



Ontario
Securities
Commission

Commission des
valeurs mobilières
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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 JOE DWEK

**SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION
and JOE DWEK**

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 section 127 of the Act, it is in the public interest for the Commission to approve this Settlement Agreement between Staff of the Commission (“Staff”) and Joe Dwek (“Dwek”) (the “Settlement Agreement”), and to make certain orders in respect of Dwek.

PART II – JOINT SETTLEMENT RECOMMENDATION

2. Staff agree to recommend settlement of the proceeding initiated by the Notice of Hearing against Dwek in accordance with the terms and conditions set out below. Dwek 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.

PART III – AGREED FACTS

A. Background

3. During the period between 2002 and 2010, Dwek was registered with the Commission as the Ultimate Responsible Person of Pathway Investment Counsel Inc. (“Pathway”). During the period between 2010 and October 12, 2012, Dwek was registered with the Commission as the Ultimate Designated Person (“UDP”) of MineralFields Management Inc. (“MFMI”), Limited Market Dealer Inc. (“LMDI”) and Pathway which comprised a group of companies (the “MineralFields Group”). Between the period between 2002 and October 12, 2012, Dwek was also registered as the Chief Compliance Officer (“CCO”) of MFMI and Pathway.

4. The MineralFields Group was involved in the distribution and management of flow-through limited partnerships. These limited partnerships invested primarily in flow-through shares of junior Canadian resource issuers through private placement issues.

5. MFMI was registered in the category of investment fund manager. It acted as the investment fund manager for flow-through limited partnerships the units of which were sold to investors through prospectuses and offering memoranda under the branding of “MineralFields”, “Pathway”, and “EnergyFields LPs” (the “MineralFields LPs”).

6. LMDI was registered as a dealer in the category of exempt market dealer. LMDI sourced private placement issues of resource companies for the MineralFields LPs to invest in, and received a finder’s fee (in cash and/or warrants) from these resource issuers for its services as an agent/finder. LMDI was also involved in negotiating the terms of the private placement issues with management of the resource issuers in connection with the purchase of securities by the MineralFields LPs.

7. Pathway was registered as an adviser in the category of portfolio manager. It was retained to provide portfolio management services to the MineralFields LPs.

8. Between April 28, 2011 and August 31, 2011, Staff conducted reviews of MFMI, LMDI and Pathway (the “Compliance Reviews”) for the period between April 1, 2010 and March 31, 2011 (the “Review Period”). Compliance Staff of the OSC noted a number of deficiencies

following its review. During the course of the Compliance Reviews, certain matters came to the attention of Staff respecting Dwek.

9. In particular, during the Compliance Reviews, it was revealed that commencing in 2002 and continuing until 2011, it was consistently disclosed in regulatory filings with the Commission that Dwek was the 100% owner of the registered firms within the MineralFields Group. Dwek is and has been the legal owner of 100% of the voting shares of MFMI and LMDI. Another person (the “Undisclosed Partner”) had a beneficial interest in 49.9% of the non-voting shares of MFMI and LMDI since inception of these firms in 2002 and 2004 respectively until after the Compliance Reviews. Dwek had an understanding with the Undisclosed Partner that the Undisclosed Partner would have a 49.9% interest and Dwek would have a 50.1% interest in the companies from the date each company was incorporated. Between 2002 and 2010:

- (a) a document dated March 25, 2002 and signed by Dwek was filed with the Commission certifying that Dwek was the only shareholder of LMDI owning 100% of the shares of LMDI;
- (b) in 2005, a limited market dealer survey questionnaire was signed by Dwek as president of LMDI and submitted to the Commission. It stated that Dwek was the sole director, officer and shareholder of LMDI;
- (c) during a compliance field review conducted by Staff in November 2005 of LMDI, Staff were told by LMDI’s CCO that Dwek was the sole shareholder of LMDI;
- (d) in 2010, the Commission was provided with an ownership chart of MFMI signed by Dwek which stated that “Joe Dwek owns 100% of the shares of MineralFields Fund Management Inc.”; and
- (e) during the Compliance Review of MFMI that commenced on April 28, 2011, Staff sent a books and records request that included a request “for a copy of the Registrant’s current organization chart and employee list with telephone numbers.” In response to this request, Staff received from the CCO and Chief Financial Officer of LMDI an organizational chart showing Dwek (directly and through his companies) as the 100% owner of MFMI and LMDI.

10. The Undisclosed Partner was not registered under the Act in any capacity and was not disclosed as a “permitted individual” within the meaning of National Instrument 33-109-*Registration Information*.

B. Inadequate Supervision of Personal Trading and Inappropriate Personal Trading

11. As the UDP of MFMI, LMDI and Pathway, Dwek was responsible for the compliance functions for the registered firms in the MineralFields Group. This included responsibility for the monitoring of compliance with the MineralFields Group trade pre-clearance policy which required trades to be pre-approved by Dwek or the CCO of LMDI.

12. During the Review Period, Dwek did not monitor and ensure that all trades made by access persons to the MineralFields Group firms were pre-approved and complied with Ontario securities law including provisions related to self-dealing and other conflicts of interest. The UDP was required to ensure that policies and procedures were established, maintained and applied that establish a system of controls and supervision to ensure that trades made by access persons were made in compliance with Ontario securities law. This was not done.

13. During the Review Period, Dwek did not ensure that certain personal trades were pre-cleared with the CCO of LMDI. Dwek sold shares of an issuer at a price more favourable than the price at which the MineralFields LPs sold the shares of the same issuer. Between March 11, 2011 and March 28, 2011, Dwek sold a total of 629,500 shares of an issuer at prices ranging from \$0.657 to \$0.520 per share. On March 28, 2011, Dwek sold 1000 shares at a price of \$0.520. On the same day, one of the MineralFields LPs sold 333,500 shares of the same issuer at an average price of \$0.5077, a price lower than Dwek received.

14. During the Review Period, the CCO of LMDI sold 7,500 shares of an issuer at a price of \$2.57 two days prior to one of the MineralFields LPs selling 100,000 shares of the same issuer at a price of \$2.51. The CCO’s trade was not monitored or pre-approved by Dwek.

C. Inadequate Supervision of Compliance Activities

15. During the Review Period, Dwek failed to meet his UDP and CCO responsibilities to supervise and ensure compliance by the MineralFields Group firms. During the Compliance Review, Staff identified significant deficiencies respecting the MineralFields Group firms.

Dwek informed Staff that he had delegated all compliance duties of MFMI, LMDI, and Pathway to the CCO of LMDI and did not perform any compliance function other than cheque review and signing and review of financial information. Dwek acknowledges that the UDP was obliged to ensure that the MineralFields Group firms were in compliance with Ontario securities law but failed to do so. In particular, no one ensured that:

- (a) individuals conducting registerable activities and acting on behalf of the MineralFields Group were properly registered, approved and/or disclosed to the Commission;
- (b) adequate portfolio management was performed for clients, including ensuring that a registered adviser was determining the investment terms of private placement transactions entered into by the MineralFields LPs and performing adequate due diligence for all investments;
- (c) sufficient know your client (“KYC”) information was collected for all clients and that MineralFields Group properly discharged their suitability obligations;
- (d) the net asset value (“NAV”) of the funds managed by MFMI was computed correctly;
- (e) the impact of the NAV errors were assessed, documented and rectified in a timely manner;
- (f) reliance on prospectus exemptions was appropriate for all clients;
- (g) conflicts of interest among the MineralFields Group were identified and were adequately managed;
- (h) claims and representations made to clients were accurate and could be substantiated;
- (i) the National Registrant Database was updated regarding the business locations and trade names used by the MineralFields Group;
- (j) appropriate steps were taken to protect the confidentiality of clients’ information;
- (k) adequate insurance coverage was maintained by the MineralFields Group; and

- (l) written policies and procedures were complete and adequately addressed key areas related to each of the MineralFields Group's obligations under Ontario securities law.

D. Respondent's Position

16. The Respondent states that:

- (a) Dwek has served accounting clients as a chartered accountant for over 40 years. Prior to the establishment of the MineralFields Group, he had not worked in the securities industry;
- (b) there is no evidence that the Respondent's conduct contrary to the public interest caused investor losses. The MineralFields Group raised in excess of \$1.1 billion;
- (c) the MineralFields Group received unqualified audit opinions from 2002 to 2010;
- (d) Dwek had his own separate office space, did not share office space with the MineralFields Group and Dwek did not regularly attend at the MineralFields Group office;
- (e) Dwek served to answer all questions from accountants and advisors respecting the proper tax treatment of investments as that was his area of expertise; and
- (f) after the compliance deficiencies at the MineralFields Group were discovered by Compliance Staff, Dwek cooperated with Staff in replacing himself as UDP, replacing the CCO and portfolio manager and appointing a monitor until the assets of the MineralFields Group were transferred to another registrant. The MineralFields Group entities are no longer in business and investors were not harmed.

PART IV - CONDUCT CONTRARY TO THE PUBLIC INTEREST

17. By engaging in the conduct described above, Dwek admits that he acted contrary to the public interest.

PART V - TERMS OF SETTLEMENT

18. Dwek agrees to the terms of settlement listed below.
19. The Commission will make an order, pursuant to subsection 127(1) and section 127.1 of the Act, that:
 - (a) the Settlement Agreement is approved;
 - (b) Dwek resign any position he holds as a director of a registrant;
 - (c) Dwek shall be prohibited from becoming or acting as an “ultimate designated person” or a “chief compliance officer” as defined in subsection 1(1) of the Act or, with the exception of a director or owner as described in subparagraph (d) below, a “permitted individual” within the meaning of section 1.1 of *National Instrument 33-109* of a registrant permanently;
 - (d) Dwek shall be prohibited from becoming or acting as a registrant, a director of a registrant or as an individual who has beneficial ownership of, or direct or indirect control over, 10% or more of the voting securities of a registered firm until the later of a period of three years from the date of the approval of the Settlement Agreement and the date on which Dwek successfully completes, in addition to any applicable proficiency requirements, the Conduct and Practices Handbook Course and, if seeking to become a director of a registered firm, until the later of a period of three years from the date of the approval of the Settlement Agreement and the date on which Dwek completes the Directors Education Program;
 - (e) Subject to the satisfaction of (d) and upon becoming registered by the Director under subsection 27(1) of the Act, Dwek’s registration shall be subject to a term and condition requiring he be under the strict supervision of a sponsoring firm for a period of one year;
 - (f) Dwek is reprimanded; and
 - (g) Dwek shall pay the costs of the Commission’s investigation upon the approval of the Settlement Agreement in the amount of \$25,000.

20. For his conduct contrary to the public interest, Dwek undertakes to make a voluntary payment in the amount of \$200,000 to the Commission which is designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act.

21. Dwek undertakes to consent to a regulatory order made by any provincial or territorial securities regulatory authority in Canada containing any or all sanctions set out in subparagraphs 19 (b) to (e) above.

PART VI - STAFF COMMITMENT

22. If this Settlement Agreement is approved by the Commission, Staff will not initiate any other proceeding under the Act against Dwek in relation to the facts set out in Part III herein, subject to the provisions of paragraph 23 below.

23. If this Settlement Agreement is approved by the Commission, and at any subsequent time Dwek fails to honour the terms of the Settlement Agreement, Staff reserve the right to bring proceedings under Ontario securities law against Dwek 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

24. 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 Dwek for the scheduling of the hearing to consider the Settlement Agreement.

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

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

27. If this Settlement Agreement is approved by the Commission, none of the parties shall make any public statement that is inconsistent with this Settlement Agreement or inconsistent with any additional agreed facts submitted at the settlement hearing.

28. Whether or not this Settlement Agreement is approved by the Commission, Dwek agrees that he 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

29. 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 Dwek leading up to its presentation at the settlement hearing, shall be without prejudice to Staff and Dwek; and
- (b) Staff and Dwek 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 the Statement of Allegations of Staff, unaffected by the Settlement Agreement or the settlement discussions/negotiations.

30. 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 Dwek and Staff or as may be required by law.

PART IX - EXECUTION OF SETTLEMENT AGREEMENT

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

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

Signed in the presence of:

“Brenda Layne”

“Joe Dwek”

Witness

Joe Dwek

“Brenda Layne”

(Print Name)

Dated this “25th” day of February, 2014

STAFF OF THE ONTARIO SECURITIES COMMISSION

“Tom Atkinson”

Tom Atkinson

Director, Enforcement Branch

Dated this “25th” day of February, 2014.



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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 JOE DWEK

- and -

**IN THE MATTER OF A SETTLEMENT AGREEMENT BETWEEN STAFF OF THE
ONTARIO SECURITIES COMMISSION AND JOE DWEK**

ORDER

(Subsections 127(1) and 127(2) and Section 127.1)

WHEREAS 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") in connection with a Statement of Allegations filed by Staff of the Commission ("Staff") to consider whether it is in the public interest to make certain orders against Joe Dwek ("Dwek");

AND WHEREAS Dwek entered into a Settlement Agreement with Staff (the "Settlement Agreement") in which Dwek and Staff agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing, 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 WHEREAS Dwek has entered into an undertaking as part of the Settlement Agreement whereby he shall make a voluntary payment to the Commission in the amount of \$200,000, which will be designated for allocation or for use by the Commission in accordance with subsection 3.4(2)(b) of the Act;

AND WHEREAS Dwek has provided to Staff a certified cheque in full payment of all monetary amounts provided and described in the Order including the above-described voluntary payment;

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 8.1 of subsection 127(1) of the Act, Dwek resign any position he holds as a director of a registrant or as a chief executive officer, chief financial officer, or chief operating officer of a registrant or the functional equivalent of any of these positions;;
- (c) pursuant to paragraph 8.2 of subsection 127(1) of the Act, Dwek shall be prohibited from becoming or acting as a director of a registrant except as described in subparagraph (f) below or from becoming or acting as a chief executive officer, chief financial officer or chief operating officer of a registrant or the functional equivalent of any of these positions permanently;
- (d) pursuant to paragraph 8.2 of subsection 127(1) of the Act, Dwek shall be prohibited from becoming or acting as an “ultimate designated person” or a “chief compliance officer” as defined in subsection 1(1) of the Act permanently;
- (e) pursuant to paragraph 8.5 of subsection 127(1) of the Act, Dwek shall be prohibited from becoming or acting as a registrant, or as an individual who has beneficial ownership of, or direct or indirect control or direction over 10% or more of the voting securities of a registered firm until the later of a period of three years from the date of the approval of the Settlement Agreement and the date on which Dwek completes, in addition to any proficiency requirements, the Conduct and Practices Handbook Course;
- (f) pursuant to paragraph 8.2 of subsection 127(1) of the Act, Dwek shall be prohibited from becoming or acting as a director of a registrant until the later of a period of three years from the date of the approval of the Settlement Agreement and the date on which Dwek completes the Directors Education Program;

- (g) subject to the satisfaction of subparagraph (e) and pursuant to subsection 127(2) of the Act, upon becoming registered by the Director under subsection 27(1) of the Act, Dwek's registration shall be subject to a term and condition requiring Dwek be under strict supervision of a sponsoring firm for a period of one year;
- (h) pursuant to paragraph 6 of subsection 127(1) of the Act, Dwek is reprimanded;
- (i) the voluntary payment of \$200,000 to the Commission made by Dwek upon the approval of the Settlement Agreement is designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act; and
- (j) pursuant to section 127.1 of the Act, Dwek shall pay the costs of the Commission's investigation upon the approval of the Settlement Agreement in the amount of \$25,000.

DATED AT TORONTO this day of February, 2014.
