

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10575 / November 16, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18898

In the Matter of

CARRIEREQ, INC., D/B/A
AIRFOX

Respondent.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 8A OF THE SECURITIES ACT
OF 1933, MAKING FINDINGS, AND
IMPOSING PENALTIES AND A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) against CarrierEQ, Inc., doing business as AirFox (“AirFox” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (“Offer”) that the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant To Section 8A of the Securities Act of 1933, Making Findings, and Imposing Penalties and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds that¹:

¹ The findings herein are made pursuant to Respondent’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Summary

As of August 2017, AirFox was a Massachusetts business that sold mobile technology that allowed customers of certain United States prepaid mobile telecommunications operators to earn free or discounted airtime or data by interacting with advertisements on their smartphones. Between August and October 2017, AirFox offered and then sold digital tokens (“AirTokens”), which were issued on a blockchain or distributed ledger. Through this initial coin offering, or ICO, AirFox raised approximately \$15 million in capital for the purpose of creating and capitalizing a new, international business and ecosystem. AirFox told investors that the new ecosystem would include the core functionality of AirFox’s existing U.S. business—allowing prepaid mobile phone users to earn free or discounted airtime or data by interacting with ads—and would also add new functionality, including the ability to transfer AirTokens between users, peer-to-peer lending, credit scoring, and, eventually, using AirTokens to buy and sell goods and services other than mobile data. In connection with the offering, AirFox stated that AirTokens would increase in value as a result of AirFox’s efforts, and that AirFox would undertake efforts to provide investors with liquidity by making AirTokens tradeable on secondary markets.

Based on the facts and circumstances set forth below, AirTokens were “securities” pursuant to *SEC v. W. J. Howey Co.*, 328 U.S. 293 (1946) and its progeny, including the cases discussed by the Commission in its *Report of Investigation Pursuant To Section 21(a) Of The Securities Exchange Act of 1934: The DAO* (Exchange Act Rel. No. 81207) (July 25, 2017) (the “DAO Report”). A purchaser in the offering of AirTokens would have had a reasonable expectation of obtaining a future profit based upon AirFox’s efforts, including AirFox revising its app, creating an “ecosystem,” and adding new functionality using the proceeds from the sale of AirTokens. AirFox violated Sections 5(a) and 5(c) of the Securities Act by offering and selling these securities without having a registration statement filed or in effect with the Commission or qualifying for exemption from registration with the Commission.

Respondent

AirFox is a privately owned Delaware corporation based in Boston, Massachusetts. Neither AirFox nor its securities are registered with the Commission.

Facts

1. 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. This business line, known as “AirFox Wireless,” still exists.

2. 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.

3. 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 mobile telecommunications providers.

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

AirFox's Initial Coin Offering

4. By August 2017, AirFox had developed a business plan that included raising capital through the sale of AirTokens, and then introducing a mobile application that would allow users to earn AirTokens, exchange them for free or discounted mobile data and, ultimately, other goods and services. AirTokens are 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 for AirToken holders to trade AirTokens on secondary markets.

5. 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.

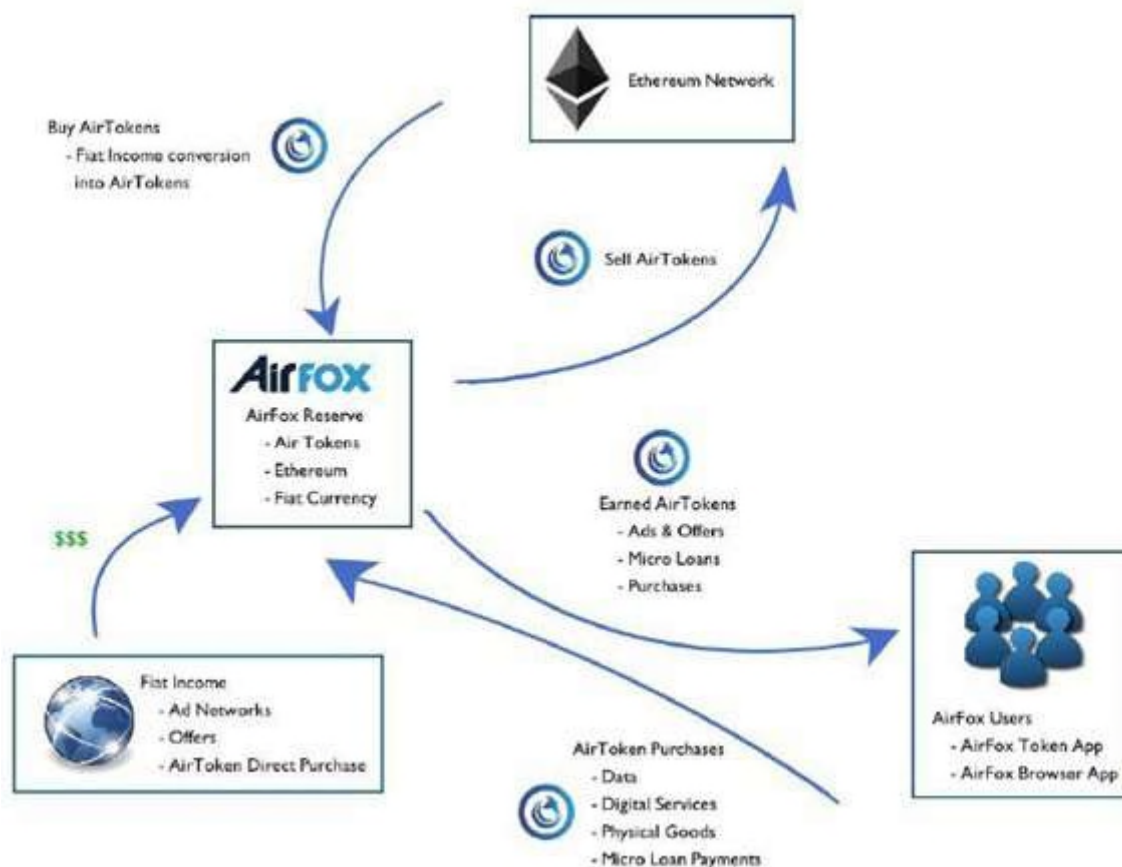
6. On October 5, 2017, AirFox completed its initial coin offering, raising approximately \$15 million by selling 1.06 billion AirTokens to more than 2,500 investors. AirTokens were available for purchase by individuals in the United States and worldwide through websites controlled by AirFox.

7. The terms of AirFox's initial coin offering 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 points, which could be exchanged for mobile airtime. According to the company, the prototype was "really just for the ICO and just for investment purposes so people know . . . how it's going to work" and "[did not] have any real users" at the time of the ICO. Despite the reference 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.

AirFox's Plan to Create an Ecosystem and Take Other Steps to Increase the Value of AirTokens

8. The terms of AirFox's initial coin offering acknowledged that, by paying Ether or other forms of valuable consideration for AirTokens, purchasers were contributing to "the development of the AirToken Project," meaning the creation of an ecosystem centered around AirTokens as envisioned in the whitepaper.

9. AirFox's whitepaper described an ecosystem to be created by the company where AirTokens would serve as a medium of exchange for mobile data, physical goods, and micro lending. AirFox's whitepaper contemplated that the company would maintain the value of AirTokens by purchasing mobile data and other goods and services with fiat currency that could be then purchased by holders of AirTokens. The whitepaper also contemplated that the company would buy and sell AirTokens as needed to facilitate the purchase and sale of goods and services with AirTokens. The below diagram, which was included in AirFox's whitepaper, contemplates AirFox's role in the ecosystem it was to develop:



10. AirFox knew that investors wanted the ability to freely trade AirTokens in the secondary market. Prior to the initial coin offering, AirFox made clear to prospective investors that it planned to enter into agreements with token exchanges to ensure that the AirToken would be traded on the secondary market. On August 22, 2017, AirFox announced that it was reducing the contemplated token supply in the initial coin offering from 150 billion to 1.5 billion without

changing the anticipated market cap “to alleviate concerns raised by many current and potential token holders and token exchanges who prefer each individual token to be worth more.” On September 4, 2017, AirFox announced that it had reached an agreement with a digital token trading platform to enable AirTokens to be traded via an “IOU trading system” in advance of the initial coin offering. At that time, the company represented that the AirTokens would be traded on additional platforms following the initial coin offering.

11. Following the ICO, AirFox attempted to list AirTokens on two major digital token trading platforms. One of the trading platform listing applications asked: “why would the value increase over time?” AirFox stated in its response “As time lapses the features and utility of AirToken will go up as we continue to build the platform. As of today, the people are able to download our browser to earn and purchase AirTokens to redeem mobile data and airtime across 500 wireless carriers. Over the next two years, the utility of the token will expand and therefore, more people across the world will need to have AirTokens in their possession to participate on our platform and ecosystem.”

AirFox Promoted AirTokens as An Opportunity to Obtain Future Profits from the Efforts of AirFox and its Agents, and Investors Reasonably Understood the Investment in that Light

12. Purchasers reasonably viewed the AirToken offering as an opportunity to profit. Purchasers reasonably expected 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 AirToken ecosystem.

13. AirFox talked about 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.

14. 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.

15. 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 tout AirTokens in their own internet message board posts, articles, YouTube videos, and social media posts. More than 400 individuals promoted the AirToken initial coin offering as part of the bounty campaign. These individuals also received AirTokens in exchange for their services.

16. AirFox primarily aimed its promotional efforts for the initial coin offering 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 on BitcoinTalk.org, a message board where users discuss investing in digital assets. These forums are available and attract 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 initial coin offering, AirFox’s principals also participated in interviews with individuals focused on digital token investing. AirFox did not market the initial coin offering 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 post, AirFox stated that an AirToken presale was intentionally directed at “sophisticated crypto investors, angel investors and early backers of the [AirToken] project.” In the pre-sale, prior to the public offering, AirFox made AirTokens available to the earliest investors at a discount.

Legal Analysis

17. Under Section 2(a)(1) of the Securities Act, a security includes “an investment contract.” *See* 15 U.S.C. § 77b. An investment contract is an investment of money in a common enterprise with a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others. *See SEC v. Edwards*, 540 U.S. 389, 393 (2004); *SEC v. W.J. Howey Co.*, 328 U.S. 293, 301 (1946); *see also United Housing Found., Inc. v. Forman*, 421 U.S. 837, 852-53 (1975) (The “touchstone” of an investment contract “is the presence of an investment in a common venture premised on a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others.”). This definition embodies a “flexible rather than a static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek the use of the money of others on the promise of profits.” *Howey*, 328 U.S. at 299 (emphasis added). The test “permits the fulfillment of the statutory purpose of compelling full and fair disclosure relative to the issuance of ‘the many types of instruments that in our commercial world fall within the ordinary concept of a security.’” *Id.* In analyzing whether something is a security, “form should be disregarded for substance,” *Tcherepnin v. Knight*, 389 U.S. 332, 336 (1967), “and the emphasis should be on economic realities underlying a transaction, and not on the name appended thereto.” *Forman*, 421 U.S. at 849.

18. As the Commission discussed in the DAO Report, tokens, coins or other digital assets issued on a blockchain may be offerings of securities under the federal securities laws, and, if they are, issuers and others who offer or sell these securities in the United States must register the offering and sale with the Commission or qualify for an exemption from registration.

The AirToken Offering Was an Offering of Securities

19. The AirToken offering was an offer and sale of “securities” as defined by Section 2(a)(1) of the Securities Act because it constituted the offer and sale of investment contracts.

20. AirFox offered and sold AirTokens in a general solicitation that included potential investors in the United States. Investors purchased their AirTokens in exchange for other digital assets. Such investment is the type of contribution of value that can create an investment contract. *See* DAO Report; *In re Munchee Inc.*, Securities Act Release No. 10445 (December 11, 2017).

21. AirToken purchasers had a reasonable expectation of profits from their investment in the AirFox enterprise. The proceeds of the AirToken offering were intended to be used by AirFox to build an ecosystem that would create demand for AirTokens, which would increase the value of AirTokens. AirFox told investors that the company would improve the AirFox App, add new functionality, enter into agreements with third-party telecommunication companies, and take other steps to encourage the use of AirTokens and foster the growth of the ecosystem. Investors reasonably expected they would profit from the success of AirFox's efforts to grow the ecosystem and the concomitant rise in the value of AirTokens. In addition, AirFox highlighted to investors that it would ensure secondary trading market for AirTokens shortly after the completion of the offering and prior to the creation of the ecosystem, including taking steps to list AirTokens on multiple digital token trading platforms.

22. Investors' profits were to be derived from the significant entrepreneurial and managerial efforts of others—specifically AirFox and its agents—who were to create the ecosystem that would increase the value of AirTokens, and facilitate secondary market trading.

23. Investors' expectations were primed by AirFox's marketing of the AirToken offering. AirFox and its agents created the AirFox and AirToken websites and the AirToken whitepaper and posted on message boards, social media, and other outlets in order to market the offering, and AirFox paid others to tout the offering, as well. These promotional efforts were primarily directed at digital token enthusiasts and investors who had previously invested in other digital tokens. The promotions were not directed at customers who would ultimately use AirTokens to purchase airtime or data from prepaid wireless carriers in developing countries. Indeed, the AirToken offering was structured to encourage speculative purchases; the earliest purchasers received discounted allocations and thus stood to earn more by selling AirTokens into the secondary market. In promotional publications, AirFox described how the putative AirToken ecosystem would create demand for AirTokens, thereby increasing their value. AirFox paid hundreds of people to promote the AirToken ICO through their own websites and postings on social media and message board sites. Because of the conduct and marketing materials of AirFox and its agents, investors would have had a reasonable belief that AirFox and its agents could be relied on to provide the significant entrepreneurial and managerial efforts required to make AirTokens a success.

AirFox Offered and Sold AirTokens in Violation of the Securities Act

24. As described above, AirFox offered and sold securities to the general public, including investors in the United States. No registration statements were filed or in effect for the AirToken offers and sales, and the offering did not qualify for any exemption from registration.

25. As a result of the conduct described above, AirFox violated Section 5(a) of the Securities Act, which states that unless a registration statement is in effect as to a security, it

shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise; or to carry or cause to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale.

26. Also as a result of the conduct described above, AirFox violated Section 5(c) of the Securities Act, which states that it shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed as to such security.

AirFox's Remedial Actions

27. In determining to accept the Offer, and to not impose greater civil penalties, the Commission considered remedial acts undertaken by Respondent and cooperation afforded the Commission staff.

Undertakings

Respondent makes the following undertakings:

28. Within fourteen (14) days from the date of this Order, Respondent will issue a press release, in a form not objected to by Commission staff, notifying the public of this Order, containing a link to the Order, and containing a link to the "Claim Form" (as defined in Paragraph 29.b. below). The press release, among other things, will also notify the public that Respondent will "Distribute" (as defined in Paragraph 29.b. below) the Claim Form on the "Effective Date" (as defined in Paragraph 29.b. below). At the same time, Respondent will prominently post the press release, link to the Order, and Claim Form on AirFox's company website and maintain it there until the "Claim Form Deadline" (as defined in Paragraph 29.b. below).

29. Within ninety (90) days of the date of this Order, Respondent will:

- a. File a Form 10 to register under Section 12(g) of the Securities Exchange Act of 1934 ("the 1934 Act Registration") the AirTokens as a class of securities;
- b. On a date no later than sixty (60) calendar days after the date of the filing of the 1934 Act Registration, or on the date of the 1934 Act Registration becomes effective, whichever date is sooner (the earlier date being the "Effective Date") distribute by electronic means reasonably designed to notify each potential claimant ("Distribute"), a notice and a claim form (the "Claim Form"), both of which shall be in a form not objected to by Commission staff, informing all persons and entities that purchased AirTokens from Respondent before and including October 5, 2017 of their potential claims under Section 12(a) of the Securities Act, including the

right to sue “to recover the consideration paid for such security with interest thereon, less the amount of any income received thereon, upon the tender of such security, or for damages if [the purchaser] no longer owns the security” and informing purchasers that they may submit a written claim on the Claim Form directly to Respondent at an address indicated on the Claim Form of a purchaser’s assertion of rights under Section 12(a) of the Securities Act, and that such claims must be submitted within three (3) months from the Effective Date (“Claim Form Deadline”); and

- c. Maintain such 1934 Act Registration and make timely filings of all reports required by Section 13(a) of the Securities Exchange Act of 1934 for at least one year from the Effective Date of the 1934 Act Registration and until such time as Respondent is eligible to terminate its registration pursuant to Rule 12g-4 under the Securities Exchange Act of 1934.

30. Respondent will pay the amount due under Section 12(a) of the Securities Act to any person or entity that purchased AirTokens from Respondent before and including October 5, 2017, and that submitted a written claim to Respondent by the Claim Form Deadline using the Claim Form. Within three (3) months from the Claim Form Deadline, Respondent will make all payments due to purchasers who submitted the Claim Form by the Claim Form Deadline. Respondent may require that a claimant submit documentation supporting that the claimant is entitled to receive payment under Section 12(a) of the Securities Act and Paragraph 29.b above. For any claims not paid, Respondent will provide the claimant with a written explanation of the reason for non-payment.

31. Respondent will submit to Commission staff a monthly report of the claims received and the claims paid under Paragraph 30 above, including (a) identifying information about each claimant; (b) the amount of each claim; (c) the resolution of each claim, including the amount of each payment; (d) identification of all claims not paid and the reasons for all non-payment of claims; and (e) a list of all complaints received and how Respondent addressed each complaint. Respondent will provide Commission staff with any related additional information or documentation reasonably requested by Commission staff, such as documentation submitted by the claimant and documentation supporting Respondent’s decision regarding the claim. In response to any objections by Commission staff to Respondent’s handling of one or more claims, Respondent will reconsider its decision(s) in light of the objection and will provide a written explanation to Commission staff of its decision following reconsideration.

32. Within seven (7) months from the Effective Date, Respondent will submit to Commission staff a final report of its handling of all claims received under Paragraph 30 above, including all information listed in Paragraph 31 above.

33. Respondent will certify, in writing, compliance with the undertakings set forth above within 30 days of their completion. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to John Dugan, Associate Regional

Director (Enforcement), Securities and Exchange Commission, 33 Arch St., 24th Fl., Boston, MA 02110, or such other person or address as the Commission staff may provide, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

34. Respondent will retain all records and communications relating to the AirToken offering for a period of at least one year after the date it submits the certification of compliance as described in Paragraph 33 above, or until such time as otherwise required by law.

35. Respondent may apply to Commission staff for an extension of the deadlines described above before their expiration and, upon a showing of good cause by Respondent, Commission staff may, in its sole discretion, grant such extensions for whatever time period it deems appropriate.

36. In determining whether to accept the Offer, the Commission has considered these undertakings.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED that:

- A. Pursuant to Section 8A of the Securities Act, Respondent AirFox cease and desist from committing or causing any violations and any future violations of Section 5(a) and (c) of the Securities Act.
- B. Within ninety (90) days of the entry of this Order, Respondent shall pay a civil money penalty in the amount of \$250,000.00 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717. Payment must be made in one of the following ways:
 - a. Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
 - b. Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
 - c. Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch

HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying AirFox as a Respondent in this proceeding, and the file number of this proceeding; a copy of the cover letter and check or money order must be sent to John Dugan, Associate Regional Director (Enforcement), Securities and Exchange Commission, 33 Arch St., 24th Fl., Boston, MA 02110, or such other person or address as the Commission staff may provide.

Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Brent J. Fields
Secretary