

**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 RANDALL NOVAK**

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 Randall Novak ("Novak") 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 Novak 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 Novak initiated by the Notice of Hearing in accordance with the terms and conditions set out below. Novak 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 Novak 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. Novak became registered with the Commission under the Act to sell mutual fund securities and limited market products in July 1994.

9. Between July 1996 and May 1998, Novak sold to Ontario investors securities of one or more of the Offering Corporations (the “Saxton Securities”). Novak sold the Saxton Securities to 33 Ontario investors for a total amount sold of approximately \$1,030,000.

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

11. None of the Offering Corporations filed a prospectus with the Commission. By selling the Saxton Securities to his clients, Novak traded in securities, which trades were distributions, without a prospectus being filed or receipted by the Commission and with no available exemption from the prospectus requirements of Ontario securities law.

12. Novak failed to provide his clients with access to substantially the same information concerning the Saxton Securities that a prospectus filed under the Act would provide. None of his clients received an Offering Memorandum prior to purchasing the Saxton Securities. The only documentation provided to clients by Novak was vague promotional material prepared by Saxton.

13. Novak failed to inform his sponsoring firm that he was selling the Saxton Securities.

14. Novak failed to adequately assess the suitability of his clients' investments in the Saxton Securities. Among other things, he did not have a sufficient understanding of the Saxton products to evaluate effectively the risk to his clients in purchasing the Saxton Securities.

15. Novak received commissions of approximately \$50,000 on the sales described in paragraph 9 above. He was promised by Saxton, and expected to receive, on-going trailer fees on such sales.

16. Novak's conduct was contrary to Ontario securities law and the public interest.

17. Novak informs Staff that:

(a) prior to selling the Saxton Securities, he met with the respondent Luke McGee ("McGee"). McGee was part of the Saxton management and a lawyer by training. McGee represented to Novak that the investment products offered by Saxton were exempt from the prospectus and registration requirements under the Act;

(b) he believed Saxton operated a legitimate, profitable business. In this regard, Novak relied on the representations of McGee and other Saxton principals concerning the nature and financial stability of Saxton's business and the nature and quality of the investment products offered by Saxton. Novak, however, never reviewed any Saxton financial statements and never made inquiries of any one independent of Saxton; and

(c) he invested approximately \$41,000 in the Saxton Securities.

18. Novak co-operated with the Commission's investigation respecting the sale of Saxton Securities.

IV. TERMS OF SETTLEMENT

19. Novak agrees to the following terms of settlement:

(a) the making of an order:

- (i) approving this settlement;
- (ii) suspending Novak's registration with the Commission for eight months;
- (iii) that trading in any securities by Novak cease for eight months;
- (iv) that Novak must successfully complete the Canadian Securities Course in order for his registration to be reinstated following the suspension;
- (v) reprimanding Novak;
- (vi) that the Temporary Order no longer has any force or effect; and
- (vii) that Novak will pay costs to the Commission in the amount of \$2,500.

V. STAFF COMMITMENT

20. If this settlement is approved by the Commission, Staff will not initiate any other proceeding under the Act against Novak 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 Novak (the "Settlement Hearing"). Novak will attend in person at the Settlement Hearing.

22. Counsel for Staff or Novak may refer to any part, or all, of this Settlement Agreement at the Settlement Hearing. Staff and Novak 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, Novak agrees to waive his rights to a full hearing, judicial review or appeal of the matter under the Act.

24. Staff and Novak 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 Novak leading up to its presentation at the Settlement Hearing, shall be without prejudice to Staff and Novak;
- (b) Staff and Novak 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 Novak or as may be required by law; and
- (d) Novak 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 Novak 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 Novak, 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 2nd day of August, 2002

WITNESS

RANDALL NOVAK

DATED this 6th day of August, 2002

**STAFF OF THE ONTARIO
SECURITIES COMMISSION**

MICHAEL WATSON
Director, Enforcement Branch