



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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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 BUNTING & WADDINGTON INC., ARVIND SANMUGAM,
JULIE WINGET and JENIFER BREKELMANS**

**SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION
AND JENIFER BREKELMANS**

PART I - INTRODUCTION

1. By Notice of Hearing dated March 22, 2012, the Ontario Securities Commission (the “Commission”) announced that it proposed to hold a hearing, commencing on April 16, 2012, 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 to make orders, as specified therein, against Bunting & Waddington Inc. (“Bunting & Waddington”), Arvind Sanmugam (“Sanmugam”), Julie Winget (“Winget”) and Jenifer Brekelmans (“Brekelmans”). The Notice of Hearing was issued in connection with the allegations as set out in the Statement of Allegations of Staff of the Commission (Staff”) dated March 22, 2012 (the “Statement of Allegations”).

2. The Commission will issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to section 127 of the Act, it is in the public interest for the

Commission to approve this Settlement Agreement between Staff and Brekelmans (the “Settlement Agreement”), and to make certain orders in respect of Brekelmans.

PART II – JOINT SETTLEMENT RECOMMENDATION

3. Staff agree to recommend settlement of the proceeding initiated by the Notice of Hearing against Brekelmans in accordance with the terms and conditions set out below. Brekelmans consents to the making of an order against her in the form attached as Schedule “A” on the basis of the facts set out below.

PART III – AGREED FACTS

Background

4. Brekelmans is a resident of Thamesford, Ontario, and has never been registered with the Commission in any capacity.

5. After commencing a personal relationship with Sanmugam in or around September, 2005, Brekelmans was offered employment with Sanmugam and Bunting & Waddington. At this time, Brekelmans was completely unsophisticated and had had no experience or training in the capital markets.

6. Between approximately July 2006 and June 2010 (the “Material Time”), Brekelmans was an employee of Bunting & Waddington, a company controlled by Sanmugam, and she also worked for other companies incorporated and/or controlled by Sanmugam.

7. Throughout the Material Time, Brekelmans reported solely to Sanmugam and took direction solely from him. At no time did Brekelmans exercise any control or authority over Bunting & Waddington or any other company incorporated by and/or controlled by Sanmugam.

Bunting & Waddington Inc.

8. Sanmugam was at all times the directing mind of Bunting & Waddington, and of the other companies he controlled and/or incorporated.

9. Bunting and Waddington held itself out as providing “market commentary” to its clients, who are investors located in Ontario, other provinces in Canada, and the United States (the “Investors”).

10. Sanmugam directed Investors to open “trading accounts with margins and options” at an online discount brokerage service (the “Investor Accounts”). Sanmugam exercised control over the Investor Accounts in two ways:

- (a) Investors would provide the login identification and passwords to their trading accounts to Sanmugam and he would execute trades in those accounts, or, through Brekelmans, cause trades to be executed in those accounts; or
- (b) Sanmugam would direct Investors or, through Brekelmans, cause Investors to be directed to execute specific trades within their accounts.

11. During the Material Time, Brekelmans was aware that Sanmugam represented to some or all of the Investors that:

- (a) they could expect to earn a monthly return of \$8,000 on a total investment of \$100,000, and, provided this 8% monthly return was achieved in any given month, Investors would pay Bunting & Waddington a monthly retainer of \$3,500;
- (b) he was a successful trader;
- (c) he had over 75 advisors working for him at Bunting & Waddington;
- (d) Bunting & Waddington’s market commentators were highly experienced and each had a proven track record of generating high rates of return; and
- (e) Investors would always retain full control over their invested funds.

12. During the Material Time, Sanmugam was the only market commentator or advisor from whom Brekelmans received trading instructions and the only market commentator or advisor Brekelmans met.

Brekelmans' trading and advising activity

13. Under Sanmugam's direction, Brekelmans traded in securities in some of the Investor Accounts and advised some of the Investors with respect to trading in specific securities.

14. Sanmugam instructed Brekelmans to send emails to some Investors with detailed instructions to buy and/or sell certain securities on certain days at specific prices. Brekelmans would comply with these instructions by sending these emails either under her own name using the email address jb.bunting.waddington@rogers.com, under the name Katie J. using the email address kj.bunting.waddington@rogers.com or under Sanmugam's name.

15. Sanmugam directed Brekelmans to input the Investors' trading data into spreadsheets (the "Spreadsheets") which recorded the Investors' profits and losses. Sanmugam used the Spreadsheets to determine whether or not he had achieved an 8% return in a given month, and consequently whether or not the Investor was required to pay the monthly retainer of \$3,500 in a given month. Sanmugam instructed Brekelmans to email the Spreadsheets to the Investors.

16. On Sanmugam's instructions, Brekelmans also kept records of the Investors' trades in notebooks and on whiteboards in the Bunting & Waddington office.

17. On occasion, Sanmugam sent Brekelmans to help some of the Investors set up their online trading accounts.

18. During the Material Time, Sanmugam is the only person from whom Brekelmans received instructions in respect of trading and/or advising in securities, and in respect of communicating with the Investors.

19. In March 2006, on Sanmugam's instructions, Brekelmans began to draw down on a line of credit which Sanmugam had directed her to obtain. He accessed these funds for his own personal use and for Bunting & Waddington purposes, including to purchase a vehicle to be used

for Bunting & Waddington business. Sanmugam also accessed funds from Brekelmans' line of credit to partially reimburse at least one Investor.

20. Sanmugam convinced Brekelmans' parents and other family members to invest in the Bunting & Waddington scheme. Brekelmans was duped into believing that Sanmugam was the experienced and successful investor he portrayed himself to be. Brekelmans' family members have lost virtually all of their monies invested with Sanmugam.

21. Sanmugam exercised complete control over every aspect of Brekelmans' life, including her living arrangements. Brekelmans felt powerless to extricate herself from Sanmugam's control.

22. For her work in respect of Bunting & Waddington and other corporate entities controlled by Sanmugam, Brekelmans was paid sporadically and made little profit from her activities.

Sanmugam's criminal conviction

23. On September 5, 2012, in the Superior Court of Justice, Sanmugam pleaded guilty to and was convicted of 3 counts of fraud over \$5,000 contrary to s. 380(1)(a) of the *Criminal Code*, R.S.C., 1985, c. C-46 in respect of his conduct arising from the facts in this matter. Brekelmans cooperated with the police investigators and the Crown prosecutors.

24. On November 9, 2012, Sanmugam was sentenced to a term of imprisonment of five years and was ordered to pay restitution of over \$1,000,000.00.

PART IV - CONDUCT CONTRARY TO THE PUBLIC INTEREST

25. By engaging in the conduct described above, Brekelmans admits and acknowledges that she contravened Ontario securities law in the following ways:

- (a) Trading and engaging in or holding herself out as engaging in the business of trading in securities without being registered to do so and without an exemption from the dealer registration requirement, contrary to subsection 25(1)(a) of the

Act as that section existed at the time the conduct at issue commenced in July 2006, and contrary to subsection 25(1) of the Act as subsequently amended on September 28, 2009;

- (b) Advising and engaging in or holding herself out as engaging in the business of advising with respect to investing in, buying or selling securities without being registered to do so and without an exemption from the advisor registration requirement, contrary to subsection 25(1)(c) of the Act as that section existed at the time the conduct at issue commenced in July 2006, and contrary to subsection 25(3) of the Act as subsequently amended on September 28, 2009.

26. Brekelmans admits and acknowledges that she acted contrary to the public interest by contravening Ontario securities law as set out in sub-paragraphs 25(a) and (b) above.

PART V - TERMS OF SETTLEMENT

27. Brekelmans agrees to the terms of settlement listed below.

28. A) The Commission will make an order, pursuant to subsection 127(1) of the Act, that:

- (a) the Settlement Agreement is approved;
- (b) trading in any securities by Brekelmans cease for a period of 7 years from the date of the approval of the Settlement Agreement;
- (c) the acquisition of any securities by Brekelmans is prohibited for a period of 7 years from the date of the approval of the Settlement Agreement;
- (d) any exemptions contained in Ontario securities law do not apply to Brekelmans for a period of 7 years from the date of the approval of the Settlement Agreement;

- (e) Brekelmans is prohibited for a period of 7 years from the date of the approval of the Settlement Agreement from becoming or acting as a director or officer of any issuer, registrant, or investment fund manager;
- (f) Brekelmans is prohibited for a period of 7 years from the date of the approval of the Settlement Agreement from becoming or acting as a registrant, as an investment fund manager or as a promoter;
- (g) Brekelmans shall disgorge to the Commission the amount of \$1,500 obtained as a result of her non-compliance with Ontario securities law. The amount of \$1,500 disgorged shall be designated for allocation or for use by the Commission, pursuant to subsection 3.4(2)(b) of the Act;
- (h) notwithstanding the provision of this order, once Brekelmans has fully satisfied the terms of sub-paragraph (g) above, Brekelmans will be permitted to trade for the account of her registered retirement savings plans as defined in the *Income Tax Act*, R.S.C. 1985, c.1, as amended (the "Income Tax Act") solely through a registered dealer or, as appropriate, a registered dealer in a foreign jurisdiction (which dealer must be given a copy of this order) in (a) any "exchange-traded security" or "foreign exchange-traded security" within the meaning of National Instrument 21-101 provided that she does not own beneficially or exercise control or direction over more than 5 percent of the voting or equity securities of the issuer(s) of any such securities, and (b) any security issued by a mutual fund that is a reporting issuer; and

B) Brekelmans also agrees to cooperate fully with Staff in any proceeding in respect of this matter and undertakes to consent to a regulatory order made by any provincial or territorial securities regulatory authority in Canada containing any or all of the sanctions set out in subparagraphs 28(b) to (f) above.

PART VI - STAFF COMMITMENT

29. If this Settlement Agreement is approved by the Commission, Staff will not initiate any other proceeding under the Act against Brekelmans in relation to the facts set out in Part III herein, subject to the provisions of paragraph 30 below.

30. If this Settlement Agreement is approved by the Commission, and at any subsequent time Brekelmans fails to honour the terms of the Settlement Agreement, Staff reserve the right to bring proceedings under Ontario securities law against Brekelmans based on, but not limited to, the facts set out in Part III herein as well as the breach of the Settlement Agreement.

PART VII - PROCEDURE FOR APPROVAL OF SETTLEMENT

31. Approval of this Settlement Agreement will be sought at a hearing of the Commission scheduled on a date to be determined by the Secretary to the Commission, or such other date as may be agreed to by Staff and Brekelmans for the scheduling of the hearing to consider the Settlement Agreement.

32. Staff and Brekelmans agree that this Settlement Agreement will constitute the entirety of the agreed facts to be submitted at the settlement hearing regarding Brekelmans' conduct, unless the parties agree that further facts should be submitted at the settlement hearing.

33. If this Settlement Agreement is approved by the Commission, Brekelmans agrees to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.

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

35. Whether or not this Settlement Agreement is approved by the Commission, Brekelmans agrees that she will not, in any proceeding, refer to or rely upon this Settlement Agreement or the settlement negotiations as the basis of 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.

PART VIII – DISCLOSURE OF SETTLEMENT AGREEMENT

36. If, for any reason whatsoever, this Settlement Agreement is not approved by the Commission or the order attached as Schedule "A" is not made by the Commission:

- (a) this Settlement Agreement and its terms, including all settlement negotiations between Staff and Brekelmans leading up to its presentation at the settlement hearing, shall be without prejudice to Staff and Brekelmans; and
- (b) Staff and Brekelmans shall be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations in the Notice of Hearing and Statement of Allegations of Staff, unaffected by the Settlement Agreement or the settlement discussions/negotiations.

37. The terms of this Settlement Agreement will be treated as confidential by all parties hereto until approved by the Commission. Any obligations of confidentiality shall terminate upon approval of this Settlement Agreement by the Commission. The terms of the Settlement Agreement will be treated as confidential forever if the Settlement Agreement is not approved for any reason whatsoever by the Commission, except with the written consent of both Brekelmans and Staff or as may be required by law.

PART IX - EXECUTION OF SETTLEMENT AGREEMENT

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

39. A facsimile copy of any signature will be as effective as an original signature.

Signed in the presence of:

“Jeff Brekelmans”

“Jenifer Brekelmans”

Witness

Print Name:

Jenifer Brekelmans

Dated this 29th day of April, 2013

STAFF OF THE ONTARIO SECURITIES COMMISSION

“Tom Atkinson”

Tom Atkinson

Director, Enforcement Branch

Dated this 8th day of May, 2013



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P.O. Box 55, 19th Floor
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Schedule "A"

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

- AND -

**IN THE MATTER OF BUNTING & WADDINGTON INC., ARVIND SANMUGAM,
JULIE WINGET and JENIFER BREKELMANS**

- AND -

**IN THE MATTER OF A SETTLEMENT AGREEMENT BETWEEN STAFF OF THE
ONTARIO SECURITIES COMMISSION AND JENIFER BREKELMANS**

**ORDER
(Subsection 127(1))**

WHEREAS on March 22, 2012, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 127 and 127.1 (the "Notice of Hearing") of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") in respect of Jenifer Brekelmans ("Brekelmans");

AND WHEREAS Brekelmans entered into a Settlement Agreement with Staff of the Commission dated April , 2013 (the "Settlement Agreement") in which Brekelmans agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing, subject to the approval of the Commission;

AND UPON reviewing the Settlement Agreement, the Notice of Hearing and Statement of Allegations of Staff of the Commission dated March 22, 2012, and upon hearing submissions from Brekelmans 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;

IT IS HEREBY ORDERED THAT:

- (a) the Settlement Agreement is approved;
- (b) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Brekelmans cease for a period of 7 years from the date of the approval of the Settlement Agreement;
- (c) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Brekelmans is prohibited for a period of 7 years from the date of the approval of the Settlement Agreement;
- (d) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Brekelmans for a period of 7 years from the date of the approval of the Settlement Agreement;
- (e) pursuant to paragraph 8, 8.2 and 8.4, respectively, of subsection 127(1) of the Act, Brekelmans is prohibited for a period of 7 years from the date of the approval of the Settlement Agreement from becoming or acting as a director or officer of any issuer, registrant, or investment fund manager;
- (f) pursuant to paragraph 8.5 of subsection 127(1) of the Act, Brekelmans is prohibited for a period of 7 years from the date of the approval of the Settlement

Agreement from becoming or acting as a registrant, as an investment fund manager or as a promoter; and,

- (g) pursuant to paragraph 10 of subsection 127(1) of the Act, Brekelmans shall disgorge to the Commission the amount of \$1,500 obtained as a result of her non-compliance with Ontario securities law. The amount of \$1,500 disgorged shall be designated for allocation or for use by the Commission, pursuant to subsection 3.4(2)(b) of the Act;
- (h) notwithstanding the provision of this order, once Brekelmans has fully satisfied the terms of sub-paragraph (g) above, Brekelmans will be permitted to trade for the account of her registered retirement savings plans as defined in the *Income Tax Act*, R.S.C. 1985, c.1, as amended (the "Income Tax Act") solely through a registered dealer or, as appropriate, a registered dealer in a foreign jurisdiction (which dealer must be given a copy of this order) in (a) any "exchange-traded security" or "foreign exchange-traded security" within the meaning of National Instrument 21-101 provided that she does not own beneficially or exercise control or direction over more than 5 percent of the voting or equity securities of the issuer(s) of any such securities, and (b) any security issued by a mutual fund that is a reporting issuer.

DATED AT TORONTO this day of May, 2013.

JAMES E.A. TURNER