



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 ANDREI MIGUEL POSTRADO

**SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION
AND ANDREI MIGUEL 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 Andrei Miguel Postrado, (“Andrei” 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 Andrei according to the terms and conditions set out in Part V of this Settlement Agreement. Andrei 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, Andrei agrees with the facts set out in this Part of this Settlement Agreement.

(a) Overview

4. Between June 9, 2015 and September 2, 2015 (the “Relevant Period”), Andrei engaged in tipping and insider trading contrary to subsections 76(2) and 76(1) of the Act respectively.

5. 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 three reporting issuers: Company “A”, Company “B”, and Company “C” (the “Reporting Issuers”). Andrei purchased securities of the Reporting Issuers while possessed of undisclosed material information.

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 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”) and Questrade Inc. (“Questrade”). After the public announcement of the M&A transactions, Andrei sold the securities of the Reporting Issuers to earn a profit in his accounts of \$200,375.

9. Andrei also conveyed the undisclosed material information to his father, Fernando Postrado (“Fernando”).

(b) The Respondent

10. Andrei is 28 years of age. He lives in Toronto. He 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 simple tax returns for corporate clients.

(c) KPMG

11. The KPMG real estate and construction industry tax department provides tax advice to clients in the real estate and construction industry. This includes providing advice to clients

involved in M&A transactions. When a client retains KPMG's tax department to provide tax advice on an M&A transaction, the department opens an electronic file respecting the client. The file may be accessed by employees of the tax department unless access to the file is restricted because of potential conflicts. When the tax department is retained by a client on an M & A transaction, a deal team is formed to work on the transaction.

12. During the Relevant Period, the KPMG tax department was retained by clients respecting the M&A transactions involving the Reporting Issuers. Electronic files were opened. Deal teams were formed to work on the transactions.

13. Andrei was not assigned to any of the deal teams involving the transactions respecting the Reporting Issuers.

(d) Trading in Reporting Issuers

(i) Trading in Company A

14. In June 2015, Andrei overheard a conversation between a manager and a partner in the tax department at KPMG. During this conversation, they were discussing the due diligence being done on Company "A". As a result of overhearing the conversation, Andrei believed that Company "A" was about to be acquired.

15. On June 9, 2015, Andrei opened his BMO account. On June 16 and June 17, he purchased 2,500 shares of Company "A" at a cost of \$23,750. Between June 11 and June 15, Andrei deposited \$10,750 in cash into his BMO account and funded the remainder of his Company "A" share purchase on margin.

16. Andrei possessed undisclosed material information at the time he purchased the Company "A" shares in his BMO account.

17. Shortly after Andrei purchased the shares of Company "A" in his BMO account, Company "A" announced that it had entered into an arrangement to be acquired for approximately \$12 per share, an increase of approximately \$2.50 per share from its closing price on June 17, 2015. KPMG was first aware of the transaction on or about May 15, 2015.

18. Andrei sold his entire position on June 19, 2015 at \$12.50 per share. He earned a profit of \$6,375.

(ii) Trading in Company “B”

19. In late June or early July, 2015, Andrei accessed the electronic client file respecting the acquisition of Company “B”. Andrei reviewed documents contained in the electronic file which made him believe that Company “B” was about to be acquired.

20. On July 10, 2015, Andrei opened his Questrade account. Between July 17, 2015 and July 29, 2015, Andrei purchased and sold units of Company “B” in his BMO and Questrade accounts. Andrei obtained cash advances on three TD Visa cards totalling \$11,900 which he deposited into his Questrade account. In total, Andrei purchased 21,945 Company “B” shares at a cost of \$176,472 in his Questrade and BMO accounts.

21. Andrei purchased the shares of Company “B” in his BMO and Questrade accounts with knowledge of the undisclosed material fact that Company “B” was about to be acquired.

22. In early August, 2015, Company “B” announced that it had entered into an arrangement to be acquired. On August 7, 2015, Company “B” closed at approximately \$7.75. On the day of the announcement, Company “B” closed at approximately \$8.10 per unit. Andrei sold 500 shares of Company “B” from his Questrade Account in July, prior to the public announcement.

23. Following the announcement in early August, 2015, Andrei sold his entire position for \$168,550. He lost approximately \$4,000.

(iii) Trading in Company “C”

24. In July, 2015, Andrei overheard a conversation between a manager and partner about the due diligence being done on Company “C”. As a result of the conversation he overheard, Andrei believed Company “C” was about to be acquired.

25. Between August 17, 2015 and August 19, 2015, Andrei acquired 19,000 shares for approximately \$159,000 at an average price of \$8.36 per share. These purchases were made in his Questrade and BMO accounts on margin.

26. Andrei purchased the shares of Company “C” in his BMO and Questrade accounts with knowledge of the undisclosed material fact that Company “C” was about to be acquired.

27. In early September, 2015, Company “C” announced that it had agreed to be acquired at approximately \$18.75 per share. The Company “C” share price rose from approximately \$8.80 to approximately \$18.50 per share, following the early September 2015 takeover announcement.

28. On the day of the takeover announcement in early September 2015, Andrei sold his position in Company “C” in both his BMO and Questrade accounts for approximately \$353,000. He earned a profit of approximately \$194,000.

(e) Andrei tipped Fernando

29. Andrei conveyed the information he had obtained with respect to Company “B” and Company “C” to Fernando. He told Fernando that he believed that Company “B” and Company “C” were about to be acquired based on what he heard at work.

30. Andrei was aware that Fernando purchased securities of Company “B” and Company “C” while possessed of the undisclosed material information that Company “B” and Company “C” were about to be acquired which Andrei had conveyed to him.

(f) Respondent’s Position

31. Andrei has no disciplinary record and cooperated fully with Staff throughout the investigation and prosecution of this matter.

32. Andrei has accepted full responsibility for his conduct and is remorseful. He has extremely limited resources, no assets in his name and is currently unemployed.

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

33. 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, Andrei engaged in insider trading contrary to subsection 76(1) of the Act. By conveying the knowledge that Company “B” and Company “C” were about to be acquired, Andrei tipped Fernando contrary to subsection 76(2) of the Act. By engaging in insider trading and tipping, Andrei acted contrary to the public interest.

PART V - TERMS OF SETTLEMENT

34. The Respondent agrees to the terms of settlement listed below.
35. 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 seven years;
 - (c) the acquisition of any securities by the Respondent is prohibited for seven years;
 - (d) any exemptions contained in Ontario securities law do not apply to the Respondent for seven years;
 - (e) the Respondent is reprimanded;
 - (f) the Respondent resign any position he holds as a director or as an officer of any issuer;
 - (g) the Respondent is prohibited from becoming or acting as a director or as an officer of any issuer for seven years;
 - (h) the Respondent resign any position he holds as a director or as an officer of a registrant;
 - (i) the Respondent is prohibited from becoming or acting as a director or as an officer of a registrant for seven years;
 - (j) the Respondent resign any position he holds as a director or as an officer of an investment fund manager;
 - (k) the Respondent is prohibited from becoming or acting as a director or as an officer of an investment fund manager for seven years;
 - (l) the Respondent is prohibited from becoming or acting as a registrant, investment fund manager or promoter for seven years;

- (m) the Respondent pay an administrative penalty of \$20,000 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 the amount of \$200,375 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 the costs of the Commission's investigation in the amount of \$8,500;
- (p) after the balance of the payments set out in sub-paragraphs (m), (n), and (o) above, is made in full, as an exception to the provisions of sub-paragraphs (b), (c), and (d) above, Andrei is permitted to trade or acquire 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 Andrei has sole legal and beneficial ownership, and such trading is carried out through a registered dealer in Canada to whom Andrei must give a copy of the Order at the time he opens or modifies these accounts; and
- (q) with respect to the monetary orders made in sub-paragraphs (m), (n), and (o) above, the Respondent shall pay in full the entire amounts ordered in such sub-paragraphs within three years of the making of the Order.

36. 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 35(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 VI - STAFF COMMITMENT

37. 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 38 below.

38. 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 VII - PROCEDURE FOR APPROVAL OF SETTLEMENT

39. 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.

40. 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.

41. 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.

42. 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.

43. 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

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 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.

45. 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 IX - EXECUTION OF SETTLEMENT AGREEMENT

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

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

Dated this "31st" day of May, 2016

"Andrei Miguel Postrado"
Andrei Miguel Postrado

"Clarke Tedesco"
Witness

Dated this "2nd" day of "June", 2016

"James Sinclair"
Director
Enforcement Branch



Ontario
Securities
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valeurs mobilières
de l'Ontario

22nd 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 ANDREI MIGUEL 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 Andrei Miguel Postrado (the "Respondent");
2. The Respondent and Staff entered into a Settlement Agreement dated May, 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 HEREBY 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 seven years;
- (c) pursuant to subsection 127(1)2.1 of the Act, the acquisition of any securities by the Respondent is prohibited for seven 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 seven 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 seven 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 seven 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;
- (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 seven 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 seven years;

- (m) pursuant to subsection 127(1)9 of the Act, the Respondent pay an administrative penalty of \$20,000, 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 the amount of \$200,375, 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) pursuant to subsection 127.1(1) of the Act, the Respondent pay the costs of the Commission's investigation in the amount of \$8,500;
- (p) after the balance of the payments set out in sub-paragraphs (m), (n), and (o) above, is made in full, as an exception to the provisions of sub-paragraphs (b), (c), and (d) above, Andrei is permitted to trade or acquire 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 Andrei has sole legal and beneficial ownership, and such trading is carried out through a registered dealer in Canada to whom Andrei must give a copy of this Order at the time he opens or modifies these accounts; and
- (q) with respect to the monetary orders made in sub-paragraphs (m), (n), and (o) above, the Respondent shall pay in full the entire amounts ordered in such sub-paragraphs within three years of the making of this Order.

DATED at Toronto this day of June, 2016.
