

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

- and -

**IN THE MATTER OF ALLAN EIZENGA, RICHARD JULES FANGEAT, MICHAEL
HERSEY, LUKE JOHN MCGEE and ROBERT LOUIS RIZZUTO**

**SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION
AND RICHARD JULES FANGEAT**

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 Richard Jules Fangeat (“Fangeat”).

II. JOINT SETTLEMENT RECOMMENDATION

2. Staff agrees to recommend settlement of the proceeding respecting Fangeat initiated by the Notice of Hearing in accordance with the terms and conditions set out below. Fangeat 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 Fangeat agree with the facts set out in paragraphs 4 through 39 of this Settlement Agreement.

Facts

(a) Background Respecting Fangeat's Registration

4. Fangeat became registered with the Commission to sell mutual fund securities in February 1993. He was registered to sell mutual fund securities and limited market products between December 31, 1996 and May 7, 1997 and between July 2, 1997 and December 28, 1998. Fangeat has not been registered with the Commission since December 29, 1998.

5. Fangeat also sold life and other insurance products. By 1993, when he became registered with the Commission, Fangeat had been participating in the insurance industry for over 20 years. Fangeat was successful and well respected in the insurance industry. Over the years, he wrote articles for industry publications and taught insurance courses.

6. Fangeat was the principal and owner of Integrated Planning Services Inc. ("Integrated Planning"). Integrated Planning operated out of St. Thomas, Ontario. Fangeat provided financial planning and related services to his clients through Integrated Planning.

7. Over time, various insurance and/or securities salespeople worked out of Integrated Planning's offices. Although these salespeople acted as independent contractors, many of them treated Fangeat as a mentor given his vast experience and financial success.

(b) Saxton Investment Ltd. and Related Companies

8. 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.

9. Eizenga was the president and a director of each Offering Corporation. Fangeat was an officer of Saxton Export Corp., Saxton Export (III) Corp., Saxton Export (IV) Corp., Saxton Export (VIII) Corp., Saxton Export (XII) Corp., Saxton Export (XIII) Corp., Saxton Export (XXII) Corp., Saxton Export (XXVII) Corp., Saxton Export (XXVIII) Corp., Saxton Export (XXXII) Corp., Saxton Export (XXXIII) Corp. and Saxton Export (XXXIV) Corp.

10. The Saxton Group was a trade name that encompassed a complex network of related companies including Saxton, the Offering Corporations and Sussex Admiral Group Limited (Barbados), later renamed Sussex Group Ltd. ("Sussex"). The Saxton Group's core business was the developing and manufacturing of beverage/beer and food products for the Cuban hospitality and tourist industries. Sussex was the Saxton Group's operating company.

11. The primary function of every Offering Corporation was to raise investment capital for the Saxton Group's operations in Cuba, the Caribbean and elsewhere. Through the sale of the Offering Corporations' shares (the "Saxton Securities") to Ontario investors, Saxton and the Offering Corporations funded Sussex's activities.

12. Michael Tibollo ("Tibollo") is a lawyer and businessperson. Tibollo speaks Spanish and had important contacts and relationships with Cuban government officials. Commencing in or about 1996, he provided consulting services in connection with the Saxton Group's Cuban businesses. In the summer of 1997, Tibollo became the president of Sussex.

13. 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 including Sussex) was approximately \$5.5 million. Sussex currently is being wound down by a court-appointed manager.

(c) Distribution of the Saxton Securities

14. Saxton marketed two investment products namely: (a) a “GIC” that was later re-named “Fixed Dividend Account”; and (b) an “Equity Dividend Account”. In either case, the investor, in fact, purchased the Saxton Securities.

15. The “GIC” promised investors an annual return of 10.25%. The Fixed Dividend Account product promised investors either a 10.25% annual return for a three year term compounded or a 12% annual return for a five year term compounded. Investors in the Equity Dividend Account product were told to expect 25% to 30% annual growth in their investment.

16. Although the Offering Corporations prepared Offering Memoranda, such Memoranda provided little information other than the geographic locations in which the Saxton Group conducted business.

17. The concept and plan for the distribution of the Saxton Securities was designed by Eizenga and implemented under 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”).

18. 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.

19. 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.

(d) Fangeat’s Conduct

(i) Fangeat’s Sales of the Saxton Securities

20. Fangeat participated in the illegal distributions of the Saxton Securities. Between 1996 and late spring 1998, Fangeat sold, or acted as the financial advisor in connection with the sale of, at least \$10 million worth of the Saxton Securities to Ontario investors. Many investors had been clients of Fangeat for several years and trusted him implicitly.

21. Fangeat 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. In many instances, Fangeat failed to provide his clients with an Offering Memorandum. In any event, the Offering Memorandum was deficient. Fangeat did not make the appropriate independent inquiries and conduct the necessary due diligence before he sold the Saxton Securities to his clients.

22. Fangeat misrepresented to his clients the nature and quality of the Saxton Securities. Among other things, Fangeat marketed and endorsed all the Saxton investment products as no, or

low, risk notwithstanding that the Offering Memoranda described the Saxton Securities as “speculative”.

23. Fangeat also represented to clients that Saxton intended to go public and ultimately would be listed on a recognized stock exchange.

24. Fangeat failed to adequately assess the suitability of his clients’ investments in the Saxton Securities.

25. Saxton provided quarterly account statements to investors. Shareholders who invested in the 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%.

26. Fangeat never received any financial statements or other financial information supporting the purported incremental values of the Saxton investments. Further, he knew that there was no market for the Saxton Securities and thus, no market value could, or should, be attributed to such Securities.

27. By virtue of his knowledge, Fangeat ought to have been aware that the quarterly account statements misrepresented the value of shareholders’ investments and were misleading to investors and other Saxton salespeople.

28. Fangeat’s sales of the Saxton Securities were never processed through his sponsor firm. Further, in or about the summer of 1997, notwithstanding that Fangeat had been told by his then-sponsor that he was not authorized to sell such Securities, he continued to do so.

(ii) Fangeat’s Role with Other Saxton Salespeople

29. Fangeat held the position of marketing officer at Saxton. In this role, he introduced several salespeople to Saxton and the Saxton Securities. These salespeople operated out of Integrated Planning's offices. Integrated Planning and Fangeat processed their subscription agreements, RRSP applications and related paperwork respecting the Saxton Securities.

30. Fangeat also acted as an intermediary between Saxton and many of its sales representatives. In this role, he made various misrepresentations to salespeople including the following:

- (a) Salespeople did not need to be registered with the Commission to sell the Saxton Securities;
- (b) The sales of the Saxton Securities complied with Ontario securities law;
- (c) The capital invested in Saxton’s GIC/Fixed Dividend Account product was guaranteed;

- (d) The Saxton investment products were suitable for conservative investors with low risk investment objectives; and
- (e) Based on the profitability of Saxton to date, the Equity Dividend Account product would provide a 30% rate of return for investors.

31. Although Eizenga was Saxton's ultimate decision-maker, Eizenga, Luke McGee ("McGee") and Tibollo frequently consulted Fangeat concerning Saxton business. Fangeat attended often at Saxton's head office in Burlington to participate in discussions with Saxton management.

(iii) Fangeat's Compensation

32. Fangeat received commissions of at least \$500,000 on his sales of the Saxton Securities. He also received a management fee of 2.5% on all Saxton Securities sold by other salespeople.

33. Saxton provided Fangeat with a Mercedes Benz as part of his compensation package and paid Integrated Planning's overhead expenses.

(iv) Sales of Sussex International Ltd. Securities

34. Sussex International Ltd. ("Sussex International") was another Saxton vehicle. Commencing in or about the spring of 1998, Sussex International and its salespeople represented to the Ontario public that the company was investing in the same businesses as the Offering Corporations.

35. The distribution of shares in Sussex International (the "Sussex International Securities") did not comply with the Act. Sussex International did not file a preliminary prospectus or prospectus with the Commission. Further, none of the prospectus exemptions in the Act was available to it.

36. In 1998, Fangeat participated in the illegal distribution of the Sussex International Securities. At that time, Fangeat was the president of Sussex International and the company operated out of the Integrated Planning offices. Fangeat traded the Sussex International Securities by soliciting investors through discussions and meetings with salespeople and prospective investors and by executing investor subscription agreements and share certificates as the corporation's authorized signing officer.

(v) Fangeat's Failure to Contact the OSC

37. In the late summer of 1997, Saxton received a legal opinion that the distribution of the Saxton Securities contravened Ontario securities law. Despite his knowledge of the substance of this opinion and evidence that certain investor funds were unaccounted for, Fangeat did not contact the Commission. Moreover, he continued to participate in the raising of funds from the public through the distribution of the Saxton and Sussex International Securities.

38. Fangeat's conduct was contrary to Ontario securities law and the public interest.

IV. FANGEAT'S POSITION

39. Fangeat takes the position and represents to Staff that:
- (a) With respect to paragraph 9 above, Fangeat was not aware that he held a position with any of the Offering Corporations until the fall of 1998;
 - (b) With respect to paragraphs 22 and 30 above, he relied on representations made by individuals connected with the Saxton Group. Beyond representations made by Eizenga and McGee, a lawyer and the vice-president of Saxton, Tibollo promoted investment in the Saxton Securities by conducting investment seminars (to which Fangeat and other salespeople were invited) and meeting with prospective large investors; and
 - (c) With reference to subparagraph 30(b) above, Eizenga told him that he had an opinion from a Toronto law firm that the structure for distributing the Saxton Securities was legal. Fangeat acknowledges that Eizenga did not have such an opinion and any letter was fabricated.

V. TERMS OF SETTLEMENT

40. Fangeat agrees to the following terms of settlement:
- (a) the making of an order:
 - (i) approving this settlement;
 - (ii) that trading in any securities by Fangeat cease for twenty years with the exception that, after six years from the date of the approval of this settlement, Fangeat is permitted to trade securities for the account of his registered retirement savings plan (as defined in the *Income Tax Act (Canada)*) if the securities are:
 - (a) referred to in clause 1 of subsection 35(2) of the Act; or
 - (b) listed and posted for trading on the TSX or NYSE (or their successor exchanges); or
 - (c) issued by mutual funds that are reporting issuers in Ontario;
 - (iii) that Fangeat is prohibited from becoming or acting as a director or officer of any issuer for twenty years;
 - (iv) reprimanding Fangeat; and
 - (v) that the Temporary Order no longer has any force or effect; and

- (b) Fangeat will carry out the permitted trading in paragraph 40(a)(ii) through accounts opened in his name only. Any existing accounts not in Fangeat's name but in which he has a beneficial ownership or interest will be closed within 10 days of the approval of this settlement.

VI. STAFF COMMITMENT

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

VII. APPROVAL OF SETTLEMENT

42. Approval of the settlement set out in this Settlement Agreement shall be sought at the public hearing of the Commission scheduled for June 14, 2004 or such other date as may be agreed to by Staff and Fangeat (the "Settlement Hearing").

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

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

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

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

47. Except as permitted under paragraph 43 above, this Settlement Agreement and its terms will be treated as confidential by Staff and Fangeat 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 Fangeat, or as may be required by law.

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

IX. EXECUTION OF SETTLEMENT AGREEMENT

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

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

DATED this 29th day of May, 2004

WITNESS

“Richard J. Fangeat”

RICHARD JULES FANGEAT

DATED this 16th day of June, 2004

**STAFF OF THE ONTARIO
SECURITIES COMMISSION**

“Michael Watson”

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

**ALLAN EIZENGA, RICHARD JULES FANGEAT,
MICHAEL HERSEY, LUKE JOHN MCGEE and ROBERT LOUIS RIZZUTO**

ORDER

(Subsection 127(1) and section 127.1)

WHEREAS on September 24, 1998, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") respecting Richard Jules Fangeat ("Fangeat") and others and issued Amended Notices of Hearing against Fangeat and others on February 7, 2003 and May 21, 2004;

AND WHEREAS on September 24, 1998, the Commission made a Temporary Order as against Fangeat and others, such Temporary Order that was extended by Commission Orders dated October 9, 1998 and February 5, 1999 (the "Temporary Order");

AND WHEREAS Fangeat entered into a Settlement Agreement executed <*> and <*> (the "Settlement Agreement") in which he agreed to a proposed settlement of the proceedings, subject to the approval of the Commission;

AND UPON reviewing the Settlement Agreement and the Amended Statement of Allegations of Staff of the Commission and upon hearing submissions from Fangeat and from Staff of the Commission;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this Order pursuant to subsection 127(1) and section 127.1 of the Act;

IT IS ORDERED THAT:

1. the attached Settlement Agreement is approved;
2. pursuant to subsection 127(1), paragraph 2, trading in any securities by Fangeat cease for twenty years commencing on the date of this Order except that, after six years, Fangeat is permitted to trade securities for the account of his registered retirement savings plan (as defined in the *Income Tax Act (Canada)*) if the securities are:
 - (a) referred to in clause 1 of subsection 35(2) of the Act; or
 - (b) listed and posted for trading on the TSX or NYSE (or their successor exchanges); or
 - (c) issued by mutual funds that are reporting issuers in Ontario;
3. pursuant to subsection 127(1), paragraph 8, Fangeat is prohibited from becoming or acting as a director or officer of any issuer for twenty years commencing on the date of this Order;
4. pursuant to subsection 127(1), paragraph 6, Fangeat is reprimanded; and
5. the Temporary Order as against Fangeat no longer has any force or effect.

DATED at Toronto this <*> day of <*>, 2004
