



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 DAVID M. O'BRIEN

**SETTLEMENT AGREEMENT
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 37, 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 David M. O’Brien (“O’Brien”, or the “Respondent”).

PART II – JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission (“Staff”) agree to recommend settlement of the proceeding commenced by Notice of Hearing dated December 7, 2010 (the “Proceeding”) against the Respondent according to the terms and conditions set out in Part V of this Settlement Agreement. The Respondent 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, the Respondent agrees with the facts as set out in Part III of this Settlement Agreement.

A. OVERVIEW

4. Between and including July 1, 2009 and December 17, 2009 (the “Material Time”), O’Brien traded in securities, engaged in acts in furtherance of trades or held himself out as engaging in the business of trading in securities without being registered to do so.
5. This matter is related to proceedings, commenced by the Notice of Hearing dated December 18, 2009, in the matter of Peter Robinson (“Robinson”) and Platinum International Investments Inc. (“Platinum”), which matter was resolved by way of a Settlement Agreement between Platinum, Robinson and Staff dated October 22 and 25, 2010 (the "Platinum Settlement Agreement"). The Platinum Settlement Agreement was approved by the Commission by Order dated November 5, 2010, and involved, among other things, the admission by Platinum and Robinson of essentially the same facts as this proceeding, and that Platinum and Robinson had traded in securities without being registered to trade in securities, and that they had engaged or participated in acts, practices or courses of conduct relating to securities that Platinum and Robinson knew, or reasonably ought to have known, perpetrated a fraud on persons or companies, contrary to section 126.1(b) of the Act. Robinson and Platinum were ordered to disgorge the \$113,893.90 obtained from the trading in securities by Platinum and Robinson as a result of non-compliance with securities law.

B. THE RESPONDENT

6. O’Brien is a resident of Ontario. At the material times, O’Brien was suffering from severe psychiatric problems which had not yet been diagnosed or treated.

C. BACKGROUND

7. David M. O’Brien Professional Legal Corporation (“DOPLC”) is a Canadian corporation registered under the Canada Business Corporations Act. O’Brien is the sole registered director of DOPLC.
8. Platinum is an Ontario corporation that was incorporated on June 12, 2007 with a registered address of 4325 Steeles Avenue West, Suite 215, Toronto, Ontario.
9. Robinson is listed as the sole Director of Platinum.

D. TRADING IN SECURITIES BY O'BRIEN, PLATINUM, AND ROBINSON

10. Throughout the Material Time, O'Brien was not registered in any capacity with the Commission. O'Brien engaged in acts in furtherance of trading in securities throughout the Material Time, which activity took place in Ontario.
11. O'Brien was aware that Robinson had been engaging in the sale of securities without registration for several years. During the Material Time, O'Brien and Robinson had regular dealings and O'Brien agreed to engage in certain business activities with, and on behalf of Robinson and Platinum, including providing services involving DOPLC's bank accounts. Robinson and Robinson's company, Platinum, were trading securities throughout the Material Time.
12. During the Material Time, residents of the United Kingdom (the "U.K. Residents") received unsolicited phone calls from representatives of Platinum and were told that Platinum could sell securities held by the U.K. Residents on behalf of the U.K. Residents. Representatives of Platinum used aliases when speaking with the U.K. Residents.
13. The representatives of Platinum told the U.K. Residents that they would be able to obtain significant amounts of money for the U.K. Residents when Platinum arranged for the sale of the securities in question for significant premiums over the current market value of the securities.
14. The U.K. Residents were told that that Platinum had received funds from the purported purchasers of the securities held by the U.K. Residents and that these funds were being held under "escrow conditions".
15. The U.K. Residents were then told that they would have to pay "performance bonds" and "non-resident taxes" to Platinum before Platinum could complete the sale of the securities. Within seven business days of the U.K. Residents providing a "performance bond" they would receive all of the funds for the sale of their securities.
16. The U.K. Residents were given instructions to send their funds for the "performance bonds" and the "non-resident taxes" to a bank account held in the name of Platinum and located in Toronto at the Royal Bank of Canada (the "Platinum RBC Accounts").
17. The U.K. Residents sent their "performance bond" and "non-resident tax" funds via wire transfer to the Platinum RBC Accounts. Between July 9, 2009 and August 25, 2009 the U.K. Residents sent \$113,893.90 to the Platinum RBC Accounts.

18. The U.K. Residents were subsequently approached and advised they would have to pay further fees so that the transactions could proceed. When the U.K. Residents refused to send further funds to the Platinum RBC Accounts they stopped receiving communications from representatives of Platinum.
19. None of the transactions for which the U.K. Residents wired funds to the Platinum RBC Accounts have been completed. At least one of the U.K. Residents has been unable to contact Platinum since the Material Time.
20. Platinum also had a bank account at TD Canada Trust (the "Platinum TD Account").
21. Once funds were wire transferred from the U.K. Residents to the Platinum RBC Accounts the funds were almost immediately withdrawn as cash or cheques. During the Material Time, approximately \$118,667 was paid directly to DOPLC from the Platinum RBC Accounts and the Platinum TD Account.
22. O'Brien has represented to Staff that he only retained approximately 5 percent of the money paid to him, and that the balance was passed along to others. As noted above, Robinson and Platinum have agreed to a disgorgement order for \$113,893.90 in respect of the funds obtained from the U.K. Residents.
23. O'Brien participated in acts, solicitations, conduct, or negotiations directly or indirectly in furtherance of the sale or disposition of securities for valuable consideration, in circumstances where there were no exemptions available to O'Brien under the Act.

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

24. By engaging in the conduct described above, O'Brien admits and acknowledges that he has breached Ontario securities law and acted contrary to the public interest in the following way:
 - (a) During the Material Time, O'Brien traded and engaged in, or held himself out as engaging in, the business of trading in securities without being registered to do so in circumstances in which no exemption was available, contrary to section 25(1)(a) of the Act as that section existed at the time the conduct at issue commenced, and contrary to section 25(1) of the Act, as subsequently amended on September 28, 2009, and contrary to the public interest.

PART V – TERMS OF SETTLEMENT

25. The Respondent agrees to the terms of settlement listed below.
26. The Commission will make an order pursuant to sections 37 and 127(1) of the Act, that:
- (a) The settlement agreement is approved;
 - (b) Trading in any securities by or of the Respondent shall cease permanently, pursuant to paragraph 2 of section 127(1) of the Act;
 - (c) Acquisition of any securities by the Respondent is prohibited permanently, pursuant to paragraph 2.1 of section 127(1) of the Act;
 - (d) Any exemptions contained in Ontario securities law do not apply to the Respondent permanently, pursuant to paragraph 3 of section 127(1) of the Act;
 - (e) O'Brien shall immediately resign all positions that he holds as a director or officer of any issuer, registrant or investment fund manager, (except as set out in paragraph 26 (f) below), pursuant to paragraphs 7, 8.1 and 8.3 of section 127(1) of the Act;
 - (f) O'Brien shall be permanently prohibited, pursuant to paragraphs 8, 8.2 and 8.4 of section 127(1) of the Act, from becoming or acting as a director or officer of any issuer, registrant or investment fund manager, with the exception that O'Brien is permitted to continue to act as a director and officer of any company through which he carries on business, so long as there are no more than 5 holders of the securities of the corporation, including him, his spouse, and/or immediate family;
 - (g) O'Brien shall be permanently prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter, pursuant to paragraph 8.5 of section 127(1) of the Act;
 - (h) pursuant to paragraph 10 of section 127(1) of the Act, O'Brien shall disgorge to the Commission the sum of \$5,000.00 obtained as a result of non-compliance with Ontario securities law, which is to be designated for allocation or for use by the Commission pursuant to subsection 3.4(2)(b) of the Act;

- (i) pursuant to paragraph 9 of section 127(1) of the Act, O'Brien shall pay to the Commission an administrative penalty of \$1,000.00, for his failure to comply with Ontario securities law, which is to be designated for allocation or for use by the Commission pursuant to subsection 3.4(2)(b) of the Act;
 - (j) after the payments set out in paragraphs 26 (h) and (i), are made in full, as an exception to the provisions of paragraphs 26 (b), (c) and (d), O'Brien is permitted to trade in or acquire:
 - i. for the account of his personal registered retirement savings plan and his registered pension plan 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) (a) any "exchange-traded security" or "foreign exchange-traded security" within the meaning of National Instrument 21-101 provided that he 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, or (b) any security issued by a mutual fund that is a reporting issuer; and
 - ii. securities of a company through which he carries on business, so long as there are no more than 5 holders of the securities of the corporation, including him, his spouse, and/or immediate family at the time of the trade.
 - (k) until the entire amount of the payments set out in paragraphs 26 (h) and (i), are paid in full, the provisions of paragraphs 26 (b), (c) and (d), shall continue in force without any limitation as to time period.
27. Pursuant to section 37(1) of the Act, the Commission orders that the Respondent is prohibited from:
- (a) calling at any residence in Ontario for the purpose of trading in securities, or
 - (b) telephoning from within Ontario to any residence within or outside Ontario for the purpose of trading in securities.

28. The Respondent agrees to make any payments ordered above when the Commission approves this Settlement Agreement. The Respondent will not be reimbursed for, or receive a contribution toward, this payment from any other person or company.
29. O'Brien hereby consents 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 (g) and 27 above, and further, hereby consents to such orders under applicable securities laws as may be necessary to permit the collection of any assets held by the Respondent and to such orders as may be necessary to permit the distribution of those assets to investors. These prohibitions and orders may be modified to reflect the provisions of the relevant provincial or territorial securities law.

PART VI – STAFF COMMITMENT

30. 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 31 below.
31. If the Commission approves this Settlement Agreement and the Respondent fail 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. In addition, if this Settlement Agreement is approved by the Commission, and the Respondent fail to comply with the terms of the Settlement Agreement, the Commission is entitled to bring any proceedings necessary to recover the amounts set out in sub-paragraphs 26 (h) and (i) above.

PART VII – PROCEDURE FOR APPROVAL OF SETTLEMENT

32. The parties will seek approval of this Settlement Agreement at a public hearing before the Commission scheduled for June 23, 2015, or on another 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*.

33. 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.
34. 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.
35. 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.
36. 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

37. 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.
38. 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 if required by law.

PART IX – EXECUTION OF SETTLEMENT AGREEMENT

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

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

DATED this 16th day of June, 2015.

)	
)	<i>“David O’Brien”</i>
<i>“Piera O’Brien”</i>)	
_____)	_____
Witness: Piera O’Brien)	DAVID M. O’BRIEN
)	

DATED this 19th day of June, 2015.

“Tom Atkinson”

TOM ATKINSON
 Director, Enforcement Branch



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

SCHEDULE "A"

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

- AND -

IN THE MATTER OF DAVID M. O'BRIEN

- AND -

**IN THE MATTER OF A SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION AND DAVID M. O'BRIEN**

ORDER

(Sections 127 and 127.1 of the Securities Act)

WHEREAS on December 7, 2010, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing, pursuant to sections 37, 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") to consider whether it is in the public interest to make orders, as specified therein, against and in respect of David M. O'Brien ("O'Brien"). 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 December 8, 2010;

AND WHEREAS the Respondent entered into a Settlement Agreement with Staff of the Commission dated June •, 2015 (the "Settlement Agreement") in which the Respondent agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing dated December 7, 2010, subject to the approval of the Commission;

AND WHEREAS on June •, 2015, the Commission issued a Notice of Hearing pursuant to section 127 of the Act to announce that it proposed to hold a hearing to consider whether it is in the public interest to approve a Settlement Agreement entered into between Staff and the Respondent;

AND UPON reviewing the Settlement Agreement, the Notices of Hearing, and the Statement of Allegations of Staff of the Commission, and upon hearing submissions from counsel for O'Brien, 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 section 127(1) of the Act, trading in any securities by or of the Respondent shall cease permanently;
- (c) pursuant to paragraph 2.1 of section 127(1) of the Act, acquisition of any securities by the Respondent is prohibited permanently;
- (d) pursuant to paragraph 3 of section 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to the Respondent permanently;
- (e) pursuant to paragraphs 7, 8.1 and 8.3 of section 127(1) of the Act, O'Brien shall immediately resign all positions that he holds as a director or officer of any issuer, registrant or investment fund manager (except as set out in paragraph (f) below);
- (f) pursuant to paragraphs 8, 8.2 and 8.4 of section 127(1) of the Act, O'Brien shall be permanently prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager, with the exception that O'Brien is permitted to continue to act as a director and officer of any company through which he carries on business, so long as there are no more than 5 holders of the securities of the corporation, including him, his spouse, and/or immediate family;

- (g) pursuant to paragraph 8.5 of section 127(1) of the Act, O'Brien shall be permanently prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter;
- (h) pursuant to paragraph 10 of section 127(1) of the Act, O'Brien shall disgorge to the Commission the sum of \$5,000.00 obtained as a result of non-compliance with Ontario securities law, which is to be designated for allocation or for use by the Commission pursuant to subsection 3.4(2)(b) of the Act;
- (i) pursuant to paragraph 9 of section 127(1) of the Act, O'Brien shall pay to the Commission an administrative penalty of \$1,000.00, for his failure to comply with Ontario securities law, which is to be designated for allocation or for use by the Commission pursuant to subsection 3.4(2)(b) of the Act;
- (j) pursuant to section 37(1) of the Act, O'Brien shall be permanently prohibited from:
 - i. calling at any residence in Ontario for the purpose of trading in securities, or
 - ii. telephoning from within Ontario to any residence within or outside Ontario for the purpose of trading in securities;
- (k) After the payments set out in paragraphs (h) and (i), are made in full, as an exception to the provisions of paragraphs (b), (c), and (d) of this Order above, O'Brien is permitted to trade in or acquire:
 - i. for the account of his personal registered retirement savings plan and his registered pension plan 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) (a) any "exchange-traded security" or "foreign exchange-traded security" within the

meaning of National Instrument 21-101 provided that he 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, or (b) any security issued by a mutual fund that is a reporting issuer; and

ii. securities of a company through which he carries on business, so long as there are no more than 5 holders of the securities of the corporation, including him, his spouse, and/or immediate family at the time of the trade.

(l) until the entire amount of the payments set out in paragraphs (h) and (i), are paid in full, the prohibitions set out in subparagraphs (b), (c), and (d) shall continue in force without any limitation as to time period.

DATED at Toronto this 23rd day of June, 2015.
