

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

- AND -

**IN THE MATTER OF EDA MARIE AGUECI, DENNIS WING, SANTO IACONO,  
JOSEPHINE RAPONI, KIMBERLEY STEPHANY, HENRY FIORILLO,  
GIUSEPPE (JOSEPH) FIORINI, JOHN SERPA, IAN TELFER,  
JACOB GORNITZKI and POLLEN SERVICES LIMITED**

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**SETTLEMENT AGREEMENT  
BETWEEN  
STAFF OF THE ONTARIO SECURITIES COMMISSION  
AND IAN TELFER**

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**PART I - INTRODUCTION**

1. The Ontario Securities Commission (the “**Commission**”) issued a Notice of Hearing on February 7, 2012 (the “**Notice of Hearing**”) to announce that it would hold a hearing to consider, among other things, 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 Ian Telfer (the “**Telfer**”) and others.

**PART II - JOINT SETTLEMENT RECOMMENDATION**

2. Staff of the Commission (“**Staff**”) agree to recommend settlement of the proceeding commenced by the Notice of Hearing (the “**Proceeding**”) against Telfer according to the terms and conditions set out in Part VI of this settlement agreement (the “**Settlement Agreement**”). Telfer 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, Telfer agrees with the facts set out in this Part III of this Settlement Agreement and the conclusion in Part V of this Settlement Agreement.

## **Telfer**

4. Telfer is a sophisticated business person with over 30 years of experience participating in and supporting Canada's capital markets as, among other things, a senior officer and/or director of over a dozen publicly traded companies and private companies, an investor, and a Chartered Accountant since 1977. Over his career Telfer has participated in many complex corporate transactions in Canada.
5. Telfer is a sophisticated investor with substantial experience participating in and/or directing corporate transactions in Canada such as mergers, acquisitions, take-overs, reorganizations and plans of arrangement.
6. Telfer has substantial experience using corporate finance advisory services and was at all material times aware that key risks surrounding corporate finance activity included concerns regarding violation of insider trading rules, maintaining and enforcing confidentiality barriers such as ethical walls, and maintaining and enforcing trading barriers such as grey lists and restricted lists.
7. Throughout his career, Telfer has been aware of the regulatory regime applicable to Ontario's capital markets, and he was aware of the high standards of conduct required of him and others as market participants, particularly when holding senior positions such as he has held.
8. Telfer was also aware of the high standards of conduct required of him and others pursuant to various codes of conduct applicable for market participants and officers and directors of public companies.
9. During the material time Telfer was a significant shareholder of and consultant to Gold Wheaton Gold Corp. ("**Gold Wheaton**") and its predecessors Kadywood Capital Corp. and 222 Pizza Express Corp. (now Franco-Nevada GLW Holdings Corp.).

## **Agueci and GMP**

10. Throughout the material time Telfer was aware that Eda Marie Agueci ("**Agueci**"), a co-respondent in the Proceeding, was subject to securities compliance requirements given

her position at GMP Securities L.P. (“GMP”) as executive assistant to the Chairman, and her access to confidential information. Telfer and Agueci were friends over more than 20 years.

11. Telfer has had a professional relationship with GMP for over 10 years. As such, throughout the material time, Telfer was aware that:
  - a. GMP is a full-service investment dealer with offices in Toronto, Montreal and Calgary, as well as the United States, Europe and Australia, and a registrant in Ontario; and
  - b. all GMP email communications of employees, including Agueci, were kept and stored on GMP servers. He was aware that these emails could be monitored by GMP’s compliance department.

### **Regulatory Framework**

12. Throughout the material time Telfer was aware of the regulatory regime of Ontario’s capital markets, and he was aware of the high standards of conduct required of him and others as market participants, particularly given the senior positions he held. Telfer acknowledges and was aware that:
  - a. the purposes of the Act are to (a) provide protection to investors from unfair, improper or fraudulent practices, and (b) foster fair and efficient capital markets and confidence in capital markets (see section 1.1 of the Act);
  - b. fundamental to achieving the purposes of the Act are, *inter alia*, restrictions on fraudulent and unfair market practices and procedures, and requirements for the maintenance of high standards of fitness and business conduct to ensure honest and responsible conduct by market participants (see subsections 2.1(2)(ii) and (iii) of the Act);

- c. the Commission has published guidelines for policies and procedures concerning inside information which state, *inter alia*, that registrants should ensure that appropriate written policies and procedures for business activities of the registrant be adopted, maintained and enforced to contain and restrict access to inside information, and includes guidance concerning policies and procedures to restrict trades, including the use of grey and restricted lists (see OSC Policy 33-601 – *Guidelines for Policies and Procedures Concerning Inside Information*);
- d. registered firms must establish, maintain and apply policies and procedures which establish a system of controls and supervision sufficient to: (a) provide reasonable assurances that the firm and each individual acting on its behalf complies with securities legislation, (b) manage the risks associated with its business in accordance with prudent business practices, and (c) keeps records which demonstrate the extent of the firm’s compliance with applicable requirements of securities legislation (see National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations*); and
- e. the Commission has published guidelines on corporate governance including adopting codes of business conduct and ethics by reporting issuers to promote integrity and deter wrongdoing (see National Instrument 58-201 – *Corporate Governance Guidelines*).

### **Code of Conduct**

13. In his role as a director of reporting issuers, Telfer was from time to time required to certify, and he did certify, that he had read the respective companies’ codes of conduct and that he would conduct himself in accordance with their terms, all of which were substantially similar.
14. For example, one such code of conduct provided, *inter alia*, that:
  - “It is the responsibility of every [Company] employee, officer and director to read and understand the Code. Individuals must comply with the Code in both letter

and spirit. Ignorance of the Code will not excuse individuals from its requirements.

...

- Never engage in behaviour that harms the reputation of [the Company].

...

- Each employee, officer and director must at all times comply fully with applicable law and should avoid any situation that could be perceived as improper, unethical or indicate a casual attitude towards compliance with the law.

...

- No employee, officer or director shall create or condone the creation of a false record. No employee shall destroy or condone the destruction of a record, except in accordance with Company policies.”

#### **Advising Agueci to use Blackberry PIN messages instead of email**

15. In and about January 2008, Telfer advised Agueci to use Blackberry PIN messages instead of email.

16. On January 29, 2008, Telfer advised Agueci in an email as follows:

*Go to the “wrench” on the homescreen and click on “status” Send me the #. On my address beside the pin: [pin number] Instead of emailing. Use pin with very close friends. Messages don’t go to the gmp server. They go straight to blkberry.*

17. The use of Blackberry PIN messages is a technique which Telfer now understands that Agueci subsequently used to communicate with others in relation to trading securities.

18. Agueci on occasion asked Telfer via Blackberry PIN messages about companies in which she was invested. Agueci and Telfer also discussed via Blackberry PIN messages Agueci’s investment in a company for which he was Chairman.

19. Telfer acknowledges that irrespective of his reasoning for using Blackberry PIN messaging from time to time, it was not proper of him to advise someone working for a registrant such as Agueci to use Blackberry PIN messages where those messages would not be monitored. At the time, Telfer had no knowledge of how Agueci used her

Blackberry to communicate with others and he had no knowledge of Agueci's other conduct as alleged in the Statement of Allegations.

20. From time to time Telfer and Agueci exchanged updated PIN numbers.

**Non-disclosure of the beneficial ownership of shares**

21. In April 2008, Telfer provided Agueci with the opportunity to purchase 500,000 common shares in a private share transaction in 222 Pizza Express Corp. ("**222 Pizza**"). 222 Pizza was a shell company listed on the NEX board of the TSX Venture Exchange.
22. Telfer advised Agueci that the 222 Pizza shares should not be purchased in her name. During the discussion Telfer and Agueci agreed that Agueci's brother in law, Santo Iacono ("**Iacono**"), would instead purchase the 222 Pizza shares.
23. As agreed, Iacono purchased the 222 Pizza shares in his name for \$5,000. Telfer now understands that Iacono deposited the 222 Pizza shares in a brokerage account held jointly by him and his wife.
24. At the time of the transfer, Telfer knew that Agueci had disclosure obligations and trading restrictions as an employee of GMP. Telfer knew that Agueci was prohibited from engaging in undisclosed securities transactions.
25. Prior to the transfer of 222 Pizza shares to Iacono's account, Telfer corresponded directly with Iacono and other investors, and advised them of particulars of the transfer and emphasized that they should "*keep this confidential*".
26. Subsequent to the transfer of 222 Pizza shares to Iacono's account, 222 Pizza went through a corporate reorganization, investment in gold stream royalty agreements, and the renaming of 222 Pizza to Kadywood Capital Corp. and then Gold Wheaton.
27. Telfer now understands that:
  - a. the 222 Pizza shares were sold in Iacono's account and ultimately yielded a return of over \$500,000;

- b. Agueci used those proceeds to, among other things, direct trading in Iacono's account in securities of other issuers that were then listed on GMP's grey or restricted list;
  - c. in or about the same time as the purchase of 222 Pizza shares, Agueci purchased and sold shares of Kadywood/Gold Wheaton in her brokerage accounts at GMP and TD Waterhouse which were monitored by GMP compliance. The sale of these shares in Agueci's GMP and TD Waterhouse accounts yielded a return of over \$71,000; and
  - d. Iacono subsequently transferred funds from his account to Agueci or on her behalf, at her request, frequently in allotments of under \$10,000, which had the effect of avoiding regulatory detection. Telfer further understands that approximately \$200,000 was paid to/for Agueci in this manner.
28. Telfer acknowledges that if Agueci's interest in or trading authority over the 222 Pizza shares in Iacono's account had been disclosed to GMP, that GMP's compliance department would have been able to monitor trading in that undisclosed account, just as they monitored trading in Kadywood/Gold Wheaton shares in Agueci's GMP and TD Waterhouse accounts, to ensure that Agueci was not conducting trades inappropriately.
29. Telfer's agreement with Agueci, a person with securities transaction reporting obligations, to have another name associated with the private share transaction of 222 Pizza shares, resulted in a transaction in which the beneficial owner of the shares was not disclosed. Telfer ought to have known there was a real risk that Agueci might have a beneficial interest in those shares that was not monitored by GMP, as required.

#### **PART IV – RESPONDENT'S POSITION**

30. Telfer requests that the settlement hearing panel consider the following mitigating circumstances. Telfer states that:

- a. he has been and is fully supportive of the regulatory regime applicable to Ontario's capital markets and the high standards of conduct required of him and others as market participants, particularly when holding senior positions such as he has held;
- b. he has and does fully support ensuring that all necessary and proper steps are taken in corporate financial activity that he is involved in to minimize as much as possible the risks surrounding that activity;
- c. in his experience it is not uncommon for people to ask if another member of their family can subscribe for shares in private offering situations. Telfer has started numerous companies in this fashion and has offered a number of people the opportunity to invest in such companies in his efforts to raise capital and promote business in Canada. Some of these companies succeeded and some did not; and
- d. at all material times he believed that his conduct was proper, but acknowledges that in hindsight his conduct fell below the standards required of him as a senior market participant, and that this conduct was contrary to the public interest.

#### **PART V - CONDUCT CONTRARY TO THE PUBLIC INTEREST**

31. Telfer's conduct as outlined above fell below the standard expected from someone in Telfer's position, particularly given his extensive experience in the capital markets industry.
32. Consequently, Telfer's conduct was contrary to the public interest.

#### **PART VI - TERMS OF SETTLEMENT**

33. Telfer agrees to the terms of settlement set out below.
34. The Commission will make an order pursuant to subsection 127(1) and section 127.1 of the Act that:



- (a) this Settlement Agreement shall be approved;
  - (b) pursuant to paragraph 6 of subsection 127(1) of the Act, Telfer shall be reprimanded; and
  - (c) pursuant to subsection 127.1(1) of the Act, Telfer shall within thirty days of this Settlement Agreement being approved pay \$200,000 towards the costs of Staff's investigation.
35. Telfer undertakes not to seek or accept indemnification from any person, company, or other legal entity in respect of the costs ordered to be paid in subparagraph (c) of paragraph 34 of this Settlement Agreement.
36. Telfer undertakes not to, directly or indirectly, trade, or arrange for trading by others, in securities of issuers for which he is a promoter, as defined in subsection 1(1) of the Act, for a period of one year from the date of the approval of this Settlement Agreement. Telfer confirms that he is not currently a promoter of any reporting issuer in Canada. For greater clarity, the undertaking does not prevent Telfer from acquiring securities of issuers for which he is a promoter.

#### **PART VII - STAFF COMMITMENT**

37. If this Settlement Agreement is approved by the Commission, Staff will not commence any other proceeding under the Act against Telfer under Ontario securities law respecting the facts set out in Part III of this Settlement Agreement, subject to the provisions of paragraph 38 below.
38. If the Commission approves this Settlement Agreement and Telfer fails to comply with any of the terms of this Settlement Agreement, Staff may bring proceedings under Ontario securities law against Telfer. 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 this Settlement Agreement.

## **PART VIII - PROCEDURE FOR APPROVAL OF SETTLEMENT**

39. The parties will seek approval of this Settlement Agreement at a public hearing before the Commission according to the procedures set out in this Settlement Agreement and the Commission's *Rules of Procedure* 2012, 35 OSCB 10071.
40. Staff and Telfer agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing on Telfer's conduct, unless the parties agree that additional facts should be submitted at the settlement hearing.
41. If this Settlement Agreement is approved by the Commission, Telfer agrees to waive all of his rights to a full hearing, judicial review or appeal of the matter under the Act.
42. If the Commission approves this Settlement Agreement, none of the parties will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the settlement hearing.
43. Whether or not the Commission approves this Settlement Agreement, Telfer 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 IX - DISCLOSURE OF SETTLEMENT AGREEMENT**

44. 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 Telfer before the settlement hearing takes place will be without prejudice to Staff and Telfer; and
  - b. Staff and Telfer will be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations contained in the Statement of Allegations issued February 7, 2012. Any proceedings, remedies

and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this agreement.

45. All parties will keep the terms of this 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 this Settlement Agreement, all parties must continue to keep the terms of this Settlement Agreement confidential, unless they agree in writing not to do so or if required by law.

**PART X - EXECUTION OF SETTLEMENT AGREEMENT**

46. This Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement.
47. A facsimile or electronic copy of any signature shall be as effective as an original signature.

**DATED** this “17<sup>th</sup>” day of September, 2013.

*“Kevin Richard”*

*“Ian Telfer”*

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Witness

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Ian Telfer

(print name: “Kevin Richard”)

*“Tom Atkinson”*

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Tom Atkinson  
Director, Enforcement Branch  
Ontario Securities Commission

**SCHEDULE “A”**

**IN THE MATTER OF THE *SECURITIES ACT*,**

**RSO 1990, c S.5, AS AMENDED**

**- AND -**

**IN THE MATTER OF EDA MARIE AGUECI, DENNIS WING, SANTO IACONO,  
JOSEPHINE RAPONI, KIMBERLEY STEPHANY, HENRY FIORILLO,  
GIUSEPPE (JOSEPH) FIORINI, JOHN SERPA, IAN TELFER,  
JACOB GORNITZKI and POLLEN SERVICES LIMITED**

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**ORDER**

**(Subsections 127(1) and Section 127.1)**

**(Settlement with Ian Telfer)**

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**WHEREAS** on February 7, 2012, Staff of the Ontario Securities Commission (“**Staff**” and 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**”) in respect of Mr. Ian Telfer (the “**Respondent**”) in regards to conduct that occurred between January 2008 and March 2011 (the “**Material Time**”);

**AND WHEREAS** Telfer and Staff entered into a settlement agreement (the “**Settlement Agreement**”) in which they agreed to a settlement of the proceeding commenced by the Notice of Hearing, subject to the approval of the Commission;

**AND WHEREAS** Telfer has undertaken not to:

- a. seek or accept indemnification or reimbursement from any person, company, or other legal entity in respect of the costs payable in this Order; and
- b. directly or indirectly, trade, or arrange for trading by others, in securities of issuers for which he is a promoter, as defined in subsection 1(1) of the Act, for a

period of one year from the date of this Order. For greater clarity, the undertaking does not prevent Telfer from acquiring securities of issuers for which he is a promoter.

**AND UPON** reviewing the Settlement Agreement and the Notice of Hearing, and upon hearing submissions from counsel for Telfer and from counsel for Staff;

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

**IT IS ORDERED THAT:**

1. the Settlement Agreement is hereby approved;
2. pursuant to paragraph 6 of subsection 127(1) of the Act, Telfer is hereby reprimanded; and
3. pursuant to subsection 127.1(1) of the Act, Telfer shall within thirty days of this Settlement Agreement being approved pay \$200,000 towards the costs of Staff's investigation.

**DATED** at Toronto this \_\_\_\_\_ day of September, 2013.

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