



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

22nd Floor
20 Queen Street West
Toronto ON M5H 3S8

22e étage
20, rue queen ouest
Toronto ON M5H 3S8

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

- and -

IN THE MATTER OF MING CHAO ZHAO

**SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE COMMISSION
AND MING CHAO ZHAO**

PART I - INTRODUCTION

1. The Ontario Securities Commission (the "Commission") will issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), it is in the public interest for the Commission to make certain orders in respect of Ming Chao Zhao, also known as Michael Zhao, ("Zhao" or the "Respondent").

PART II - JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission ("Staff") agree to recommend settlement of the proceeding to be commenced by a Notice of Hearing and a Statement of Allegations to be filed by Staff (the "Proceeding") against Zhao according to the terms and conditions set out in Part V of this Settlement Agreement. Zhao agrees to the making of an order in the form attached as Schedule "A", based on the facts set out below.

PART III - AGREED FACTS

3. For this proceeding, and any other regulatory proceeding commenced by a securities regulatory authority, Zhao agrees with the facts set out in this Part of the Settlement Agreement.

(a) Overview

4. Between June 2010 and December 2011 (the “Relevant Period”), Zhao engaged in insider trading. Zhao was an Investment Banking Analyst at BMO Nesbitt Burns (“BMO”). He was in possession of undisclosed material information about Menu Foods Income Fund, (“Menu Foods”), Consolidated Thompson Iron Mines Ltd. (“Consolidated Thompson”), Forzani Group Ltd. (“Forzani”), Pacific Northern Gas Ltd. (“Pacific Northern”) and Canmarc REIT (“Canmarc”) (the “Five Reporting Issuers”) as a result of his position at BMO.

5. The undisclosed material information about the Five Reporting Issuers was that they were involved in merger and acquisition (“M&A”) transactions. BMO was involved in these M&A transactions as a financial adviser.

6. Zhao directed the purchase of the securities of the Five Reporting Issuers in advance of the public announcement of the M&A transactions in an online discount brokerage account with TD Waterhouse (“Waterhouse”) held by a family member with a name other than Zhao (the “Family Account”). After the public announcement of the M&A transactions, Zhao directed the sale of the securities of the Five Reporting Issuers to earn a profit in the Family Account of approximately \$416,000.

7. Zhao’s trading in the Family Account was not disclosed to BMO, contrary to its compliance policies.

(b) Conduct contrary to the Act

8. As a result of his position at BMO, Zhao was a person in a special relationship to the Five Reporting Issuers. While a person in a special relationship with the Five Reporting Issuers, Zhao purchased securities of the Five Reporting Issuers with knowledge of undisclosed material information about the Five Reporting Issuers and thereby engaged in insider trading contrary to subsection 76(1) of the Act.

(c) The Respondent

9. Zhao is 28 years of age. He lives in Toronto. He was employed by BMO as an Investment Banking Analyst.

10. Zhao was hired on July 5, 2009, as an Investment Banking Analyst in the Media & Communication Group of the Investment & Corporate Banking division of BMO. His duties included the following:

(a) conducting financial analyses of companies, including comparable trading analysis, precedent transaction analysis, and pro-forma financial modelling;

(b) preparing proactive client pitches, including compiling data, assembling presentation materials, and conducting specific research to support valuation and rationale; and

(c) participating in strategic alternatives reviews for clients by applying capital markets knowledge.

(d) Trading in the Family Account

11. The trades in the Family Account occurred proximate to the merger announcements. For instance, the Family Account started accumulating the bulk of holdings in Consolidated Thompson on the day prior to the M&A announcements. The Family Account also bought Pacific Northern within a week, Canmarc within two weeks and accumulated Forzani shares within three weeks of the M&A announcements. The Family Account made its largest investment of \$814,400 in Canmarc in advance of the public announcement of the M&A deal on November 28, 2011, shortly before Zhao left BMO.

(i) Menu Foods Income Fund

12. At 2:15 a.m. on August 9, 2010, Menu Foods announced that Simmons Pet Food, an affiliate of Simmons Foods, Inc. had entered into a definitive agreement to acquire Menu Foods for approximately \$239 million, including assumption of existing debt. Immediately after the disposition of the Fund's assets, the units of the Fund would be redeemed for \$4.80 per unit in cash.

13. On August 6, 2010, Menu Foods' unit price closed at \$3.27.

14. On August 9, 2010, Menu Foods' unit price closed at \$4.72.

15. Prior to the public announcement of the agreement that Simmons Pet Food would acquire Menu Foods, Zhao accessed the shared network drive at BMO and was aware of the transaction

before it was announced. Between June 16, 2010 and July 22, 2010, Zhao had 24,000 units of Menu Foods purchased at a total cost of \$86,549 in the Family Account at an average price of \$3.61.

16. On August 9, 2010, the day of the takeover announcement, Zhao had the Family Account sell its entire 24,000 share position at an average price of \$4.72 per unit.

17. The Family Account earned a profit of \$26,720.

(ii) Consolidated Thompson Iron Mines Ltd.

18. At 4:41 p.m. (after market close) on January 11, 2011, Cliffs Natural Resources publicly announced that it had entered into a definitive arrangement agreement with Consolidated Thompson to acquire all of its shares in an all cash transaction valued at approximately \$4.9 billion (including net debt), or \$17.25/share.

19. On January 11, 2011, Consolidated Thompson closed at \$13.38/share.

20. On January 12, 2011, Consolidated Thompson closed at \$17.35/share.

21. Prior to the public announcement of the acquisition of Consolidated Thompson by Cliffs Natural Resources, Zhao accessed BMO's shared network drive and was aware of the pending transaction prior to its public announcement.

22. Between January 10, 2011 and January 11, 2011, Zhao had the Family Account purchase 16,500 shares at a total cost of \$218,280 at an average price of \$13.23.

23. On January 18, 2011 and January 24, 2011, Zhao had the Family Account sell 16,500 shares in Consolidated Thompson at an average price of \$17.29/share.

24. The Family Account earned a profit of \$66,944.

(iii) Forzani Group Limited

25. At 6:35 a.m. on May 9, 2011, the Forzani Group publicly announced that it would be acquired by Canadian Tire for \$26.50/share in cash.

26. On May 6, 2011, Forzani's share price closed at \$17.61/share.

27. On May 9, 2011, Forzani's share price closed at \$26.25/share.
28. Prior to the public announcement of the acquisition of Forzani by Canadian Tire, Zhao accessed BMO's shared network drive and was aware of the pending acquisition before it was publicly announced. Between April 18, 2011, and May 6, 2011, Zhao had the Family Account purchase 11,500 shares at an average price of \$18.18 per share.
29. On May 9, 2011, Zhao had the Family Account sell 6,500 shares of Forzani at an average price of \$26.22/share.
30. On June 1, 2011, Zhao had the Family Account sell the remaining 5,000 shares of Forzani at an average price of \$26.41/share.
31. The Family Account earned a profit of \$93,339.

(iv) Pacific Northern Gas Ltd

32. At 7:30 a.m. on Monday, October 31, 2011, AltaGas publicly announced that it had entered into a definitive agreement with Pacific Northern pursuant to which AltaGas would indirectly acquire all of the issued and outstanding common shares of Pacific Northern for \$36.75 cash per share.
33. On October 28, 2011, Pacific Northern's stock price closed at \$30.50.
34. On October 31, 2011, Pacific Northern's stock price closed at \$36.67.
35. Prior to the public announcement of the acquisition of Pacific Northern by AltaGas, Zhao accessed BMO's shared network drive and was aware of the pending acquisition before it was publicly announced. Between October 25, 2011 and October 28, 2011, Zhao had the Family Account purchase 7,500 shares of Pacific Northern at a total cost of \$222,296 at an average price of \$29.64/share.
36. On November 4, 2011, Zhao had the Family Account sell 7,400 shares of Pacific Northern and sell its remaining 100 shares of Pacific Northern on November 7, 2011.

37. The Family Account earned a profit of \$52,935.

(v) Canmarc Real Estate Investment Trust

38. At 6:30 a.m. on November 28, 2011, Cominar publicly announced its intention to acquire all units of Canmarc in an all-cash offer of \$15.30/unit. Additionally, Cominar purchased by way of private placement, a total of 3,099,300 Canmarc units, representing 5.7% of the total issued and outstanding units.

39. On November 25, 2011, Canmarc's unit price closed at \$13.28/unit.

40. On November 28, 2011, Canmarc's unit price closed at \$15.80/unit.

41. Prior to the public announcement of the acquisition of Canmarc by Cominar, Zhao accessed BMO's shared network drive and was aware of the acquisition before it was publicly announced. Between November 11, 2011 and November 21, 2011, Zhao had the Family Account purchase 60,000 units of Canmarc at a total cost of \$814,400 at an average price of \$13.57/unit. On January 26, 2012, Zhao had the Family Account sell its total position of 60,000 Canmarc units at an average price of \$16.52.

42. The Family Account earned a profit of \$176,781.

(e) Trading in the Family Account was directed by Zhao

43. All the trades in the Family Account were made by Zhao or at the direction of Zhao.

(f) Materiality of BMO information

44. BMO was retained as financial advisers on each of the five M&A deals.

45. At the time that the securities of the Five Reporting Issuers were purchased in the Family Account, BMO was in possession of material information about the Five Reporting Issuers. The material information had not been generally disclosed. Indeed, it was highly confidential.

(g) Zhao's access to undisclosed material information

46. At the time that the securities of the Five Reporting Issuers were purchased in the Family Account, Zhao had access to material undisclosed information about the Five Reporting Issuers. As a result of his position, he had access to a shared computer network drive where confidential

documents respecting the relevant M&A deals were stored. He accessed relevant documents on the shared network drive in advance of trading of the securities of Menu Foods, Consolidated Thompson, Forzani, Pacific Northern, and Canmarc.

**PART IV - CONDUCT CONTRARY TO ONTARIO SECURITIES LAW AND
CONTRARY TO THE PUBLIC INTEREST**

47. By purchasing securities of the Five Reporting Issuers while possessed with knowledge of undisclosed material information about the Five Reporting Issuers and while in a special relationship with the Five Reporting Issuers, Zhao engaged in insider trading contrary to subsection 76(1) of the Act and thereby acted contrary to the public interest.

PART V - TERMS OF SETTLEMENT

48. The Respondent agrees to the terms of settlement listed below.

49. The Commission will make an order pursuant to section 127(1) and section 127.1 of the *Act* that:

- (a) the Settlement Agreement is approved;
- (b) trading in any securities by the Respondent shall cease permanently, except that trading shall be permitted in mutual fund, exchange-traded fund or index fund securities for the account of any registered retirement savings plans, tax-free savings accounts and self-directed retirement savings plans (as defined in the *Income Tax Act* (Canada) in which Zhao and/or his spouse have sole legal and beneficial ownership, and such trading is carried out through a registered dealer in Canada to whom he must give a copy of this Order at the time he opens or modifies these accounts;
- (c) the acquisition of any securities by the Respondent is prohibited permanently, except that the acquisition of securities shall be permitted in mutual fund, exchange-traded fund or index fund securities for the account of any registered retirement savings plans, tax-free savings accounts and self-directed retirement savings plans (as defined by the *Income Tax Act* (Canada)) in which Zhao and/or his spouse have sole legal and beneficial ownership, and such trading is carried

out through a registered dealer in Canada to whom he must give a copy of this Order at the time he opens or modifies these accounts;

- (d) notwithstanding paragraphs (b) and (c) above, Zhao shall be permitted to have 30 calendar days from the date of the order to effect liquidating trades only of any non-mutual fund securities that he owns in BMO Investorline accounts # 22043142, 22429619, and 21640397 and he must give a copy of this Order to the Chief Compliance Officer of BMO Investorline and provide notice to Staff of the Commission upon completion of his liquidating trades;
- (e) any exemptions contained in Ontario securities law do not apply to the Respondent permanently, except for the purpose of trades described in paragraphs (b) and (c) set forth above in this Order;
- (f) the Respondent is reprimanded;
- (g) the Respondent resign any position he holds as a director or officer of any issuer;
- (h) the Respondent is prohibited from becoming or acting as a director or officer of any issuer for ten years;
- (i) the Respondent resign any position he holds as a director of a registrant;
- (j) the Respondent is prohibited from becoming or acting as a director of a registrant permanently;
- (k) the Respondent resign any position he holds as a director or officer of an investment fund manager;
- (l) the Respondent is prohibited from becoming or acting as a director or officer of an investment fund manager permanently;
- (m) the Respondent is prohibited from becoming or acting as a registrant, investment fund manager or promoter permanently;

- (n) the Respondent pay an administrative penalty of \$750,000 which is designated for allocation or use by the Commission in accordance with section 3.4(2)(b) of the Act to or for the benefit of third parties;
- (o) the Respondent disgorge to the Commission the amount of \$416,719 which is designated for allocation or use by the Commission in accordance with section 3.4(2)(b) of the Act to or for the benefit of third parties; and
- (p) the Respondent pay the costs of the Commission's investigation in the amount of \$30,000.

50. The Respondent agrees to make a payment of \$350,000 by certified cheque upon the date the Commission approves this Settlement Agreement, which will satisfy part of the amount of \$416, 719 ordered to be disgorged in paragraph 49(o).

51. The Respondent undertakes to consent to a regulatory Order made by any provincial or territorial securities regulatory authority in Canada containing any or all of the prohibitions set out in sub-paragraphs 49 (b) to (e) and (g) to (l) above. These prohibitions may be modified to reflect the provisions of the relevant provincial or territorial securities law.

PART VI - STAFF COMMITMENT

52. If the Commission approves this Settlement Agreement, Staff will not commence any proceeding under Ontario securities law in relation to the facts set out in Part III of this Settlement Agreement, subject to the provisions of paragraph 53 below.

53. If the Commission approves this Settlement Agreement and the Respondent fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Ontario securities law against the Respondent. These proceedings may be based on, but are not limited to, the facts set out in Part III of this Settlement Agreement as well as the breach of the Settlement Agreement.

PART VII - PROCEDURE FOR APPROVAL OF SETTLEMENT

54. The parties will seek approval of this Settlement Agreement at a public hearing before the Commission to be scheduled on a date agreed to by Staff and the Respondent, according to the procedures set out in this Settlement Agreement and the Commission's Rules of Procedure.

55. Staff and the Respondent agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing on the Respondent's conduct, unless the parties agree that additional facts should be submitted at the settlement hearing.

56. If the Commission approves this Settlement Agreement, the Respondent agrees to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.

57. If the Commission approves this Settlement Agreement, neither party will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the settlement hearing.

58. Whether or not the Commission approves this Settlement Agreement, the Respondent will not use, in any proceeding, this Settlement Agreement or the negotiation or process of approval of this agreement as the basis for any attack on the Commission's jurisdiction, alleged bias, alleged unfairness, or any other remedies or challenges that may otherwise be available.

PART VIII - DISCLOSURE OF SETTLEMENT AGREEMENT

59. If the Commission does not approve this Settlement Agreement or does not make the order attached as Schedule "A" to this Settlement Agreement:

- (a) this Settlement Agreement and all discussions and negotiations between Staff and the Respondent before the settlement hearing takes place will be without prejudice to Staff and the Respondent; and
- (b) Staff and the Respondent will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations contained in the Statement of Allegations. Any proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this agreement.

60. Both parties will keep the terms of the Settlement Agreement confidential until the Commission approves the Settlement Agreement. At that time, the parties will no longer have to maintain confidentiality. If the Commission does not approve the Settlement Agreement, both parties must continue to keep the terms of the Settlement Agreement confidential, unless they agree in writing not to do so or are required by law to disclose the terms.

PART IX - EXECUTION OF SETTLEMENT AGREEMENT

61. The parties may sign separate copies of this agreement. Together, these signed copies will form a binding agreement.

62. A fax copy of any signature will be treated as an original signature.

Dated this “30th” day of “April”, 2013

“Ming Chao Zhao”
Ming Chao Zhao

“Ying Ting Feng”
Witness

“Tom Atkinson”
Tom Atkinson
Director
Enforcement Branch



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

- and -

IN THE MATTER OF MING CHAO ZHAO

ORDER

(Pursuant to subsection 127(1) and section 127.1 of the Securities Act and Rule 12 of the Commission Rules of Procedure)

WHEREAS on May 2, 2013, the Ontario Securities Commission (the “Commission”) issued a Notice of Hearing (the “Notice of Hearing”) pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “Act”) and Staff of the Commission (“Staff”) filed a Statement of Allegations dated May 2, 2013 (the “Statement of Allegations”) in respect of Ming Chao Zhao (the “Respondent”);

AND WHEREAS the Respondent and Staff entered into a Settlement Agreement dated April 30, 2013, (the “Settlement Agreement”) in which they agreed to a settlement in relation to the matters set out in the Notice of Hearing and the Statement of Allegations subject to the approval of the Commission;

AND WHEREAS the Commission has reviewed the Notice of Hearing, the Statement of Allegations and the Settlement Agreement and has heard submissions from counsel for Staff and counsel for the Respondent;

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

IT IS HEREBY ORDERED THAT:

- (a) the Settlement Agreement is approved;
- (b) pursuant to subsection 127(1)2 of the Act, trading in any securities by the Respondent shall cease permanently, except that trading shall be permitted in mutual fund, exchange-traded fund or index fund securities for the account of any registered retirement savings plans, tax-free savings accounts and self-directed retirement savings plans (as defined in the *Income Tax Act* (Canada)) in which Zhao and/or his spouse have sole legal and beneficial ownership, and such trading is carried out through a registered dealer in Canada to whom he must give a copy of this Order at the time he opens or modifies these accounts;
- (c) pursuant to subsection 127(1)2.1 of the Act, the acquisition of any securities by the Respondent is prohibited permanently, except that the acquisition of securities shall be permitted in mutual fund, exchange-traded fund or index fund securities for the account of any registered retirement savings plans, tax-free savings accounts and self-directed retirement savings plans (as defined in the *Income Tax Act* (Canada)) in which Zhao and/or his spouse have sole legal and beneficial ownership, and such trading is carried out through a registered dealer in Canada to whom he must give a copy of this Order at the time he opens or modifies these accounts;
- (d) notwithstanding paragraphs (b) and (c) above, Zhao shall be permitted to have 30 calendar days from the date of this Order to effect liquidating trades only of any non-mutual fund securities that he owns in BMO Investorline accounts # 22043142, 22429619, and 21640397 and he must give a copy of this Order to the Chief Compliance Officer of BMO Investorline and provide notice to Staff of the Commission upon completion of his liquidating trades;
- (e) pursuant to subsection 127(1)3 of the Act, any exemptions contained in Ontario securities law do not apply to the Respondent permanently, except for the purpose of trades described in paragraphs (b) and (c) set forth above in this Order;
- (f) pursuant to subsection 127(1)6 of the Act, the Respondent is reprimanded;

- (g) pursuant to subsection 127(1)7 of the Act, the Respondent resign any position he holds as a director or as an officer of any issuer;
- (h) pursuant to subsection 127(1)8 of the Act, the Respondent is prohibited from becoming or acting as a director or as an officer of any issuer for ten years;
- (i) pursuant to subsection 127(1)8.1 of the Act, the Respondent resign any position he holds as a director or as an officer of a registrant;
- (j) pursuant to subsection 127(1)8.2 of the Act, the Respondent is prohibited from becoming or acting as a director or as an officer of a registrant permanently;
- (k) pursuant to subsection 127(1)8.3 of the Act, the Respondent resign any position he holds as a director or as an officer of an investment fund manager permanently;
- (l) pursuant to subsection 127(1)8.4 of the Act, the Respondent is prohibited from becoming or acting as a director or as an officer of an investment fund manager permanently;
- (m) pursuant to subsection 127(1)8.5 of the Act, the Respondent is prohibited from becoming or acting as a registrant, investment fund manager or promoter permanently;
- (n) pursuant to subsection 127(1)9 of the Act, the Respondent pay an administrative penalty of \$750,000 which is designated for allocation or use by the Commission in accordance with section 3.4(2)(b) of the Act to or for the benefit of third parties;
- (o) pursuant to subsection 127(1)10 of the Act, the Respondent disgorge to the Commission the amount of \$416,719 which is designated for allocation or use by the Commission in accordance with section 3.4(2)(b) of the Act to or for the benefit of third parties, of which \$350,000 shall be paid by the Respondent upon the making of this Order; and

- (p) pursuant to subsection 127.1(1) of the Act, the Respondent pay the costs of the Commission's investigation in the amount of \$30,000.

DATED at Toronto this day of , 2013.

Edward P. Kerwin