

SCHEDULE “1”

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

- and -

**IN THE MATTER OF
TERRENCE WILLIAM MARLOW,
MARLOW GROUP PRIVATE PORTFOLIO MANAGEMENT INC.
AND MARLOW GROUP SECURITIES INC.**

**SETTLEMENT AGREEMENT
BETWEEN STAFF OF THE COMMISSION and
TERRENCE WILLIAM MARLOW**

I. INTRODUCTION

1. By Notice of Hearing dated May 23, 2006, the Commission announced that it will hold a hearing on May 25, 2006 in respect of a settlement agreement (“Settlement Agreement”) between Staff of the Commission and Terrence William Marlow (“Marlow”) to determine whether it is in the public interest to approve the Settlement Agreement and to make an Order that:

- (a) Marlow’s registrations under Ontario securities law be suspended permanently, pursuant to paragraph 1 of s. 127(1);
- (b) Marlow cease trading in securities permanently, pursuant to paragraph 2 of s. 127(1);
- (c) any exemptions contained in Ontario securities law do not apply to Marlow permanently, pursuant to paragraph 3 of s. 127(1);
- (d) Marlow be reprimanded, pursuant to paragraph 6 of s.127(1);
- (e) Marlow resign any positions he holds as director or officer of any issuer, pursuant to paragraph 7 of s.127(1); and

- (f) Marlow be permanently prohibited from becoming or acting as officer or director of any issuer, pursuant to paragraph 8 of s.127(1).

II. JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission recommend settlement of the proceeding initiated in respect of Marlow in accordance with the terms and conditions set out below. Marlow consents to the making of an order against him in the form attached as Schedule “A” on the basis of the facts set out below.

III. STATEMENT OF FACTS

Acknowledgement

3. For the purposes of this Settlement Agreement, Marlow agrees with the facts set out in Part III.

Agreed Facts

A. Background

4. Marlow resides in the province of Ontario and is the President of both Marlow Group Private Portfolio Management Inc. (“Marlow Private”) and Marlow Group Securities Inc. (“Marlow Securities”).

5. Marlow Private is a corporation incorporated pursuant to the laws of Ontario and was registered with the Commission as an investment counsel and portfolio manager (“ICPM”) and limited market dealer (“LMD”). Marlow Private’s registrations with the Commission are currently suspended by Order of the Commission dated December 17, 2004 and amendments thereto.

6. Marlow Securities is a corporation incorporated pursuant to the laws of Ontario and was registered with the Investment Dealers Association (“IDA”) as a dealer in the

category of investment dealer. The registration of Marlow Securities has been terminated by the IDA.

7. Marlow was registered with the Commission as a director and as an advising and trading officer of Marlow Private. He was the Ultimate Responsible Person and Chief Compliance Officer in respect of Marlow Private's ICPM registration and the Designated Compliance Officer in respect of Marlow Private's LMD registration. Marlow was also registered with the IDA as a director and as a trading officer of Marlow Securities. Marlow's registrations with the Commission and the IDA are currently suspended by Order of the Commission dated December 17, 2004 and amendments thereto.

B. Events leading to the Respondents' Suspension

(i) Failure to File Audited Financial Statements and Maintain Proper Books and Records

8. Marlow Private failed to file its audited financial statements with the Commission for the year ended December 31, 2003, due April 1, 2004, in contravention of sections 21.10(4) and 139 of Regulation 1015 (the "Regulations") to the *Securities Act*, R.S.O. 1990, c. S.5 (the "Act").

9. On October 22, 2004, Staff conducted a preliminary compliance review of the books and records of Marlow Private. The review revealed deficiencies in the books and records of Marlow Private, including that client trust accounts and portfolios had not been reconciled for several months.

(ii) Identification of Trust Account Deficiency

10. On December 7, 2004, the interim Chief Operating Officer of Marlow Private and Marlow Securities (the "COO") advised Staff that an extensive review of the available accounting and client records, and meetings with the largest clients of Marlow Private

and Marlow Securities, revealed that there was a deficiency between the cash balance owed to clients and the cash balance in the client trust account in the name of Marlow Private (the “Trust Account Deficiency”).

11. The COO provided Staff with a client account balance reconciliation for both Marlow Private and Marlow Securities detailing the cash balances owed to clients (the “Reconciliation”). The COO also advised Staff that there appeared to be a number of unallocated client investments that could satisfy most of the Trust Account Deficiency.

12. Following the identification of the Trust Account Deficiency, the Commission imposed a temporary order on December 17, 2004, and the amendments thereto by orders dated December 22, 2004, and January 4, 2005, all on consent. These orders suspended the registrations of the Respondents and required the Respondents to cease trading subject to two specified exceptions, pending further order of the Commission.

13. In addition to completion of the Reconciliation, Staff also required an audit (the “Audit”) of the Reconciliation and that Marlow Private surrender the cash balance of the Trust Account totaling approximately \$476,000.

C. Events Following the Respondents’ Suspension

14. The Audit report, dated January 7, 2005, confirmed that the cash balance of Marlow Private’s account was significantly less than amounts Marlow Private was required to be holding in trust for its clients. The Trust Account Deficiency was estimated to be approximately \$3,400,000.

15. Following the completion of the Reconciliation and the Audit, Marlow and representatives of six clients (the “Six Clients”) who were owed approximately 95% of the Trust Account Deficiency attempted to address concerns regarding the missing funds and to negotiate repayment from Marlow.

16. These negotiations were unsuccessful. On March 9, 2005, the Six Clients obtained an order of the Ontario Superior Court of Justice appointing A. Farber & Partners Inc. as the receiver and manager (the “Receiver”) of all assets, undertakings, and properties of the Respondents (the “Receivership Order”), including the \$476,000 surrendered by Marlow Private as described in paragraph 10 above.

D. The Results of the Receiver Reports

17. Between March 2005 and January 2006, the Receiver undertook a court-approved process of identifying, recovering and realizing on the assets of the Corporate Respondents.

18. The First Report of the Receiver, dated April 11, 2005, included the Receiver’s initial findings regarding the Corporate Respondents’ books and records. The Receiver reported that:

- (i) client funds were co-mingled with general corporate funds;
- (ii) record keeping and reporting systems and procedures, including those designed to maintain proper documentation and records, were weak or absent, resulting in inadequate or missing documentation with respect to many transactions; and
- (iii) unallocated client assets identified by the Receiver would not be sufficient to cover the Trust Account Deficiency.

19. Between April 2005 and September 2005, the Receiver continued its review of the Corporate Respondents’ books and records.

20. The Third Report of the Receiver, dated August 15, 2005, concluded that the Trust Account Deficiency had an estimated value of \$3,415,000 and was attributable to the following:

- (i) substantial spending by the Corporate Respondents on leasehold improvements and purchases of furniture and art;
- (ii) financing of overheads and ongoing losses sustained by the Corporate Respondents; and
- (iii) a substantial investment by the Corporate Respondents through a private placement in a privately owned Canadian company.

21. The Fourth Report of the Receiver dated September 30, 2005:

- (i) confirmed that the vast majority of securities purchased by Marlow Private were notionally allocated, but not registered, to individual investors; and
- (ii) estimated that the Respondents' clients, including the Six Clients, would recover approximately 60% of balances owed to them.

22. Marlow has not provided any satisfactory explanation to Staff or the Receiver regarding the Trust Account Deficiency.

23. On January 6, 2006, the Ontario Superior Court of Justice made an order authorizing the bankruptcy of the Corporate Respondents, but not Marlow personally (the "Bankruptcy Order") and appointed the Receiver as the trustee in bankruptcy (the "Trustee").

IV. Conduct Contrary to the Public Interest by Marlow

24. Marlow has breached Ontario securities law and engaged in conduct contrary to the public interest by failing:

- (i) to deal fairly, honestly, and in good faith with his clients, contrary to s. 2.1 of Rule 31-505.
- (ii) to maintain books, records and other documents necessary for the proper recording of business transactions and financial affairs executed on behalf of others, contrary to s. 19 of the Act and s. 113(1) of the Regulations.

- (iii) to deposit into a trust account and properly identify funds or prepayments held on behalf of his clients contrary to s. 118-119 of the Regulations;
- (iv) to file with the Commission audited financial statements for Marlow Private for the year ended December 31, 2003, in contravention of s. 21.10(4) of the Act and s. 139 of the Regulations.

V. TERMS OF SETTLEMENT

25. Marlow agrees to the following terms of settlement:

- (a) Marlow's registrations under Ontario securities law be suspended permanently, pursuant to paragraph 1 of s. 127(1);
- (b) Marlow cease trading in securities permanently, pursuant to paragraph 2 of s. 127(1)
- (c) any exemptions contained in Ontario securities law do not apply to Marlow permanently, pursuant to paragraph 3 of s. 127(1);
- (d) Marlow be reprimanded, pursuant to paragraph 6 of s.127(1);
- (e) Marlow resign any positions he holds as director or officer of any issuer, pursuant to paragraph 7 of s.127(1); and
- (f) Marlow be permanently prohibited from becoming or acting as officer or director of any issuer, pursuant to paragraph 8 of s.127(1).

VI. STAFF COMMITMENT

26. 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 Marlow in relation to the facts set out in Part III of this Settlement Agreement, subject to the provisions of paragraph 30 below.

VII. PROCEDURE FOR APPROVAL OF SETTLEMENT

27. Approval of this Settlement Agreement shall be sought at the public hearing of the Commission scheduled for May 25, 2006, or such other date as may be agreed to by Staff and Marlow, in accordance with procedures described in this Settlement Agreement.

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

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

30. If Marlow fails to honour the terms of settlement contained in paragraph 25 or 29 of this Settlement Agreement, Staff reserve the right to bring proceedings under Ontario securities law against Marlow based on, but not limited to, the facts set out in Part III of this Settlement Agreement as well as the breach of this Settlement Agreement.

31. 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 Marlow will 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, unaffected by this Settlement Agreement or the settlement negotiations.

32. Whether or not this Settlement Agreement is approved by the Commission, Marlow agrees that he will not, in any proceeding, refer to or rely upon this Settlement Agreement or the negotiation or process of approval of this Settlement 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.

VIII. DISCLOSURE OF AGREEMENT

33. 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 consent of both Marlow and Staff or as may be required by law.

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

IX. EXECUTION OF 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 effective as an original signature.

Dated this 19th day of May, 2006

“Melanie Adams”
Witness

“Terrence William Marlow”
Terrence William Marlow

Dated this 19th day of May, 2006

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
TERRENCE WILLIAM MARLOW,
MARLOW GROUP PRIVATE PORTFOLIO MANAGEMENT INC.
AND MARLOW GROUP SECURITIES INC.**

**ORDER
(Section 127)**

WHEREAS on April 4, 2006, the Ontario Securities Commission issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act* (the "Act") in respect of Terrence William Marlow ("Marlow"), Marlow Group Private Portfolio Management Inc. and Marlow Group Securities Inc.;

AND WHEREAS Marlow entered into a settlement agreement with Staff of the Commission dated May 19, 2006 (the "Settlement Agreement") in which he agreed to a settlement of the proceeding against him, subject to the approval of the Commission;

AND WHEREAS the Commission issued a Notice of Hearing dated May **, 2006 setting down the hearing to consider the Settlement Agreement;

AND UPON reviewing the Settlement Agreement, the Notice of Hearing and the Statement of Allegations of Staff of the Commission, and upon hearing submissions from Marlow's representative and from Staff of the Commission;

IT IS HEREBY ORDERED THAT:

- (a) the Settlement Agreement attached this Order as Schedule "1" is hereby approved;
- (b) Marlow's registrations under Ontario securities law be suspended permanently, pursuant to paragraph 1 of s. 127(1);
- (c) Marlow cease trading in securities permanently, pursuant to paragraph 2 of s. 127(1);
- (d) any exemptions contained in Ontario securities law do not apply to Marlow permanently, pursuant to paragraph 3 of s. 127(1);
- (e) Marlow be reprimanded, pursuant to paragraph 6 of s.127(1);
- (f) Marlow resign any positions he holds as director or officer of any issuer, pursuant to paragraph 7 of s.127(1); and
- (g) Marlow be permanently prohibited from becoming or acting as officer or director of any issuer, pursuant to paragraph 8 of s.127(1).

DATED at Toronto this day of May, 2006
