IN THE MATTER OF THE SECURITIES ACT, R.S.O. 1990, c. S.5, as amended and IN THE MATTER OF THE COMMODITY FUTURES ACT, R.S.O. 1990, c. C. 20, as amended

-AND -

IN THE MATTER OF PHOENIX RESEARCH AND TRADING CORPORATION, RONALD MOCK AND STEPHEN DUTHIE

SETTLEMENT AGREEMENT BETWEEN STAFF OF THE ONTARIO SECURITIES COMMISSION AND RONALD MOCK

I. INTRODUCTION

1. By Amended Amended Notice of Hearing dated March 11, 2003 (the "Notice of Hearing"), the Ontario Securities Commission (the "Commission") announced that it proposed to hold a hearing against Ronald Mock ("Mock") to consider, among other things:

(a) whether pursuant to sections 127 and 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:

(i) that the registration of Mock be terminated or restricted or that terms and conditions be imposed on his registration;

(ii) that trading in any securities by Mock cease permanently or for such period as specified by the Commission;

(iii) that Mock be prohibited from becoming an officer or director of any issuer permanently or for some other time specified by the Commission;

(iv) reprimanding Mock;

(v) requiring Mock to pay the costs of the Commission's investigation and the hearing; and

(vi) encompassing such other terms and conditions as the Commission may deem appropriate; and

(b) whether, pursuant to sections 60 and 60.1 of the *Commodity Futures Act*, R.S.O. 1990, c. C.20 it is in the public interest for the Commission to make an order:

(i) that Mock's registration be terminated or restricted or that terms and conditions be imposed on his registration;

(ii) that the exemptions contained in Ontario commodity futures law do not apply to Mock permanently or for such period as specified by the Commission;

(iii) reprimanding Mock;

(iv) requiring Mock to pay the costs of the Commission's investigation and the hearing; and

(v) encompassing such other terms and conditions as the Commission may deem appropriate.

II. JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission ("Staff") agrees to recommend settlement of the proceeding initiated in respect of Mock by the Notice of Hearing in accordance with the terms and conditions set out below. Mock 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

3. Solely for the purposes of this proceeding, and of any other proceeding commenced by a securities regulatory agency, Staff and Mock agree with the facts set out in paragraphs 4 through 41.

Facts

(a) Mock

4. Mock became registered with the Commission pursuant to the Act on October 22, 1987 as a salesperson, on September 3, 1987 as a director and salesperson and on February 3, 1994 as a portfolio manager.

5. Commencing March 6, 1995, Mock was Phoenix Research and Trading Corporation's registered Supervisory Procedures Officer pursuant to the Act.

6. Pursuant to the *Commodity Futures Act*, Mock was registered with Phoenix Research Trading and Corporation ("Phoenix Canada"), an advisor in the category of Commodity Trading Manager, as an advising officer from March 7, 1995 to May 30, 2000.

7. Mock's registrations under the Act and *Commodity Futures Act* were suspended on May 30, 2000 due to Phoenix Canada's inability to meet the conditions for registration renewal namely to file audited financial statements and maintain insurance.

(b) The Phoenix Group

8. The Phoenix Group was a hedge fund management group. The Group was structured as a master/feeder fund arrangement. Unitholders invested in the "feeder" funds. In turn, the feeder funds (and other investors) purchased units in the "master" funds. The Phoenix Fixed Income Arbitrage Limited Partnership ("PFIA LP") was a hedge fund and one of the Group's "master" funds.

9. Phoenix Canada was established in 1994 as a specialty hedge fund asset manager. Phoenix Research and Trading (Bermuda) Limited ("Phoenix Bermuda") is a wholly-owned subsidiary of Phoenix Canada. Commencing in or about late 1995, and pursuant to an arrangement between Phoenix Bermuda and Phoenix Canada which ultimately was formalized in a Services Agreement dated June 15, 1999 (the "Services Agreement"), Phoenix Canada provided investment advisory and portfolio management services to, among others, the Phoenix Group's feeder and master funds, including PFIA LP.

10. The Phoenix Hedge Fund Limited Partnership was a hedge fund listed on the TSE in or about July 1997 (the "Phoenix TSE fund"). Phoenix Canada provided portfolio management services to the Phoenix TSE fund. The Phoenix TSE fund purchased, among other things, units of PFIA LP.

11. Mock was Phoenix Canada's CEO and President and the company's registered supervisory procedures officer for fixed income activity. Mock was responsible for all Phoenix Canada's fixed income business, including that of PFIA LP.

12. During the material time, Phoenix Canada comprised fourteen individuals, nine of whom were involved in PFIA LP's fixed income activities. In heading PFIA LP, Mock managed the operations group comprising the CFO, the operations manager and the settlement clerk. The fixed income traders, including Stephen Duthie ("Duthie"), and the Research and Risk Manager reported to Mock. Duthie has never been registered with the Commission.

13. PFIA LP was established to provide investors with professionally managed market neutral and arbitrage investment trading strategies generally designed to minimize exposure to market direction investment.

14. In this regard, the Services Agreement enumerated PFIA LP's approved fixed income trades, investment restrictions and risk control guidelines. Pursuant to such Agreement, at the end of each business day Phoenix Canada was obliged to review the positions taken and the assets held by PFIA LP to ensure compliance with the investment guidelines/restrictions and risk control guidelines. Mock failed to fulfill this obligation on behalf of Phoenix Canada.

15. In the spring of 1998, Duthie became the trader for PFIA LP's U.S. portfolio under the direct supervision of Mock. At this time, Duthie had less than one year's experience as a fixed income arbitrage trader.

16. In late 1998 and throughout 1999, PFIA LP (through trading by Duthie) held long positions in various U.S. benchmark treasuries (the "UST Notes") including 6% U.S. treasury notes due August 15, 2009. All the UST Notes were confirmed and settled by Phoenix Canada's back office operations staff.

17. Duthie's trading in the UST Notes was directional, unhedged and contravened PFIA LP's investment parameters (in concentration, size, length of time held and value at risk). The UST Notes were highly unsuitable investments for PFIA LP and other Phoenix Canada clients.

18. PFIA LP's long position in 6% U.S. treasury notes due August 15, 2009 (the "August 2009's") increased from US$181 million on August 12, 1999 to US$3.3 billion on December 31, 1999. By mid-November 1999, the August 2009's represented PFIA LP's entire U.S. portfolio. By December 31, 1999, the August 2009's constituted approximately 80% of PFIA LP's total assets.

19. The Bank of New York informed Phoenix Canada on January 4, 2000 that the latter was in an overdraft position in excess of US$50 million. The August 2009's caused the overdraft. Phoenix Canada liquidated all of PFIA LP's assets. PFIA LP collapsed when it sustained a loss in excess of US$125 million.

20. All Phoenix unitholders who had a direct investment in PFIA LP, and the TSE Phoenix fund shareholders, were detrimentally impacted by PFIA LP's collapse.

(c) Mock's Misconduct

21. From the fall of 1998 through the end of 1999, on the face of the on-line trading screens and daily trade blotters reviewed regularly by Mock, Duthie was engaged in directional and unhedged trading of U.S. treasuries which fell well outside PFIA LP's investment parameters.

22. By mid-November 1999, the size, concentration and value at risk ("VAR") of the August 2009's greatly exceeded PFIA LP's investment parameters. As at December 31, 1999, the position was seven times the allowable VAR and had directional exposure in excess of US$2 million per basis point.

23. Further, Phoenix Canada's December 1999 trade blotters showed the purchase of US$108 million worth of long bonds which were held several days despite being coded on the blotters as intra-day trades. These bonds contravened PFIA LP's investment parameters.

24. The UST Notes and the August 2009's were never marked to market. Because of the misstated prices attributed to the August 2009's, as at November 30, 1999, PFIA LP's U.S. portfolio was overvalued by almost US$47 million. As at December 31, 1999, the inaccurate pricing resulted in PFIA LP's U.S. portfolio being overvalued by more than US$80 million. Mock never checked Duthie's inputted prices.

25. Mock's failure to supervise Duthie in any meaningful way resulted in Duthie's trading of the UST Notes and accumulation of the August 2009's. This failure was material to the collapse of PFIA LP.

26. Mock takes the position and represents to Staff that, between the fall of 1998 and December 1999, he believed that Duthie was engaged in a matched book trading strategy of repurchase agreements ("repos") and open reverse repos such that the UST Notes were reverse repo'd in bonds rather than outright bond purchases (the "purported open reverse repos").

27. Mock takes the position and represents to Staff that his belief was based on oral representations made by Duthie. Mock's belief was contrary to the books and records of Phoenix Canada.

28. Notwithstanding Mock's belief, his supervision of Duthie, a trader with just over one year of fixed income arbitrage trading experience, was wholly inadequate. The nature of Duthie's trading activities should have been readily ascertainable by Mock.

29. Further, Mock permitted and acquiesced to the generation of books and records that were contrary to his belief. The purported open reverse repo transactions were recorded/reported as outright bond purchases in Phoenix Canada's:

(a) back office computer system (Alydia);
(b) daily trade blotters;
(c) settlement reports;
(d) VAR reports;
(e) collateral reports;
(f) trial balances;
(g) profit and loss statements;
(h) general ledger accounts; and
(i) net asset value reports.

30. Mock did not check the existence of any of the purported open reverse repos. He never asked for, nor reviewed, a "Bloomberg" or any other third party source document respecting the purported open reverse repos. This was so even in the face of a November 1999 collateral report which indicated that Duthie could not have been engaged in a matched book strategy of repos and open reverse repos to the extent Mock says he believed he was.

31. Mock permitted and acquiesced in the implementation of unreliable controls and procedures and inadequate segregation of duties relating to the purported open reverse repo transactions.

32. With Mock's approval, the VAR reports and the profit and loss ("P & L") statements were manually adjusted. Mock failed to ensure that the manual adjustments were confirmed or supported by third party source documentation. Since Mock had no way to validate the existence of the purported open reverse repos, the repo rate and the interest income accrual, the VAR reports and P & L statements were fundamentally flawed and unreliable. Accordingly, Mock's reliance on these documents was inappropriate.

33. Further, based on Mock's belief, the P & L, trial balances and general ledgers misstated Duthie's position and the related income.

34. The safeguards typically afforded by the confirmation and settlement processes were rendered ineffective since Mock did not ensure that the operations manager and settlement clerk were aware of his belief concerning the UST Notes. They had no knowledge of the purported open reverse repo transactions.

35. If Mock had walked once through the process respecting a purported open reverse repo transaction to ensure that the trade capture, trade confirmation, trade settlement, risk assessment and accounting processes in place were appropriate and reliable, the $3.3 billion long bond position would not have accumulated.

36. After being informed of the overdraft position, it took Mock little time to determine that the August 2009's were a long bond position and not open reverse repo transactions as he states he had believed.

37. By failing to ensure that Duthie complied with PFIA LP's investment objectives and restrictions, Mock did not act in the best interests of PFIA LP and other Phoenix Canada clients.

38. Mock further compromised the interests of PFIA LP and other Phoenix Canada clients by allowing the reporting of information concerning PFIA LP's trading activities that was inaccurate and misleading (based on his belief) to unitholders, Phoenix Bermuda and the Bank of Bermuda. Accordingly, the Bank of Bermuda (Phoenix Canada's administrator and custodian) was hindered from fulfilling properly its role as a "check and balance" for Phoenix Canada.

39. Duthie, in advising PFIA LP respecting the investing in and the buying or selling of securities, was engaged in registerable activity. Mock failed to take steps to ensure that Duthie was so registered with the Commission.

40. Mock's conduct was contrary to Ontario securities law and the public interest.

41. Mock promptly reported the impending collapse of PFIA LP to the Commission and co-operated with Staff throughout its investigation.

IV. MOCK'S POSITION

42. Mock takes the position and represents to Staff that:

(a) He believed that Duthie's inputted prices were being independently checked by the operations group and the Bank of Bermuda. Mock acknowledges that he did not verify that this was being done;

(b) Phoenix Canada's CFO and its Research and Risk Manager believed that Duthie was engaged in a matched book trading strategy of repos and reverse repos such that the UST Notes were reverse repo'd in bonds rather than outright bond purchases. With the approval of Mock and based only on the oral representations of Duthie, the Risk Manager manually adjusted the VAR reports by assigning the symbol "USTDS" to the UST Notes and assessing their risk as short term notes; and

(c) He and his family suffered serious financial losses as a result of the collapse of PFIA LP and the wind-up of Phoenix Canada.

V. TERMS OF SETTLEMENT

43. Mock agrees to the following terms of settlement:

(a) The making of an Order:

(i) approving this Settlement Agreement;

(ii) terminating Mock's registrations under the Act and the *Commodity Futures Act*;

(iii) prohibiting Mock from becoming or acting as a director or officer of any issuer for 6 years;

(iv) reprimanding Mock; and

(v) requiring Mock to pay investigation costs in the amount of $45,000.

(b) Mock will undertake to the Commission in writing that he will not apply for registration under the Act or the *Commodity Futures Act* in any capacity for 5 years;

(c) Mock will undertake to the Commission in writing that he will not hold any position which entails supervising a registrant within the meaning of the Act for 6 years;

(d) Within one year prior to applying for registration with the Commission, Mock will write and pass the Partners, Directors and Officers (PDO) Examination; and

(e) If Mock becomes registered with the Commission, he agrees to be subject to supervision for one year as a term and condition of his registration.

VI. STAFF COMMITMENT

44. If this Settlement Agreement is approved by the Commission, Staff will not initiate any proceeding under Ontario securities law respecting any conduct or alleged conduct of Mock in relation to the facts set out in Part III of this Settlement Agreement subject to the provisions of paragraph 45 below.

45. If the Settlement Agreement is approved by the Commission and at any subsequent time Mock fails to honour the undertakings contained in subparagraphs 43(b), (c) and (d) above, Staff reserves the right to bring proceedings under Ontario securities law against Mock based on the facts set out in Part III of the Settlement Agreement and the breach of the undertakings.

VII. APPROVAL OF SETTLEMENT

46. Approval of the settlement set out in this Settlement Agreement shall be sought at the public hearing of the Commission scheduled for April 9, 2003 or such other date as may be agreed to by Staff and Mock (the "Settlement Hearing") in accordance with the procedures described in this Settlement Agreement. Mock will attend the Settlement Hearing in person.

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

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

49. Staff and Mock agree that if this settlement is approved by the Commission, neither Staff nor Mock will make any public statement inconsistent with this Settlement Agreement.

50. 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 Mock leading up to its presentation at the Settlement Hearing, shall be without prejudice to Staff and Mock;

(b) Staff and Mock 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 Settlement 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 Mock, or as may be required by law; and

(d) Mock 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 of 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.

VIII. DISCLOSURE OF SETTLEMENT AGREEMENT

51. Subject to paragraph 47 above, this Settlement Agreement and its terms will be treated as confidential by Staff and Mock until approved by the Commission, and forever if, for any reason

whatsoever, this settlement is not approved by the Commission, except with the written consent of Staff and Mock, or as may be required by law.

52. Any obligations of confidentiality shall terminate upon approval of this Settlement Agreement by the Commission.

IX. EXECUTION OF SETTLEMENT AGREEMENT

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

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

DATED this 7th day of April 2003

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RONALD MOCK

DATED this 8th day of April 2003

STAFF OF THE
ONTARIO SECURITIES COMMISSION

(Per) "Michael Watson"
Michael Watson
Director, Enforcement Branch