their utility as a medium of exchange for mobile airtime, and not as an investment or a security. At the time of the ICO this functionality was not available. Rather, the AirFox App was a prototype that only enabled users to earn and redeem loyalty tokens, which could be exchanged for mobile airtime. Despite the references to AirTokens as a medium of exchange, at the time of the ICO, investors purchased AirTokens based upon anticipation that the value of the tokens would rise through AirFox's future managerial and entrepreneurial efforts.

13. Purchasers reasonably viewed the AirToken offering as an opportunity to profit. Purchasers reasonably expected that they might obtain future profits from buying AirTokens if AirFox was successful in its entrepreneurial and managerial efforts to develop its business. Based on AirFox's statements in its AirToken whitepaper and other materials, purchasers reasonably believed they could pursue such profits by holding or trading AirTokens, whether or not they ever used the AirFox App or otherwise participated in the AirFox ecosystem.

14. AirFox discussed prospects for development of the AirToken ecosystem on blogs, social media, online videos, and online forums. For example, on September 18, 2017, AirFox’s principals stated in a YouTube video that they believed the undeveloped microlending functionality would create demand for AirTokens from large-scale lenders who would be required to purchase AirTokens in the public markets in order to participate.

15. Purchasers reasonably expected that AirFox and its agents would expend efforts to develop the AirFox App and the AirToken ecosystem, which would increase the value of their AirTokens. Airfox highlighted the credentials, abilities, and management skills of its agents and employees. For example, in the AirToken whitepaper and elsewhere, AirFox highlighted that its founders had worked at prominent technology companies and attended prestigious universities.

16. Through a “bounty” campaign, AirFox provided AirTokens to people who amplified the company’s promotional efforts. AirFox entered into an agreement with an individual who had previously led similar bounty campaigns promoting ICOs by other issuers. This individual, who received a percentage of the AirTokens issued in the ICO in exchange for his services, recruited other people to translate AirFox’s whitepaper into multiple languages and to tout AirTokens in their own internet message board posts, articles, YouTube videos, and social media posts. More than 400 individuals promoted the AirToken ICO as part of the bounty campaign. These individuals also received AirTokens in exchange for their services.

17. AirFox primarily aimed its promotional efforts for the ICO at digital token investors, rather than anticipated users of AirTokens. AirFox and its agents promoted the

AirToken offering in forums aimed at people investing in Bitcoin and other digital assets, including BitcoinTalk.org, a message board where users discuss investing in digital assets. These forums are available to and attract viewers internationally, including viewers in the United States, even though the AirFox App was not intended to be used by individuals in the United States. In promoting their ICO, AirFox's principals also participated in interviews with individuals focused on digital token investing. AirFox did not market the ICO to the anticipated users of AirFox tokens *i.e.*, individuals with prepaid phones in developing countries. Rather, AirFox marketed the ICO to investors who reasonably viewed AirTokens as a speculative, tradeable investment vehicle that might appreciate based on AirFox's managerial and entrepreneurial efforts. For example, in an August 2017 blog posts, AirFox stated that an AirToken presale was intentionally directed to, among others, "sophisticated crypto investors, angel investors and early backers of the [AirToken] project."

18. AirFox's offers and sales of AirTokens originated from the Commonwealth of Massachusetts, and AirFox sold AirTokens to multiple residents of the Commonwealth of Massachusetts.

19. AirFox has never been registered in any capacity with the Division, and AirTokens are not and have never been registered in the Commonwealth of Massachusetts.

VI. VIOLATIONS OF LAW

Count I – Violations of MASS. GEN. LAWS ch. 110A, § 301

20. Section 301 of the Act provides:

It is unlawful for any person to offer or sell any security in the commonwealth unless:--

- (1) the security is registered under this chapter;
- (2) the security or transaction is exempted under section 402; or
- (3) the security is a federal covered security.

MASS. GEN. LAWS ch. 110A, § 301.

21. Section 401(k) of the Act provides:

“Security” means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a “security,” or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. “Security” does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or some other specified period.

MASS. GEN. LAWS ch. 110A, § 401(k).

22. Section 14.401 of the Regulations provides:

Investment Contract, as used in Section 401(k) of the Act, includes:

- (1) any investment in a common enterprise with the expectation of profit to be derived through the essential managerial efforts of someone other than the investor. As used in 950 CMR 14.401, a “common enterprise” means an enterprise in which the fortunes of the investor are interwoven with and dependent upon the efforts and successes of those seeking the investment or a third party; and
- (2) any investment by which an offeree furnishes initial value to an offeror, and a portion of this initial value is subject to the risks of the enterprise, and the furnishing of the initial value is induced by the offeror’s promises or representations which give rise to a reasonable understanding that a valuable benefit of some kind over and above the initial value will accrue to the offeree as a result of the operation of the enterprise, and the offeree does not receive the right to exercise practical and actual control over the management of the enterprise.

950 MASS. CODE REGS. 14.401.

23. The conduct of AirFox, as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 301.

VII. ORDER

IT IS HEREBY ORDERED:

A. AirFox shall permanently cease and desist from committing or causing any violations and any future violations of Section 301 of the Act. For any future registered or exempt offers of securities in Massachusetts, AirFox shall file a Form U-2, Consent to Service of Process, with the Division as required by MASS. GEN. LAWS. ch. 110A, § 414(g);

B. AirFox shall provide written notice to the Enforcement Section at least thirty (30) days prior to making any future registered or exempt offers or sales of securities in Massachusetts;

C. Within ninety (90) days of the entry of this Order, AirFox shall file with the Securities and Exchange Commission a Form 10 to register under Section 12(g) of the Securities Exchange Act of 1934 the AirTokens as a class of securities;

D. AirFox shall offer compensation to purchasers of AirTokens who qualify for relief pursuant to Section 12(a) of the Securities Act of 1933. This obligation is deemed satisfied by the Order Instituting Cease-And-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing A Cease-And-Desist Order, in *In the Matter of CarrierEQ, Inc. d/b/a AirFox*, Administrative Proceeding File No. 3-18898 (November 16, 2018);

E. Within thirty (30) business days of the entry of this Order, AirFox shall pay a fine in the amount of \$100,000 to the Commonwealth of Massachusetts. Payment shall be:

(1) made by United States postal money order, certified check, bank cashier's check, bank money order, or wire transfer; (2) made payable to the Commonwealth of Massachusetts; and (3) either hand-delivered or mailed to One Ashburton Place, Room 1701, Boston, Massachusetts 02108, or wired per Division instructions; and (4) submitted under cover letter or other documentation that identifies the payor and the docket number of the proceedings. Additionally, AirFox shall provide the Division with notice twenty-four (24) hours prior to the payment;

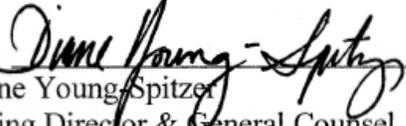
F. For good cause shown, the Enforcement Section may agree to extend any of the procedural deadlines set forth above. Any request to extend any of the procedural deadlines set forth above shall be made in writing; and

G. Upon issuance of this Order, if AirFox fails to comply with any of the terms set forth in the Order, the Enforcement Section may take all appropriate action. Additionally, after a fair hearing and the issuance of an appropriate order finding that AirFox has not complied with the Order, the Enforcement Section may move to have the Order declared null and void, in whole or in part, and institute an administrative proceeding against AirFox.

**WILLIAM FRANCIS GALVIN
SECRETARY OF THE COMMONWEALTH**

Date: November 16, 201

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By: 
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