



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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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 FERNANDO POSTRADO

**SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION
AND FERNANDO POSTRADO**

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 Fernando Postrado, ("Fernando" 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 the Notice of Hearing and a Statement of Allegations to be filed by Staff (the "Proceeding") against Fernando according to the terms and conditions set out in Part VI of this Settlement Agreement. Fernando 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 the Proceeding, and any other regulatory proceeding commenced by a securities regulatory authority, Fernando agrees with the facts set out in this Part of this Settlement Agreement.

(a) Overview

4. Between July 10, 2015 and September 2, 2015, Fernando engaged in insider trading contrary to subsection 76(1) of the Act.

5. Fernando was tipped by his son, Andrei Miguel Postrado (“Andrei”). Andrei was employed in the real estate and construction tax department at KPMG LLP (Canada) (“KPMG”). Andrei obtained confidential undisclosed material information at KPMG respecting two reporting issuers: Company “A” and Company “B” (the “Reporting Issuers”).

6. The undisclosed material information respecting the Reporting Issuers was that each of the Reporting Issuers was going to be bought by another entity.

7. Andrei was a person in a special relationship with the Reporting Issuers as a result of his employment with KPMG.

8. Andrei conveyed the undisclosed material information to Fernando. Fernando purchased securities of the Reporting Issuers while possessed of the undisclosed material information respecting the Reporting Issuers.

9. Fernando purchased securities of the Reporting Issuers in advance of the public announcement of certain merger and acquisition (“M&A”) transactions respecting the Reporting Issuers in online discount brokerage accounts with BMO InvestorLine (“BMO”), Questrade Inc. (“Questrade”) and HSBC Securities Canada Inc. (“HSBC”). After the public announcement of the M&A transactions, Fernando sold the securities of the Reporting Issuers in his accounts to earn a profit of CAD \$101,776.96 and USD \$4,605.

10. Fernando was a person in a special relationship with the Reporting Issuers as he learned of the undisclosed material information from Andrei, a person who he ought reasonably to have known was in a special relationship with the Reporting Issuers.

(b) The Respondent

11. Fernando is 58 years of age. He lives in Toronto with Andrei.

12. Andrei was hired by KPMG in August 2014 in the real estate and construction industry tax department. He started at the entry-level position referred to as the technician level. His responsibilities were to prepare the simplest of tax returns for corporate clients.

(c) Trading in Reporting Issuers

(i) Trading in Company A

13. On July 10, 2015, Fernando opened his Questrade account. On July 13, 2015, Fernando opened his BMO account.

14. On July 20, 2015, Fernando bought a total of 10,190 Company A units through his BMO account, his Questrade account and his HSBC account at a total cost of \$81,800. On August 5 and August 7, 2015, Fernando purchased 3,450 additional units in his BMO account for approximately \$26,600. All units purchased in his BMO and Questrade account were purchased on margin.

15. Shortly after Fernando purchased the units of Company A, Company A announced that it had entered into an arrangement to be acquired. Prior to the public announcement that Company A was being acquired, it was trading at approximately \$7.75. On the day of the announcement, Company A was trading at approximately \$8.05.

16. Following the announcement that Company A was being acquired, Fernando sold his entire position in both his HSBC account and his BMO account. He sold the 355 shares of Company A in his Questrade account on August 31, 2015. Fernando earned an estimated profit of \$1,200.

(ii) Trading in Company B

17. Between August 10, 2015 and September 1, 2015, Fernando acquired 10,800 Company B shares for approximately \$91,775 at average share prices between \$8.30 and \$8.82. These purchases were made in his Questrade, HSBC and BMO accounts. The shares in his Questrade and BMO account were purchased on margin.

18. Shortly after Fernando purchased the shares of Company B, Company B announced that it had agreed to be acquired at more than \$18 per share. Company B's share price rose from approximately \$9 to approximately \$19 per share, following the takeover announcement.

19. On September 2, 2015, Fernando sold his position of Company B for approximately \$200,000. His estimated profit was approximately \$108,000.

(d) Andrei tipped Fernando

20. In or about July 2015, Andrei conveyed the information he had obtained about the Reporting Issuers to Fernando. He told Fernando that he believed that the Reporting Issuers would be good investments because he heard that they were about to be acquired. Fernando knew that Andrei worked in the tax department and that Andrei had the opportunity to know certain information about mergers and acquisitions.

(e) Fernando committed insider trading

21. Fernando purchased securities of the Reporting Issuers while possessed of the undisclosed material information that the Reporting Issuers were about to be acquired which Andrei had conveyed to him.

PART IV – RESPONDENT'S POSITION

22. At the time that Andrei conveyed the information to Fernando, Fernando took the information provided to him and followed up by researching and analyzing the financial performance and fundamentals of the Reporting Issuers and considered them to be good and worthwhile investments.

23. Fernando has accepted full responsibility for his conduct and is remorseful. He has fully cooperated with Staff's investigation. He has extremely limited resources and no assets in his name.

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

24. By purchasing securities of the Reporting Issuers while possessed with knowledge of undisclosed material information respecting the Reporting Issuers while in a special relationship

with the Reporting Issuers, Fernando engaged in insider trading contrary to subsection 76(1) of the Act. By engaging in insider trading, Fernando acted contrary to the public interest.

PART VI - TERMS OF SETTLEMENT

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

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

- (a) the Settlement Agreement is approved;
- (b) trading in any securities by the Respondent shall cease for five years;
- (c) the acquisition of any securities by the Respondent is prohibited for five years,
- (d) any exemptions contained in Ontario securities law do not apply to the Respondent for five years,;
- (e) the Respondent is reprimanded;
- (f) the Respondent resign any position he holds as a director or officer of any issuer;
- (g) the Respondent is prohibited from becoming or acting as a director or officer of any issuer for five years;
- (h) the Respondent resign any position he holds as a director of a registrant;
- (i) the Respondent is prohibited from becoming or acting as a director of a registrant for five years;
- (j) the Respondent resign any position he holds as a director or officer of an investment fund manager;
- (k) the Respondent is prohibited from becoming or acting as a director or officer of an investment fund manager for five years;
- (l) the Respondent is prohibited from becoming or acting as a registrant, investment fund manager or promoter for five years;

- (m) the Respondent pay an administrative penalty of \$10,000, of which \$4,000 is payable forthwith, which amount is designated for allocation or use by the Commission in accordance with paragraphs b(i) or (ii) of subsection 3.4(2) of the Act;
- (n) the Respondent disgorge to the Commission forthwith the amount of \$109,200, which amount is designated for allocation or use by the Commission in accordance with paragraphs b(i) or (ii) of subsection 3.4(2) of the Act;
- (o) the Respondent pay forthwith the costs of the Commission's investigation in the amount of \$4,250;
- (p) after the balance of the payment set out in sub-paragraph (m) above, is made in full, as an exception to the provisions of sub-paragraphs (b), (c), and (d) above, Fernando is permitted to trade or acquire 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)) of which Fernando has sole legal and beneficial ownership, and such trading is carried out through a registered dealer in Canada to whom Fernando must give a copy of the Order at the time he opens or modifies these accounts; and
- (q) with respect to the monetary order made in sub-paragraph (m) above, the Respondent shall pay in full the entire amount ordered in that subparagraph within three years of the making of the order.

27. 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 26(b) to (d) and (f) to (l) above. These prohibitions may be modified to reflect the provisions of the relevant provincial or territorial securities law.

PART VII - STAFF COMMITMENT

28. 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 29 below.

29. If the Commission approves this Settlement Agreement and the Respondent fails to comply with any of the terms of this 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 this Settlement Agreement.

PART VIII - PROCEDURE FOR APPROVAL OF SETTLEMENT

30. 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.

31. 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.

32. 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.

33. 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.

34. 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 IX - DISCLOSURE OF SETTLEMENT AGREEMENT

35. 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.

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

PART X - EXECUTION OF SETTLEMENT AGREEMENT

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

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

Dated this "16th" day of May, 2016

"Fernando Postrado"
Fernando Postrado

"Janice Wright"
Witness-Janice Wright
Wright Temelini LLP

Dated this "16th" day of May, 2016

"James Sinclair"
Director
Enforcement Branch

Schedule "A"



Ontario
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Commission des
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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 FERNANDO POSTRADO

ORDER

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

WHEREAS:

1. On X, 2016, 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 X, 2016 (the "Statement of Allegations") in respect of Fernando Postrado (the "Respondent");
2. The Respondent and Staff entered into a Settlement Agreement dated May XX, 2016 (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;
3. 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;
4. The Commission is of the opinion that it is in the public interest to make this Order;

IT IS 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 for five years;
- (c) pursuant to subsection 127(1)2.1 of the Act, the acquisition of any securities by the Respondent is prohibited for five years;
- (d) pursuant to subsection 127(1)3 of the Act, any exemptions contained in Ontario securities law do not apply to the Respondent for five years,;
- (e) pursuant to subsection 127(1)6 of the Act, the Respondent is reprimanded;
- (f) 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;
- (g) 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 five years;
- (h) 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;
- (i) 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 for five years;
- (j) 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 for five years;
- (k) 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 for five years;
- (l) 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 for five years;

- (m) pursuant to subsection 127(1)9 of the Act, the Respondent pay an administrative penalty of \$10,000, of which \$4,000 is payable forthwith, which amount is designated for allocation or use by the Commission in accordance with paragraphs b(i) or (ii) of subsection 3.4(2) of the Act;
- (n) pursuant to subsection 127(1)10 of the Act, the Respondent disgorge to the Commission forthwith the amount of \$109,200, which amount is designated for allocation or use by the Commission in accordance with paragraphs b(1) or (ii) of subsection 3.4(2) of the Act;
- (o) pursuant to subsection 127.1(1) of the Act, the Respondent pay forthwith the costs of the Commission's investigation in the amount of \$4,250;
- (p) after the balance of the payment set out in paragraph (m) above, is made in full, as an exception to the provisions of paragraphs (b), (c) and (d) of this Order, Fernando is permitted to trade or acquire 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)) of which the Respondent has a 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; and
- (q) with respect to the monetary order made in sub-paragraph (m), the Respondent shall pay any outstanding balance owing within three years of the making of this order.

DATED at Toronto this day of , 2016.
