

**IN THE MATTER OF THE SECURITIES ACT
R.S.O. 1990, c. S.5, AS AMENDED**

- and -

**IN THE MATTER OF
ROBERT THOMISLAV ADZIJA, LARRY ALLEN AYRES, DAVID ARTHUR
BENDING, MARLENE BERRY, DOUGLAS CROSS, ALLAN JOSEPH DORSEY,
ALLAN EIZENGA, GUY FANGEAT, RICHARD JULES FANGEAT, MICHAEL
HERSEY, GEORGE EDWARD HOLMES, TODD MICHAEL JOHNSTON, MICHAEL
THOMAS PETER KENNELLY, JOHN DOUGLAS KIRBY, ERNEST KISS,
ARTHUR KRICK, FRANK ALAN LATAM, BRIAN LAWRENCE, LUKE JOHN
MCGEE, RON MASSCHAELE, JOHN NEWMAN, RANDALL NOVAK, NORMAND
RIOPELLE, ROBERT LOUIS RIZZUTO AND MICHAEL VAUGHAN**

**SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION
AND TODD MICHAEL JOHNSTON**

I. INTRODUCTION

1. By Notice of Hearing dated September 24, 1998 (the "Notice of Hearing"), the Ontario Securities Commission (the "Commission") announced that it proposed to hold a hearing to consider, among other things:

- (a) whether, pursuant to subsection 127(1) of the *Securities Act*, R.S.O. 1990, c. S.5 (the "Act"), it is in the public interest for the Commission to make an order that the exemptions contained in Ontario securities law do not apply to the respondent Todd Michael Johnston ("Johnston") permanently or for such time as the Commission may direct; and
- (b) such other orders as the Commission deems appropriate.

2. By Temporary Order dated September 24, 1998, the Commission ordered that trading in securities by Johnston cease immediately except for trades in mutual fund securities and trades for his personal account (the "Temporary Order"). The Temporary Order was extended by Commission Orders dated October 9, 1998 and February 4, 1999.

II. JOINT SETTLEMENT RECOMMENDATION

3. Staff of the Commission ("Staff") agrees to recommend settlement of the proceeding respecting Johnston initiated by the Notice of Hearing in accordance with the terms and conditions set out below. Johnston consents to the making of an order against him in the form attached as Schedule "A" based on the facts set out in Part III of this Settlement Agreement.

III. STATEMENT OF FACTS

Acknowledgement

4. Solely for the purposes of this proceeding, and of any other proceeding commenced by a securities regulatory agency, Staff and Johnston agree with the facts set out in paragraphs 5 through 18 of this Settlement Agreement.

Facts

5. Saxton Investment Ltd. ("Saxton") was incorporated on January 13, 1995. The respondent Allan Eizenga ("Eizenga") was Saxton's registered director. Saxton and Eizenga established numerous offering corporations, as listed below (the "Offering Corporations").

The Saxton Trading Corp.
The Saxton Export Corp.
The Saxton Export (II) Corp.
The Saxton Export (III) Corp.
The Saxton Export (IV) Corp.
The Saxton Export (V) Corp.
The Saxton Export (VI) Corp.
The Saxton Export (VII) Corp.
The Saxton Export (VIII) Corp.
The Saxton Export (IX) Corp.
The Saxton Export (X) Corp.
The Saxton Export (XI) Corp.
The Saxton Export (XII) Corp.
The Saxton Export (XIII) Corp.
The Saxton Export (XIV) Corp.
The Saxton Export (XV) Corp.
The Saxton Export (XVI) Corp.
The Saxton Export (XVII) Corp.
The Saxton Export (XVIII) Corp.
The Saxton Export (XIX) Corp.
The Saxton Export (XX) Corp.

The Saxton Export (XXI) Corp.
The Saxton Export (XXII) Corp.
The Saxton Export (XXIII) Corp.
The Saxton Export (XXIV) Corp.
The Saxton Export (XXV) Corp.
The Saxton Export (XXVI) Corp.
The Saxton Export (XXVII) Corp.
The Saxton Export (XXVIII) Corp.
The Saxton Export (XXIX) Corp.
The Saxton Export (XXX) Corp.
The Saxton Export (XXXI) Corp.
The Saxton Export (XXXII) Corp.
The Saxton Export (XXXIII) Corp.
The Saxton Export (XXXIV) Corp.
The Saxton Export (XXXV) Corp.
The Saxton Export (XXXVI) Corp.
The Saxton Export (XXXVII) Corp.
The Saxton Export (XXXVIII) Corp.

6. Saxton and the Offering Corporations represented to the public that they were investing in businesses in Cuba and other Caribbean companies.

7. On or about October 7, 1998, the Court appointed KPMG Inc. (“KPMG”) as the custodian of Saxton’s assets. In early 1999, KPMG reported that the Offering Corporations had raised approximately \$37 million from investors. All funds invested in the Offering Corporations had been transferred to Saxton. At that time, KPMG held the view that the value of the Saxton assets, at its highest (as reported by related companies), was approximately \$5.5 million.

8. Johnston became registered with the Commission under the Act to sell mutual fund securities in January 1997. As of June 23, 1998, Johnston was registered with the Commission to sell limited market products. Johnston has not been registered since January 20, 2001.

9. Between December 1996 and June 1998, Johnston sold to Ontario investors securities of one or more of the Offering Corporations (the “Saxton Securities”). Johnston sold the Saxton Securities to 3 Ontario investors for a total amount sold of approximately \$311,900. With respect to the third investor, Johnston recommended against buying the Saxton Securities. Notwithstanding this recommendation, Johnston’s client choose to purchase approximately \$150,000 of the Securities.

10. When Johnston made his first sale of the Saxton Securities, he was not registered with the Commission. Johnston was registered to sell only mutual fund securities when he made his second sale of the Saxton Securities.

11. All of the Offering Corporations were incorporated pursuant to the laws of Ontario. Johnston’s sales of the Saxton Securities constituted trades in securities of an issuer that had not been previously issued.

12. None of the Offering Corporations filed a prospectus with the Commission. By selling the Saxton Securities to his clients, Johnston traded in securities, which trades were distributions, without a prospectus being filed or receipted by the Commission and with no exemption from the prospectus requirements of Ontario securities law being available.
13. With respect to his first sale of Saxton securities, Johnston traded in securities without being registered with the Commission and with no exemption from the registration requirements being available to him.
14. Johnston received commissions of approximately \$15,600 on the sales described in paragraph 9 above.
15. Although Johnston informed his clients that an investment in the Saxton Securities was speculative, he failed to adequately assess the suitability of his clients' investments in such Securities. Moreover, in one case, Johnston advised a retired client to invest the majority of his portfolio in the Saxton Securities.
16. Johnston failed to inform his sponsoring firm that he was selling the Saxton Securities.
17. Johnston's conduct in selling the Saxton Securities was contrary to Ontario securities law and the public interest.
18. Johnston co-operated with the Commission's investigation respecting the sale of Saxton Securities.

IV TERMS OF SETTLEMENT

19. Johnston agrees to the following terms of settlement:
 - (a) the making of an order:
 - (i) approving this settlement;
 - (ii) that trading in any securities by Johnston cease for nine months;
 - (iii) reprimanding Johnston; and
 - (iv) that the Temporary Order no longer has any force or effect.
 - (b) Johnston will undertake to the Commission that within six months of applying to the Commission for registration he will successfully complete the Canadian Securities Course and the Conduct and Practices Handbook Course.

V. STAFF COMMITMENT

20. If this settlement is approved by the Commission, Staff will not initiate any other proceeding under the Act against Johnston in relation to the facts set out in Part III of this Settlement Agreement.

VI. APPROVAL OF SETTLEMENT

21. Approval of the settlement set out in this Settlement Agreement shall be sought at the public hearing of the Commission scheduled for August 8, 2002, or such other date as may be agreed to by Staff and Johnston (the "Settlement Hearing"). Johnston will attend in person at the Settlement Hearing.

22. Counsel for Staff or Johnston may refer to any part, or all, of this Settlement Agreement at the Settlement Hearing. Staff and Johnston agree that this Settlement Agreement will constitute the entirety of the evidence to be submitted at the Settlement Hearing.

23. If this settlement is approved by the Commission, Johnston agrees to waive his rights to a full hearing, judicial review or appeal of the matter under the Act.

24. Staff and Johnston agree that if this settlement is approved by the Commission, they will not make any public statement inconsistent with this Settlement Agreement.

25. If, for any reason whatsoever, this settlement is not approved by the Commission, or an order in the form attached as Schedule "A" is not made by the Commission:

- (a) this Settlement Agreement and its terms, including all discussions and negotiations between Staff and Johnston leading up to its presentation at the Settlement Hearing, shall be without prejudice to Staff and Johnston;
- (b) Staff and Johnston shall be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations in the Notice of Hearing and Statement of Allegations of Staff, unaffected by this Agreement or the settlement discussions/negotiations;
- (c) the terms of this Settlement Agreement will not be referred to in any subsequent proceeding, or disclosed to any person, except with the written consent of Staff and Johnston or as may be required by law; and
- (d) Johnston agrees that he will not, in any proceeding, refer to or rely upon this Settlement Agreement, the settlement discussions/negotiations or the process of approval of this Settlement Agreement as the basis for any attack on the Commission's jurisdiction, alleged bias or appearance of

bias, alleged unfairness or any other remedies or challenges that may otherwise be available.

VII. DISCLOSURE OF SETTLEMENT AGREEMENT

26. Except as permitted under paragraph 22 above, this Settlement Agreement and its terms will be treated as confidential by Staff and Johnston until approved by the Commission, and forever, if for any reason whatsoever this settlement is not approved by the Commission, except with the consent of Staff and Johnston, or as may be required by law.

27. Any obligations of confidentiality shall terminate upon approval of this settlement by the Commission.

VIII. EXECUTION OF SETTLEMENT AGREEMENT

28. This Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement.

29. A facsimile copy of any signature shall be as effective as an original signature.

DATED this 26th day of July, 2002

WITNESS

TODD MICHAEL JOHNSTON

DATED this 2nd day of August, 2002

**STAFF OF THE ONTARIO
SECURITIES COMMISSION**

MICHAEL WATSON
Director, Enforcement Branch