

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

- and -

**IN THE MATTER OF
PATRICK FRASER KENYON PIERREPONT LETT,
MILEHOUSE INVESTMENT MANAGEMENT LIMITED,
PIERREPONT TRADING INC.,
BMO NESBITT BURNS INC., JOHN STEVEN HAWKYARD
AND JOHN CRAIG DUNN**

**SETTLEMENT AGREEMENT
OF
JOHN STEVEN HAWKYARD**

I. INTRODUCTION

1. By Notice of Hearing dated September 18, 2002, the Ontario Securities Commission announced that it proposed to hold a hearing to consider whether, pursuant to sections 127(1) and 127.1 of the *Securities Act*, as amended it is in the public interest for the Commission:

- (a) to make an order that the registration of Hawkyard be suspended for a period of time;
- (b) to make an order that Hawkyard be reprimanded; and,
- (c) to make an order that the respondent Hawkyard pay costs to the Commission.

II. JOINT SETTLEMENT RECOMMENDATION

2. Staff recommends settlement of the proceeding initiated in respect of the respondent Hawkyard by the Notice of Hearing in accordance with the terms and conditions set out below. Hawkyard agrees to the settlement on the basis of the facts agreed to as provided in Part III and

consents to the making of an Order in the form attached as Schedule "A" on the basis of the facts set out below.

III. FACTS

Acknowledgement

3. Staff and the respondent agree with the facts and conclusions set out in Part III of the Settlement Agreement, except in relation to paragraph 11 of which the Respondent has no knowledge. While Hawkyard has no knowledge of the facts set out in this paragraph, Hawkyard accepts that Staff has evidence that supports these allegations.

The Parties

4. The conduct of Hawkyard that is the subject matter of this settlement agreement occurred between January 1996 and April 1998.

5. Patrick Fraser Kenyon Pierrepont Lett is an individual residing in Ontario and is, and was, between the material period, the President, a Director and the directing mind of Milehouse Investment Management Limited and Pierrepont Trading Inc. (collectively referred to as the "Companies").

6. Each of the Companies is incorporated under the laws of Ontario. Neither of the Companies has been registered in any capacity under the Act.

7. BMO Nesbitt Burns Inc. is registered as a Broker/Investment Dealer under the Act.

8. John Craig Dunn was registered under the Act from October 1994 to August 2002 as a trading officer with Nesbitt at its branch located at 1 Robert Speck Parkway, Mississauga, Ontario. From July 1986 to February 2002, Dunn was the Branch Manager of the Nesbitt branch located at 1 Robert Speck Parkway, Mississauga, Ontario.

9. John Steven Hawkyard was registered under the Act from October 1989 to April 1997 as a salesperson of Bank of Montreal Investment Management Limited, a dealer in the category of Mutual Fund Dealer. From March 1996 to April 1997, Hawkyard was the Manager of the Bank of Montreal - Private Banking Services Branch located at 1 Robert Speck Parkway, Mississauga, Ontario.

10. From November 1997 to August 2002, Hawkyard was registered as a salesperson of Nesbitt working out of the Nesbitt branch located at 1 Robert Speck Parkway, Mississauga, Ontario, the branch which was managed by Dunn. The Nesbitt branch was located in the same building and adjacent to the Bank of Montreal branch.

Proof of Funds Letters

11. In late 1995, Lett opened accounts in the name of Milehouse at the Nesbitt branch located at 1 Robert Speck Parkway in Mississauga. Lett also opened an account in the name of Pierrepont Trading Inc. at the Nesbitt Mississauga branch. Dunn was the Investment Advisor responsible for the Milehouse and Pierrepont accounts.

12. Dunn introduced Lett to Hawkyard as a client with a substantial net worth who was embarking on a trading program. Lett also opened bank accounts at the Bank of Montreal branch located at 1 Robert Speck in Mississauga.

13. Approximately US \$21 million was deposited into the accounts of Milehouse and Pierrepont at Nesbitt and the Milehouse account at the Bank of Montreal for the purpose of investing in an intended trading program. Hawkyard was not given particulars of the proposed transaction. Both Dunn and Lett advised Hawkyard that they expected a substantial profit would be earned by Lett from one of these transactions.

14. Between January 1996 and October 1999, Dunn provided and caused others to provide Lett with approximately 18 letters that contained inaccurate representations (referred to as the

“Proof of Funds Letters”) regarding the accounts of Milehouse and Pierrepont at Nesbitt (referred to collectively as the “Lett Accounts”).

15. The Proof of Funds Letters contained the following inaccurate representations regarding the Lett Accounts:

INACCURATE REPRESENTATION		FACT
i)	The letters indicated that, as of a certain date, a stated amount of money (ranging from US \$10 million to US \$100 million) was in the Lett Accounts or was available in the Lett Accounts.	In all cases, the stated amount of money was not in the Lett Accounts.
ii)	Some of the letters indicated that, for a period of time, the stated amount of money would be “held” in the Lett Accounts.	Nesbitt did not have a mechanism to place a “hold” on funds in a client account.
iii)	Some of the letters attested to the legitimacy of the funds; for example, the letters stated that the funds were “clear”, “clean” “of non-criminal origin”, “unencumbered” or “legitimately earned or obtained”.	Hawkyard did not attempt to verify the source of the funds that were deposited into the Lett accounts.

16. Fifteen of the Proof of Funds Letters were written on Bank of Montreal letterhead. Hawkyard was asked to sign approximately seven of these Proof of Funds letters, three during the time he was employed at Nesbitt, under Dunn’s direct supervision. Hawkyard also provided two unsigned Proof of Fund Letters to Lett. At the request of Lett, Dunn or Hawkyard, the Assistant Manager at the Bank of Montreal branch in Mississauga also signed Proof of Funds Letters. Lett provided draft wording for these letters.

17. Hawkyard was told by Dunn and Lett that the letters confirmed Lett’s ability to purchase on margin a bank instrument or guarantee. Dunn and Lett advised Hawkyard that the letters had to be issued on Bank of Montreal letterhead, rather than on Nesbitt letterhead, as it was more widely recognized in Europe.

18. Dunn or Lett represented to Hawkyard that the Proof of Funds Letters would be provided to third parties in support of the purchase on margin of a bank guarantee or debenture, issued by a foreign bank, through the Lett Accounts at Nesbitt.

19. Hawkyard had no access to the Lett Accounts at Nesbitt, even while employed at Nesbitt. Dunn or Lett provided Hawkyard with all information regarding the Lett Accounts, at Nesbitt, including the balance of funds in the accounts.

20. Lett did not purchase a bank guarantee or debenture.

IV. CONDUCT CONTRARY TO THE PUBLIC INTEREST

21. By engaging in the conduct described above, Hawkyard acted contrary to the public interest for the following reason:

Hawkyard, while employed at the Bank of Montreal and later at Nesbitt, at the request of Dunn, prepared and signed Proof of Funds Letters and caused the Assistant Manager to prepare and sign these letters.

V. COOPERATION OF HAWKYARD

22. At all times, Hawkyard fully cooperated with Staff in its investigation and admitted his culpability. Hawkyard will testify on behalf of Staff at any hearing relating to this matter.

VI. TERMS OF SETTLEMENT

23. Hawkyard agrees to the following terms of settlement:

- (a) the Commission will make an Order under clause 1 of subsection 127(1) of the Act, suspending the registration of Hawkyard for a period of 12 months, effective the date of the Order of the Commission approving this Settlement Agreement;

- (b) as a condition precedent to the reinstatement of his registration, Hawkyard will successfully complete the Ethics Seminar of the Compliance Program, a course offered by the Canadian Securities Institute, on Saturday May 10, 2003;
- (c) the Commission will make an Order under clause 6 of subsection 127(1) of the Act that Hawkyard be reprimanded; and
- (d) Hawkyard will attend the hearing in person.

VII. STAFF COMMITMENT

25. If this settlement is approved by the Commission, Staff will not initiate any other proceeding under the Act against Hawkyard respecting the facts set out in Part III of this Settlement Agreement, subject to the provision of paragraphs 31 and 36.

26. If this settlement is approved by the Commission, and, at any subsequent time, Hawkyard fails to honour the undertakings contained in paragraph 24 of this Settlement Agreement, Staff reserves the right to bring proceedings under Ontario securities law against Hawkyard based on the facts set out in Part III of the agreement, as well as the breach of the undertakings.

VIII. PROCEDURE FOR APPROVAL OF SETTLEMENT

27. Approval of the settlement set out in this Settlement Agreement shall be sought at a public hearing (the "Settlement Hearing") of the Commission scheduled for such date as is agreed to by Staff and Hawkyard.

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

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

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

31. If Hawkyard fails to honour the agreement contained in paragraph 24 of this Settlement Agreement, Staff reserves the right to bring proceedings under Ontario securities law against Hawkyard based on the facts set out in Part III of the agreement, as well as the breach of the agreement.

32. Whether or not the settlement is approved by the Commission, Hawkyard 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.

33. 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 Hawkyard leading up to its presentation at the Settlement Hearing, shall be without prejudice to Staff and Hawkyard;
- (b) Staff and Hawkyard 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; and,
- (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 Hawkyard, or as may be required by law.

IX. DISCLOSURE OF AGREEMENT

34. Except as permitted under paragraph 33 above, this Settlement Agreement and its terms will be treated as confidential by Staff and Hawkyard 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 Hawkyard, or as may be required by law.

35. Any obligations of confidentiality attaching to this Settlement Agreement shall terminate upon approval of this settlement by the Commission.

36. If Hawkyard fails to honour the agreement contained in paragraph 24 of this Settlement Agreement, Staff reserve the right to bring proceedings under Ontario securities law against Hawkyard based on the facts set out in Part II of the agreement, as well as the breach of the agreement.

X. EXECUTION OF SETTLEMENT AGREEMENT

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

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

DATED this 25th day of April, 2003.

Signed in the presence of:

“John Steven Hawkyard”
John Steven Hawkyard

DATED this 28th day of April, 2003.

Signed in the presence of:

**Staff of the Ontario Securities Commission
Per:**

“Karen Manarin”
Karen Manarin

“M. Watson per M. Kennedy”
Michael Watson
Director, Enforcement Branch

SCHEDULE “A”

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

- and -

**IN THE MATTER OF
JOHN STEVEN HAWKYARD**

ORDER

WHEREAS on September 18, 2002, the Ontario Securities Commission issued a Notice of Hearing pursuant to sections 127(1) and 127.1 of the *Securities Act*, R.S.O. 1990 c. S.5, as amended in respect John Steven Hawkyard;

AND WHEREAS Hawkyard entered into a settlement agreement dated [insert date] in which he agreed to a proposed settlement of the proceeding, subject to the approval of the Commission;

AND UPON reviewing the Settlement Agreement and the Statement of Allegations of Staff of the Commission, and upon hearing submissions from counsel for Hawkyard and from Staff;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this Order;

IT IS HEREBY ORDERED THAT:

1. the Settlement Agreement dated [insert date], attached to this Order, is hereby approved;
2. pursuant to subsection 127(1)(6) of the Act, Hawkyard is hereby reprimanded;
3. pursuant to subsection 127(1) of the Act, effective the date of this Order, Hawkyard's registration is suspended for a period of twelve months; and,
4. as a condition precedent to the reinstatement of his registration, Hawkyard will successfully complete the Ethics Seminar of the Compliance Program, a course offered by the Canadian Securities Institute, on Saturday, May 10, 2003.

DATED at Toronto this day of April, 2003.
