



IN THE MATTER OF

DANIEL SHEEHAN

SETTLEMENT AGREEMENT

PART I – INTRODUCTION AND STAFF’S REGULATORY MESSAGE

1. During the 10-year period from September 28, 2009 to April 30, 2019 (the **Material Time**), Daniel Sheehan (**Sheehan**) raised approximately \$25 million from about 50 investors, invested that money in public equities and fixed income securities and received approximately \$21 million in compensation for these investment services. Sheehan carried on this activity through Sheehan Associates Limited Partnership (**SALP**), an Ontario limited partnership formed on September 1, 1999 with its registered office in Mississauga, Ontario.
2. During the Material Time, Sheehan was the general partner of SALP and had full power and authority to operate and make all decisions regarding the business of the limited partnership, including all investment decisions. At no time was Sheehan registered under the *Securities Act*, RSO 1990, c. S.5 (the **Act**) to engage in the business of trading or advising in securities or to act as an investment fund manager.
3. Registration is a cornerstone of Ontario securities law. The registration requirement serves an important gate-keeping function to protect investors by ensuring that only a suitable and qualified person acts as an investment fund manager or engages in the business of trading or advising in securities. Additionally, registrants under the Act are subject to a robust regulatory regime that requires applicants to submit to a detailed application process for registration as well as to ongoing oversight by the Commission and other important safeguards designed to protect investors.
4. The parties will jointly file a request that the Ontario Securities Commission (the **Commission**) issue a Notice of Hearing to announce that it will hold a hearing (the

Settlement Hearing) to consider whether, pursuant to sections 127 and 127.1 of the Act, it is in the public interest for the Commission to make certain orders against the Respondent.

PART II – JOINT SETTLEMENT RECOMMENDATION

5. Staff agree to recommend settlement of the proceeding commenced by the Notice of Hearing (the **Proceeding**) against Sheehan according to the terms and conditions set out in Part VI of this Settlement Agreement (the **Settlement Agreement**). Sheehan agrees to the making of an order in the form attached as Schedule “A” (the **Order**) to this Settlement Agreement, based on the facts set out herein.
6. For the purposes of the Proceeding, and any other regulatory proceeding commenced by a securities regulatory authority, Sheehan agrees with the facts set out in Part III and the conclusions set out in Part IV of this Settlement Agreement.

PART III – AGREED FACTS

SALP’s Structure

7. SALP’s terms and structure were governed in part by a partnership agreement (the **Partnership Agreement**) and subsequent amendments. Under the terms of the partnership set out in the Partnership Agreement, SALP’s investors became limited partners of SALP by acquiring an interest in the partnership in the form of a partnership unit (**Unit**) in exchange for the investment capital they contributed to the fund.
8. Under the terms of the Partnership Agreement, units granted investors the right to participate in any returns earned from SALP’s portfolio of securities and were redeemable at the limited partner’s written request.
9. The Partnership Agreement designated Sheehan as the general partner and all other investors as limited partners.
10. The Partnership Agreement stated the partnership was to “buy, purchase, invest in, acquire, hold, trade, sell, transfer and otherwise deal in and with, directly or indirectly, Securities”.

11. The Partnership Agreement granted Sheehan the “full, complete and exclusive right, power and authority to manage, control, administer and operate the business and affairs” of SALP and to make all decisions regarding the partnership.

Legal Advice

12. Sheehan formed SALP based upon legal advice he received in August 1999 from an experienced securities lawyer (the **Securities Lawyer**). The Securities Lawyer drafted and advised on the Partnership Agreement.
13. The Securities Lawyer advised Sheehan that SALP was a private investment club and therefore registration was not required. However, in order to qualify as a private investment club, Sheehan would not have been able to take compensation beyond normal brokerage fees for his services, which Sheehan was not advised of by the Securities Lawyer.

Investor Contributions to SALP

14. During the Material Time, Sheehan remained the General Partner of SALP which comprised approximately 35 to 50 Ontario investors at any given point in time, 3 of which were immediate family members of Sheehan.
15. During the Material Time, SALP’s limited partners made contributions to SALP totalling \$25,300,864.

SALP’s Prior Interest in Private Businesses

16. Between 2001 and 2004, SALP bought 90% of a private business. SALP sold its interest in the private business in 2008. After the sale of the private business in 2008 and throughout the Material Time, SALP did not invest any capital in private companies, but continued to look for opportunities to do so.

SALP’s Business During the Material Time

17. During the Material Time, Sheehan invested SALP’s investor capital primarily in publicly traded equities and also invested in fixed income assets and exchange-traded derivatives.

18. During the Material Time, SALP's only active investments were a portfolio of publicly-traded securities, which Sheehan managed exclusively, and for which he received compensation.

Sheehan's Compensation

19. The Partnership Agreement stated that Sheehan be paid an annual performance fee equal to 25% of all returns on partnership capital over 6%, subject to certain terms and conditions including a claw back of the performance fee so as to ensure a 6% return to the limited partners.
20. In March 2001, Sheehan proposed that if over any five-year period the value of the partnership capital had not increased by 6% compounded annually, he would return the amount of any performance-based compensation on terms that would provide limited partners with a net 6% compounded return. This proposal was approved by the limited partners. After the amendment, all gains were assigned pro-rata on the first 6% compounded annually. Any gains above 6% compounded annually were attributed 75% pro-rata and 25% to Sheehan as his compensation
21. During the Material Time, SALP always earned in excess of the minimum 6% compounded annual return over any given five-year period and therefore, Sheehan was never required to repay any of his performance-based compensation to SALP's limited partners.
22. In 2016, Sheehan introduced a further amendment to his compensation formula, reducing his compensation to 12.5% of the partnerships' returns above 6% on the first \$300,000 of the limited partners' invested capital; it remained 25% on returns above 6% on invested capital in excess of \$300,000. In 2018, Sheehan raised the capital threshold to the first \$450,000 of the limited partners' invested capital.
23. During the Material Time, Sheehan's compensation was approximately \$21 million including \$3,448,954 in compensation received from his immediate family.
24. The limited partners' percentage return and Sheehan's compensation in each year during the Material Time were as follows:

Year	Limited Partner's Percentage return	Sheehan's Compensation
2009	28.3%	\$517,810
2010	11.3%	\$400,373
2011	6.8%	\$67,342
2012	15 %	\$834,883
2013	46.8%	\$6,016,923
2014	24%	\$4,017,805
2015	15.8%	\$2,756,081
2016	10.5%	\$1,409,660
2017	21.2%	\$5,104,262
2018	3.3%	\$0
2019	13.0%	\$0 ¹
TOTAL		\$21,125,139

SALP's Operating Expenses

25. According to the Partnership Agreement, all expenses were payable out of the assets of the limited partnership. During the Material Time, SALP's operating expenses were as follows:

2019:	\$48,920
2018:	\$83,981
2017:	\$86,165
2016:	\$63,870
2015:	\$69,995
2014:	\$42,860
2013:	\$37,292
2012:	\$35,341
2011:	\$29,014
2010:	\$23,048
2009:	\$20,556

Distribution of SALP's Proceeds and Wind-Up

26. SALP has been permanently wound up. On or about April 30, 2019, Sheehan paid each of SALP's limited partners the full amount of their invested capital plus the limited

¹ In permanently winding up SALP, Sheehan waived his 2019 performance based compensation of \$2,364,577.72.

partners' proportional share of investment returns, net of Sheehan's performance-based compensation.

PART IV - CONDUCT CONTRARY TO ONTARIO SECURITIES LAW

27. Sheehan admits and acknowledges that he contravened Ontario securities law by engaging in the business of trading and advising in securities and by acting as an investment fund manager, without registration and where no exemptions were available. Such acts contravened subsections 25(1), 25(3), and 25(4) of the Act.

PART V – RESPONDENT'S POSITION

28. The Respondent intends to request, and Staff do not object, that the panel at the Settlement Hearing consider the following mitigating circumstances:
- a. Sheehan reasonably relied on the legal advice he received in 1999.
 - b. Sheehan acknowledges that he did not seek or obtain further legal advice again at any point after 1999, including in 2009 when significant amendments were made to the Act. While the Act required registration for engaging in the business of trading in and advising in securities in 1999, amendments to the Act that came into force on September 28, 2009 also required, for the first time, registration in order to act as an investment fund manager.
 - c. Sheehan did not intend to, or knowingly, act, contrary to the Act.
 - d. Sheehan did not solicit investors to SALP.
 - e. As of the date of this Settlement Agreement, Staff is not aware of any complaints from any investor in SALP.
 - f. Sheehan has provided Staff with a signed undertaking, in the form attached as Annex I to Schedule "A" to this Settlement Agreement, to not apply for registration under Ontario securities law for a period of one year following the date of the Order.

PART VI – TERMS OF SETTLEMENT

29. The Respondent agrees to the terms of settlement listed below and consents to the order in substantially the form attached hereto as Schedule "A" (the **Order**), the terms of which include that:
- a. the Settlement Agreement is approved;
 - b. Sheehan shall make a voluntary payment of \$1,600,000 to the Commission by wire transfer to the Commission before the commencement of the Settlement Hearing, which amount is designated (i) for allocation to or for the benefit of third parties or (ii) for use by the Commission for the purpose of educating investors or promoting or otherwise enhancing knowledge and information of persons regarding the operation of the securities and financial markets, in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act; and
 - c. pursuant to paragraph 1 of subsection 127.1 of the Act, Sheehan shall pay costs of the Commission's investigation in the amount of \$100,000, by wire transfer to the Commission before the commencement of the Settlement Hearing, pursuant to section 127.1 of the Act.
30. Sheehan agrees to attend at the hearing before the Commission to consider the proposed settlement by video conference.
31. Sheehan acknowledges that this Settlement Agreement and the Order may form the basis for orders of parallel effect in other jurisdictions in Canada. The securities laws of some other Canadian jurisdictions allow orders made in this matter to take effect in those other jurisdictions automatically, without further notice to the Respondent. The Respondent should contact the securities regulator of any other jurisdiction in which the Respondent intends to engage in any securities- or derivatives-related activities, prior to undertaking such activities.

PART VII – FURTHER PROCEEDINGS

32. If the Commission approves this Settlement Agreement, Staff will not commence or continue any proceeding against the Respondent under Ontario securities law based on

the misconduct described in Part III of this Settlement Agreement, unless the Respondent fails to comply with any term in this Settlement Agreement, in which case Staff may bring proceedings under Ontario securities law against the Respondent that may be based on, among other things, the facts set out in Part III of this Settlement Agreement as well as the breach of this Settlement Agreement.

33. Sheehan acknowledges that, if the Commission approves this Settlement Agreement and Sheehan fails to comply with any term in it, Staff or the Commission are entitled to bring any proceedings necessary to enforce compliance with the terms of the Settlement Agreement.
34. Sheehan waives any defences to a proceeding referred to in paragraph 32 or 33 that are based on the limitation period in the Act, provided that no such proceeding shall be commenced later than six years from the date of the occurrence of the last failure to comply with the Settlement Agreement.

PART VIII – PROCEDURE FOR APPROVAL OF SETTLEMENT

35. The parties will seek approval of this Settlement Agreement at the Settlement Hearing before the Commission, according to the procedures set out in this Settlement Agreement and the Commission's Rules of Procedure.
36. Staff and Sheehan agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the Settlement Hearing in relation to Sheehan's conduct, unless the parties agree that additional facts should be submitted at the Settlement Hearing.
37. If the Commission approves this Settlement Agreement:
 - a. Sheehan irrevocably waives all rights to a full hearing, judicial review or appeal of this matter under the Act; and
 - b. No party will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the Settlement Hearing.
38. If the Commission does not approve this Settlement Agreement at the Settlement Hearing, Staff shall return to Sheehan all funds paid by them to the Commission prior to

the Settlement hearing within seven (7) days of the Settlement Hearing or the Commission's decision not to approve this Settlement Agreement, whichever is later.

39. Whether or not the Commission approves this Settlement Agreement, Sheehan will not use, in any proceeding, this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any attack on the Commission's jurisdiction, alleged bias, alleged unfairness, or any other remedies or challenges that may otherwise be available.

PART VIII – DISCLOSURE OF SETTLEMENT AGREEMENT

40. If the Commission does not approve this Settlement Agreement or does not make an order substantially in the form of the Order attached as Schedule "A" to this Settlement Agreement:
- a. this Settlement Agreement and all discussions and negotiations between Staff and Sheehan before the Settlement Hearing takes place will be without prejudice to Staff and Sheehan; and
 - b. Staff and Sheehan will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations contained in the Statement of Allegations dated May 5, 2020. Any such proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this Settlement Agreement.
41. The parties will keep the terms of this Settlement Agreement confidential until the Commission approves the Settlement Agreement, except as is necessary to make submissions at the Settlement Hearing. If, for whatever reason, the Commission does not approve the Settlement Agreement, the terms of the Settlement Agreement shall remain confidential indefinitely, unless Staff and the Respondent otherwise agree in writing or if required by law.

PART IX – EXECUTION OF SETTLEMENT AGREEMENT

42. This Settlement Agreement may be signed in one or more counterparts which, together, constitute a binding agreement.
43. An electronic copy of any signature will be as effective as an original signature.

DATED at this 30th day of September, 2021.

“Kristy Sheehan”
Witness:

Name: Kristy Sheehan
Title:

“Daniel Sheehan”
DANIEL SHEEHAN

DATED at Toronto, Ontario, this 4th day of October, 2021.

ONTARIO SECURITIES COMMISSION

By: “Jeff Kehoe”
Name: Jeff Kehoe
Title: Director, Enforcement Branch

Schedule "A"



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 ouest
Toronto ON M5H 3S8

IN THE MATTER OF DANIEL SHEEHAN

Wendy Berman, Vice-Chair and Chair of the Panel

File No. 2020-38

[Date]

ORDER

(Sections 127 and 127.1 of the
Securities Act, RSO 1990, c S.5)

WHEREAS on September X, 2021, the Ontario Securities Commission (the **Commission**) held a hearing by video conference to consider the request made jointly by Daniel Sheehan (**Sheehan**) and Staff of the Commission (**Staff**) for approval of a settlement agreement dated September X, 2021 (the **Settlement Agreement**);

ON READING the Joint Application for Settlement Hearing, including the Statement of Allegations dated November 3, 2020 and the Settlement Agreement, and the written submissions of Staff, and on hearing the submissions of Staff and the representative for Sheehan, and on considering Sheehan having made payment of each of \$1,600,000 and \$100,000 to the Commission in accordance with the terms of the Settlement Agreement and on considering the undertaking of Sheehan dated September X, 2021 and attached as Schedule "A" to this Order;

IT IS ORDERED THAT:

1. the Settlement Agreement is approved;
2. The voluntary payment of \$1,600,000 made by Sheehan to the Commission is designated for allocation or use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act;
3. Sheehan shall pay costs of the Commissions investigation in the amount of \$100,000, pursuant to section 127.1 of the Act.

Wendy Berman

ANNEX I

**IN THE MATTER OF
DANIEL SHEEHAN**

UNDERTAKING TO THE ONTARIO SECURITIES COMMISSION

1. This Undertaking is given in connection with the settlement agreement dated September X, 2021 (the **Settlement Agreement**) between Daniel Sheehan (**Sheehan**) and staff (**Staff**) of the Ontario Securities Commission (the **Commission**). All terms shall have the same meanings in this Undertaking as in the Settlement Agreement.
2. Sheehan undertakes to the Commission to:
 - (a) not apply for registration for a period of one year following the date of the Order approving the Settlement Agreement.

Dated at Mississauga, Ontario this 27th day of August, 2021.

"Daniel Sheehan"

Daniel Sheehan