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

- and -

IN THE MATTER OF ALLAN EIZENGA AND
MICHAEL ANTHONY TIBOLLO

SETTLEMENT AGREEMENT OF ALLAN EIZENGA

I. INTRODUCTION

1. By Notice of Hearing dated May 21, 2004 (the "Notice of Hearing"), the Ontario Securities Commission (the "Commission") announced that it proposed to hold a hearing to consider whether, pursuant to section 127 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:

    (a) trading in any securities by Allan Eizenga ("Eizenga") cease permanently or for such period as the Commission may order;

    (b) the exemptions contained in Ontario securities law do not apply to Eizenga permanently or for such period as the Commission may order;

    (c) Eizenga resign any position that he may hold as director or officer of any issuer;

    (d) Eizenga is prohibited from becoming or acting as a director or officer of any issuer permanently or for such period as the Commission may order;

    (e) Eizenga be reprimanded; and/or

    (f) such other order as the Commission may deem appropriate.

2. By temporary order dated September 24, 1998, the Commission ordered that the exemptions contained in ss. 35(1)21 and 35(2)10 of the Act do not apply to Eizenga (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") agree to recommend settlement of the proceeding initiated in respect of Eizenga by the Notice of Hearing in accordance with the terms and conditions set out below. Eizenga 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.

Acknowledgment

4. For the purposes of this proceeding, and of any other proceeding commenced by a securities regulatory agency, Eizenga agrees with the facts set out in Part III of this settlement agreement.

III. STATEMENT OF FACTS

Factual Background

The Respondent

5. Eizenga is an individual who resides in St. Catharines, Ontario. Eizenga has never been registered with the Commission to trade in securities.

The Distribution of the Saxton Securities

6. Saxton Investments Ltd. ("Saxton") was incorporated on January 13, 1995. Eizenga was an officer and a director of Saxton. Saxton and Eizenga established numerous other corporations. Eizenga was the president and a director of each of these companies (the "Offering Corporations").

7. Between January 1995 and September 1998, Eizenga participated in the distribution of, and sold to Ontario investors, securities of one or more of the following Offering Corporations:

Saxton Investments Ltd.
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.

8. The Offering Corporations were incorporated pursuant to the laws of Ontario. Eizenga's sales of shares of the Offering Corporations (the "Saxton Securities") constituted trades in securities of an issuer that had not been previously issued.

9. The distribution of the Saxton Securities contravened Ontario securities law. None of the Offering Corporations filed a preliminary prospectus or a prospectus with the Commission. No Offering Corporation was issued a receipt for a prospectus by the Commission. None of the Offering Corporations filed an Offering Memorandum or a Form 20 with the Commission.

10. The Offering Corporations purported to rely on the "seed capital" prospectus exemption contained in subparagraph 72(1)(p) of the Act. Neither this exemption, nor any other prospectus exemption, was available to them.

11. None of the exemptions from the registration requirements in Ontario securities law was available for the sale of the Saxton Securities.

12. 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 a related company, Sussex Group Ltd. (Barbados)), was approximately $5.5 million. Sussex Group Ltd. (Barbados) is currently being wound down by a court-appointed manager.

The Saxton Products and Business

13. 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. (Barbados) ("Sussex").

14. The Saxton Group's core business was the development and manufacture of beverage and food products for the hospitality and tourist industries in Cuba (and elsewhere in the Caribbean). Sussex was the operating company. Among other things, Sussex held the Saxton Group's economic associations, operating contracts and supply agreements.

15. The primary function of every Offering Corporation was to raise investment capital for the operations in Cuba and elsewhere. The Offering Corporations financed Sussex's activities. Funds raised through the Offering Corporations were pooled and transferred to Saxton. Saxton, in turn, transferred the money directly, and indirectly (through 1125956 Ontario Inc.), to the Cuban and other operations. Investors associated their investment with "Saxton" and the Cuban operations, not the Offering Corporations.

16. Even though, in fact, investors purchased shares in the Offering Corporations (the Saxton Securities), Saxton marketed the Securities as a "GIC", a "Fixed Dividend Account" product and an "Equity Dividend Account" product.

17. The "GIC" promised investors an annual return of 10.25%. The Fixed Dividend Account offered 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. Investors were told that their money funded the Saxton Group's operations and that the rate of return on, or the growth of, their investment resulted from the profitability and success of the Group's businesses, principally the Cuban operations.

18. The Saxton products were marketed and sold as a no, or low, risk investment notwithstanding that the Saxton Securities were described in the Offering Memoranda as "speculative".

Eizenga's Conduct

(a) Management of Saxton and the Raising of Funds

19. Eizenga controlled the Saxton Group and the raising of funds from Ontario investors through the sale of the Saxton Securities. He made all key business and management decisions relating to, among other things, the means by, and structure through, which the Saxton Securities were distributed and the use of investor funds. All Saxton officers, and the Sussex president, reported to him. Eizenga approved all promotional and investor relations material distributed by Saxton.

20. The concept and plan for, and the resulting distribution of, the Saxton Securities were designed by Eizenga and implemented at his direction. The incorporation, and use, of many Offering Corporations was designed or implemented by Eizenga to avoid the "seed capital" prospectus exemption requirement in subparagraph 72(1)(p) of the Act that sales be made to no more than 25 purchasers. Once one Offering Corporation received funds from the maximum allowed 25 investors, Eizenga allocated investors to a new Offering Corporation.

21. Eizenga directed the preparation, and approved the publication and distribution, of an Offering Memorandum for each of the Offering Corporations. These Memoranda were virtually identical and provided little information about the Saxton Group's operations (into which funds invested in the Offering Corporations would flow) other than their geographic location.

22. Further, Eizenga failed to ensure that salespeople provided an Offering Memorandum to investors prior to their purchase of the Saxton Securities.

23. Eizenga controlled the monies raised through the distributions of the Saxton Securities. He possessed the authority to independently sign cheques and effect transfers on Saxton's and the Offering Corporations' bank accounts. He controlled the flow of funds from the Offering Corporations to Saxton and from Saxton to Sussex, 1125956 Ontario Inc. and elsewhere.

24. Between 1995 and 1998, Eizenga traded the Saxton Securities by executing as each Offering Corporation's authorized signing officer the investor subscription agreements and share certificates.

25. He also acted as a financial advisor to clients who purchased approximately $1.1 million worth of the Saxton Securities. In this regard, he made representations to certain of his clients as described in subparagraphs 29(d) through (g) below and failed to provide all of them with access to substantially the same information concerning the Saxton Securities that a prospectus filed under the Act would provide. Eizenga was not registered with the Commission and no registration exemption was available to him. He received commissions for sales in which he was directly involved.

(b) Information Disseminated to Saxton Salespeople and Investors

26. Saxton's head office was located initially in London and then moved to Burlington, Ontario. The sales force consisted of independent salespeople who earned commissions and trailer fees on their sales of the Saxton Securities. The majority of the Saxton salespeople also purchased the Saxton Securities for themselves and/or their families.

27. Rick Fangeat was a Saxton salesperson who acted as an intermediary between Saxton head office and several other Saxton salespeople. Luke McGee also had some direct dealings with salespeople. Rick Fangeat and Luke McGee reported to, and took direction from, Eizenga.

28. Eizenga made various oral and written representations respecting the nature and quality of the Saxton Securities and the mechanics and legality of their distributions to Saxton management and salespeople. Among other things, Eizenga approved promotional and investor relations material, facilitated, organized or approved group meetings with sales staff and presentations respecting the Saxton Securities and the Sussex operations and participated in promotional/investor relations trips to Cuba.

29. Between January 1995 and the summer of 1998, Eizenga made various representations to salespeople, investors and/or prospective investors including the following:

    (a) He had obtained a legal opinion that the structure for the Saxton Securities' distributions complied with Ontario securities laws, which was not true;

    (b) Salespeople did not need to be registered with the Commission to sell the Saxton Securities, which was not true;

    (c) For salespeople who were registered with the Commission, sales of the Saxton Securities did not need to be approved of, or processed through, their mutual fund dealers, which was not true;

    (d) The capital invested in, and the rate of return earned on shares in the "GIC" or "Fixed Dividend Account" product was guaranteed, which was not true;

    (e) Based on the historical profits of the operations, the "Equity Dividend Account" would provide a 30% rate of return for investors, which was not true;

    (f) In anticipation of becoming a public company, Saxton had purchased surety bonds from Liberty Insurance that guaranteed fully the company's capital base and provided an additional level of security to investors, which was not true; and

(g) Saxton had secured a Certificate of Deposit for $40 million backed by gold that fully collateralized shareholders' investments, which was not true.

(c) Investor Quarterly Account Statements

30. Eizenga failed to ensure that Saxton and/or its controller established proper internal controls and kept proper books of account. Among other things, Saxton's general ledger was never "closed off" and audited financial statements were never prepared.

31. Saxton distributed quarterly account statements to all investors who purchased the Saxton Securities. These account statements were created and disseminated on the instructions of Eizenga**.**

32. Shareholders who invested in the "GIC/Fixed Dividend Account" product received quarterly account statements that reflected a "market value" increase of between 10.25% or 12% and, thus, showed the rate of return promised to investors. The quarterly account statements provided to shareholders who invested in the "Equity Dividend Account" product reflected a "market value" increase of between 25% and 30%, thus showing the rate of return which investors had been told to expect.

33. Along with the historical cost of the Saxton Securities held by the investor, the quarterly account statements purported to disclose an increase in the "market value" for the quarter and the end of the quarter for such Securities. There were no financial statements or record of any revenue generation by the Saxton operations. There were thus no means by which Saxton or Eizenga could establish the net results of the Saxton Cuban or other operations. In fact, an independent audit established that they were operating at a loss.

34. Thus the quarterly account statements distributed to, and relied upon by, investors did not reflect the true "value" of the Saxton Securities. They also provided to investors and salespeople misplaced comfort and confidence in the legitimacy of the Saxton Group business and the return on, and the stability, quality, and risk level of, their investment.

(d) Eizenga's Continued Distribution of the Saxton Securities

35. In or about 1997, Eizenga embarked on a plan to take Saxton public and listed on a recognized stock exchange by way of a reverse takeover. It was contemplated that Sussex's assets would be vended in to F.S.P.I. Technologies Corp., a company listed on the Alberta Stock Exchange.

36. In the course of the going public process, Eizenga and the Saxton Group received legal advice that the distributions of the Saxton Securities likely did not comply with Ontario securities law and that no further funds should be raised. Further, it became apparent that the existing Saxton books and records did not account for all of the investor funds.

37. Notwithstanding the circumstances described in the previous paragraph, and in the face of Commission inquiries in April of 1998, Eizenga continued to solicit investors and distribute the Saxton Securities. He did not contact the Commission.

(e) Eizenga's Failure to Inform the Commission

38. In October 1997, the Commission wrote to Eizenga and asked him to provide certain information respecting the Saxton Group. In his January 1998 response, Eizenga did not provide the Commission with all of the requested information of which he was aware.

(f) Eizenga's Remuneration

39. Eizenga received a generous remuneration package as the president of Saxton.

40. Eizenga's conduct as described in Part III of this Settlement Agreement was contrary to Ontario securities law and the public interest.

IV. POSITION OF THE RESPONDENT

41. Eizenga takes the position and represents to Staff that:

(a) In relation to subparagraph 29(f) above, surety bonds were issued to Saxton by Liberty Insurance but were never paid for because Eizenga discovered that the value of the bonds were questionable; and

(b) In Eizenga's view, the beverage business in Cuba had great potential and its sales were growing. He calculated the "market value" of the Saxton Securities on the basis of the Cuban business' potential. Investors were not told that this is how the "market value" of their investment was being calculated.

V. TERMS OF SETTLEMENT

42. Eizenga agrees to the following terms of settlement:

(a) The Commission will make an order:

(i) approving this settlement agreement;

(ii) removing all exemptions and requiring that trading in any securities by Eizenga cease for twenty two years with the exception that, after ten years

from the date of the approval of this settlement, Eizenga 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) requiring that Eizenga resign any position that he holds as director or officer of any issuer;

(iv) prohibiting Eizenga from becoming or acting as a director or officer of any issuer for twenty five years;

(v) reprimanding Eizenga; and

(vi) rescinding the Temporary Order.

(b) Eizenga will carry out the permitted trading described in paragraph 42(a)(ii) through accounts opened in his name only. Any existing accounts not in Eizenga's name but in which he has a beneficial ownership or interest will be closed within 10 days of the approval of this settlement agreement;

(c) Eizenga undertakes to never apply for registration or recognition of any kind under Ontario securities law or any other Canadian securities legislation; and

(d) Eizenga undertakes to cooperate fully with Staff in connection with the outstanding Saxton-related proceeding, including providing complete and truthful answers to any Staff inquiries and testifying as a witness for Staff.

VI. STAFF COMMITMENT

43. If this settlement agreement is approved by the Commission, Staff will not initiate any proceeding under Ontario securities law in respect of any conduct or alleged conduct of Eizenga in relation to the facts set out in Part III of this settlement agreement, subject to the provisions of paragraph 44 below.

VII. FAILURE TO HONOUR UNDERTAKINGS

44. If this settlement agreement is approved by the Commission, and at any subsequent time Eizenga fails to honour the undertakings contained in subparagraphs 42(b), (c) and (d) and

paragraph 47 of this settlement agreement, Staff reserve the right to bring proceedings under Ontario securities law against Eizenga based on the facts set out in Part III of this settlement agreement, as well as the breach of the undertakings.

VIII. PROCEDURE FOR APPROVAL OF SETTLEMENT

45. Approval of this settlement agreement shall be sought at a hearing of the Commission scheduled for August 29, 2005, or such other date as may be agreed to by Staff and Eizenga, in accordance with the procedures described in this settlement agreement.

46. Staff and Eizenga agree that if this settlement agreement is approved by the Commission, it will constitute the entirety of the evidence to be submitted respecting Eizenga in this matter, and Eizenga agrees to waive his rights to a full hearing, judicial review or appeal of the matter under the Act.

47. Staff and Eizenga agree that if this settlement agreement is approved by the Commission, neither Staff nor Eizenga will make any public statement inconsistent with this settlement agreement.

48. If, for any reason whatsoever, this settlement agreement is not approved by the Commission or an order in the form attached as Schedule "A" is not made by the Commission, each of Staff and Eizenga will be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations against Eizenga set out in the Notice of Hearing and Amended Statement of Allegations against Eizenga dated May 21, 2004, unaffected by this agreement or the settlement negotiations.

49. Whether or not this settlement agreement is approved by the Commission, Eizenga agrees that he will not, in any proceeding, refer to or rely upon this agreement or the negotiation or process of approval of this agreement as the basis for any attack on the Commission's jurisdiction, alleged bias, appearance of bias, alleged unfairness or any other remedies or challenges that may otherwise be available.

X. DISCLOSURE OF AGREEMENT

50. The terms of this settlement agreement will be treated as confidential by all parties hereto until approved by the Commission, and forever if, for any reason whatsoever, this settlement agreement is not approved by the Commission, except with the written consent of both Eizenga and Staff or as may be required by law.

51. Any obligations of confidentiality shall terminate upon approval of this settlement agreement by the Commission except in accordance with any order made by the Commission.

IX. EXECUTION OF AGREEMENT

52. This settlement agreement may be signed in one or more counterparts which together shall constitute a binding agreement.

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

Dated this 29th day of August, 2005.

"Jennifer Cooper"
_____
Witness

"Allan Eizenga"
_____
Allan Eizenga

Dated this 29th day of August, 2005.

STAFF OF THE ONTARIO SECURITIES COMMISSION
Per:
"Kelley McKinnon"
_____
per: Michael Watson
Director, Enforcement Branch