

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

**- and -**

**IN THE MATTER OF  
ROBERT DAVIES**

**SETTLEMENT AGREEMENT BETWEEN  
STAFF OF THE ONTARIO SECURITIES COMMISSION  
AND ROBERT DAVIES**

**I. INTRODUCTION**

1. By Notice of Hearing, the Ontario Securities Commission (the “Commission”) announced that it proposed to hold a hearing to consider a settlement entered into between Staff of the Commission (“Staff”) and the respondent Robert Davies (“Davies”).

**II. JOINT SETTLEMENT RECOMMENDATION**

2. Staff agrees to recommend settlement of the proceeding respecting Davies initiated by the Notice of Hearing in accordance with the terms and conditions set out below. Davies 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 Davies agree with the facts set out in paragraphs 4 through 24 of this Settlement Agreement.

**Facts**

(a) **Saxton Investment Ltd.**

4. Saxton Investment Ltd. (“Saxton”) was incorporated on January 13, 1995. 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.

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

6. 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.

**(b) Distribution of the Saxton Securities**

7. Saxton marketed two investment products namely: (i) a “GIC” which was later re-named a “Fixed Dividend Account”; and (ii) an “Equity Dividend Account”. In either case, the investor purchased securities in one or more of the Offering Corporations (the “Saxton Securities”).

8. The Fixed Dividend Account products promised investors either 10.25% annual return for a three year term compounded or 12% annual return for a five year term compounded. Investors in the Equity Dividend Account were told to expect 25% to 30% annual growth in their investment.

9. The concept and plan for the distribution of the Saxton Securities was designed by Eizenga and implemented at his direction between January 1995 and September 1998. The Saxton Securities were distributed in violation of the *Securities Act*, R.S.O. 1990, c. S.5 (the “Act”). All of the Offering Corporations were incorporated pursuant to the laws of Ontario. Sales of the Saxton Securities constituted trades in securities of an issuer that had not been previously issued.

10. None of the Offering Corporations filed a preliminary prospectus or prospectus with the Commission. The Offering Corporations purported to rely on the “seed capital” prospectus exemption under subparagraph 72(1)(p) of the Act. Neither this exemption, nor any other prospectus exemption, was available to them.

**(c) Davies’ Conduct**

11. Davies was a chartered accountant and a certified management accountant. Between October 1996 and December 1997, he was employed as Saxton’s controller. Davies was not a Saxton salesperson. Throughout his tenure, Davies reported directly to, and took direction from, Eizenga.

12. When Davies commenced his employment as controller, Saxton did not have the proper accounting controls in place and had never prepared financial statements. His responsibilities as controller included establishing and maintaining proper internal accounting controls and books of account, preparing financial statements and producing quarterly account statements for investors.

13. Davies failed to keep and maintain the proper books and records and failed to ensure that the basic accounting controls were in place. Among other things:

- (a) the general ledger did not reflect all transactions pertaining to the Saxton operations and were incomplete for the purposes of preparing financial statements in accordance with GAAP;
- (b) the general ledger was not “closed-off” after the financial year end for the purpose of establishing proper financial statements;

- (c) investor funds were not reconciled and controlled to the shareholder register and the respective company's financial records;
- (d) interest accruing on the Fixed Dividend Accounts were not recorded in the books of account;
- (e) Saxton's use of funds were not properly recorded;
- (f) funds generated through investments and/or revenue from the Cuban or other Saxton operations, if any, were not reflected in the books of account; and
- (g) financial statements were never prepared.

14. Shareholders who invested in a Fixed Dividend Account product received quarterly account statements that reflected a market value increase in their investment of 10.25% or 12%. The Equity Dividend Account holders' quarterly account statements reflected a market value increase of between 25% and 30%.

15. Davies knew that the quarterly account statements were unsubstantiated by any accounting or financial data in Saxton's possession. Among other things, there was no record of any revenue generation by the Saxton operations and thus, no ability for Saxton or Davies to establish the net results of the operations.

16. Along with the historical cost of the Saxton Securities held by each investor, the quarterly account statements disclosed an increase in the market value for the quarter and the end of the quarter market value for such Securities. Davies knew that in addition to lacking the financial information to report any incremental values on the Saxton investments, there was no market for Saxton Securities and thus, no market value could, or should, be attributed to such Securities.

17. By virtue of his knowledge described in paragraph 16 above, Davies was aware that the quarterly account statements misrepresented the value of shareholders' investments and were misleading to investors and Saxton salespeople.

18. During Davies' tenure, quarterly account statements were distributed to investors in December 1996, March 1997, June 1997, September 1997 and December 1997. As controller, Davies had the ultimate responsibility for the preparation of such statements to investors. At a minimum, he ought to have asserted control over the process when it became clear to him that the supporting financial data was neither available nor forthcoming.

19. Davies knew, or ought reasonably to have known, that Saxton salespeople and the Saxton investors relied upon the quarterly account statements. Davies also knew, or ought reasonably to have known, that Saxton management promoted to its salespeople the fact that a chartered accountant was employed by the organization as one means to enhance the credibility/legitimacy of the Saxton business. Thus, directly and indirectly, Davies provided to salespeople and investors misguided comfort respecting the nature and quality of the Saxton Securities.

20. Davies failed to exercise the appropriate due diligence concerning Saxton's activities. Moreover, he continued to participate in Saxton after becoming aware that investor funds were being diverted to Eizenga's personal use.

21. Davies never made inquiries of, or requested assistance from, any professional association or the Commission.

22. Beyond his annual salary of between \$52,000 and \$60,000, Davies did not benefit financially from any of his conduct described above.

23. Davies' conduct was contrary to Ontario securities law and the public interest.

24. Davies co-operated with Staff's investigation respecting the Saxton Securities.

#### **IV. DAVIES' POSITION**

25. Davies takes the position and represents to Staff that:

- (a) Any attempts by Davies to address the lack of accounting controls at Saxton were either resisted, or frustrated, by Eizenga;
- (b) With reference to paragraphs 15 and 18 above, Eizenga represented to him that the financial data to support the interest accruing on the Fixed Dividend Account products and the growth in the Equity Dividend Account shares existed in Cuba and would be forwarded to Saxton. This purported financial data, however, never materialised;
- (c) With reference to paragraph 20 above, Luke McGee, the Vice-President of Saxton, assured him that Eizenga was paying back in full all investor funds he used for personal purposes;
- (d) He lacked the experience necessary to resolve the accounting deficiencies present at Saxton; and
- (e) In hindsight, he realizes that he was naïve and allowed himself to be persuaded and intimidated by Eizenga and McGee.

#### **V. TERMS OF SETTLEMENT**

26. Davies agrees to the following terms of settlement:

- (a) the making of an order:
  - (i) approving this settlement;
  - (ii) that trading in any securities by Davies cease for ten years with the exception that, after three years from the date of the approval of this settlement, Davies is permitted to trade securities through a

registered dealer for his personal account and the account of his registered retirement savings plan (as defined in the *Income Tax Act (Canada)*);

- (iii) that Davies is prohibited from continuing, becoming or acting as a director or officer of any issuer for ten years;
- (iv) reprimanding Davies; and
- (v) that Davies will pay costs to the Commission in the amount of \$2000.00; and

(b) For ten years, Davies will not participate directly in any filings with the Commission required under the Act;

(c) Over the next two years, Davies will complete 15 hours of continuing education provided by the Institute of Chartered Accountants of Ontario concerning fraud awareness and related topics; and

(d) Within six months prior to becoming an officer or director of any issuer, Davies will successfully complete the Partners, Directors, Officers examination.

## **VI. STAFF COMMITMENT**

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

## **VII. APPROVAL OF SETTLEMENT**

28. Approval of the settlement set out in this Settlement Agreement shall be sought at the public hearing of the Commission scheduled for July 21, 2003 or such other date as may be agreed to by Staff and Davies (the "Settlement Hearing"). Davies will attend in person at the Settlement Hearing.

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

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

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

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

### **VIII. DISCLOSURE OF SETTLEMENT AGREEMENT**

33. Except as permitted under paragraph 29 above, this Settlement Agreement and its terms will be treated as confidential by Staff and Davies 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 Davies, or as may be required by law.

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

**IX. EXECUTION OF SETTLEMENT AGREEMENT**

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

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

**DATED** this 20th day of July, 2003

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**WITNESS**

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**ROBERT DAVIES**

**DATED** this 21st day of July, 2003

**STAFF OF THE ONTARIO  
SECURITIES COMMISSION**

“Michael Watson”  
**MICHAEL WATSON**  
Director, Enforcement Branch



**IN THE MATTER OF THE SECURITIES ACT,  
R.S.O. 1990, c. S. 5, as amended**

**-and-**

**IN THE MATTER OF ROBERT DAVIES**

**UNDERTAKING OF ROBERT DAVIES**

Pursuant to a Settlement Agreement between Staff of the Ontario Securities Commission and Robert Davies (“Davies”), approved by the Commission by Order dated July 21, 2003, Davies undertakes to the Commission that, commencing today, he will not participate directly in any filings with the Commission required under the *Securities Act* for ten years.

Dated at Toronto this 21st day of July, 2003.

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Robert Davies