

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

**- and -**

**IN THE MATTER OF  
PATRICK FRASER KENYON PIERREPONT LETT,  
MILEHOUSE INVESTMENT MANAGEMENT LIMITED,  
PIERREPONT TRADING INC.,  
BMO NESBITT BURNS INC., JOHN STEVEN HAWKYARD  
AND JOHN CRAIG DUNN**

**AMENDED  
STATEMENT OF ALLEGATIONS  
OF THE ONTARIO SECURITIES COMMISSION**

Staff of the Ontario Securities Commission make the following allegations:

**I. THE RESPONDENTS**

1. Patrick Fraser Kenyon Pierrepont Lett is an individual residing in Ontario and is, and was, between January 1996 and October 1999 (the “material period”), the President, a Director and the directing mind of Milehouse Investment Management Limited and Pierrepont Trading Inc. (collectively referred to as the “Companies”).

2. Each of the Companies is incorporated under the laws of Ontario. Neither of the Companies has been registered in any capacity under the Securities Act.

3. Lett was sanctioned by the Commission in June of 1993. Lett was named as a respondent *In the Matter of Gordon Capital Corporation*. Lett exposed Gordon Capital to risk and participated in transactions which placed Gordon Capital in breach of Ontario securities law and the By-Law’s of the Toronto Stock Exchange. In addition, Lett misled Staff of the Commission before approaching Staff to cooperate in its investigation. The Commission ordered that Lett’s

registration be suspended for a six month period and that Lett complete a number of securities-related courses as a condition of future registration.

4. In April of 1998, the Alberta Securities Commission issued an Order to Freeze Property in the Milehouse account at Nesbitt in an attempt to satisfy an outstanding Settlement Agreement it had entered into with Lenzburg Capital Corporation, Lenzburg International Ltd. and William Lenz (the "Respondents"). The Respondents had deposited \$4,500,000 into the Milehouse account. On April 22, 1998, the Commission issued a similar direction. Eventually, Lett transferred out all the funds in the Milehouse account, except those that had been deposited by the Respondents, in accordance with the freeze orders.

5. The Respondents solicited investors to provide funds for investments that constituted trades which were distributions. Their actions breached the Alberta Securities Act and were contrary to the public interest as the Respondents were not registered and a preliminary prospectus and prospectus were not filed with the ASC as required. According to the Settlement Agreement, the Respondents were to return \$1,850,000 to the investors by August 30, 1997. The Order to Freeze Property was issued because the money was not returned.

6. Lett is currently not registered under the Act and was not registered during the material period. He was previously registered as follows:

- i) from 1989 to 1995, with Trafalgar Capital Management Inc., which was registered as an Adviser in the categories of Investment Counsel and Portfolio Manager. Lett was registered as an Investment Counsel and Portfolio Manager, and, during the same time period, approved as a Director;
- ii) in January 1991, approved as a Director of Arbitrage Risk Management Ltd., a Limited Market Dealer;
- iii) Lett's registrations were suspended in June 1993 for a six month period pursuant to the Settlement Agreement in *Gordon Capital*;
- iv) Lett's registration as a Director and Investment Counsel and Portfolio Manager with Trafalgar was suspended on June 15, 1995 due to involuntary non-renewal of the registration of Trafalgar; and,

- v) in June 1994, under the *Commodity Futures Act* R.S.O. 1990, chapter C.20, as a Director and Counselling Officer with Trafalgar, which was registered as an Adviser in the category of Commodity Trading Manager. Lett's registration was suspended on June 15, 1995 due to the involuntary non-renewal of the registration of Trafalgar.
7. Lett has never been registered as a limited market dealer.
8. BMO Nesbitt Burns Inc. is registered as a Broker/Investment Dealer under the Act.
9. John Craig Dunn was registered under the Act from October 1994 to August 2002 as a trading officer with Nesbitt at its branch located at 1 Robert Speck Parkway, Mississauga, Ontario. From July 1986 to February 2002, Dunn was the Branch Manager of the Nesbitt branch located at 1 Robert Speck Parkway, Mississauga, Ontario.
10. John Steven Hawkyard was registered under the Act from October 1989 to April 1997 as a salesperson of Bank of Montreal Investment Management Limited, a dealer in the category of Mutual Fund Dealer. From March 1996 to April 1997, Hawkyard was the Manager of the Bank of Montreal - Private Banking Services Branch located at 1 Robert Speck Parkway, Mississauga, Ontario.
11. From November 1997 to August 2002, Hawkyard was registered as a salesperson of Nesbitt working out of the Nesbitt branch located at 1 Robert Speck Parkway, Mississauga, Ontario, the branch which was managed by Dunn.

## **II. OVERVIEW OF STAFF'S ALLEGATIONS**

12. In engaging in the conduct described below, the respondents have acted contrary to Ontario securities law and the public interest.
13. As set out paragraphs 17-23 below, Lett and his Companies traded in securities without being registered, contrary to section 25(1)(a) of the Act. Lett and his Companies acted as "market intermediaries" by engaging or holding themselves out as engaging in the business of trading in securities.

14. As set out paragraphs 24-27 below, Dunn provided or caused others to provide Lett with letters that contained inaccurate representations (referred to as the “Proof of Funds Letters”) regarding the accounts of Milehouse and Pierrepont at Nesbitt (referred to collectively as the “Lett Accounts”). Dunn’s actions, which included preparing and signing such letters and causing others to prepare and sign these letters, were contrary to the public interest.

15. Hawkyard, while employed at the Bank of Montreal and later at Nesbitt, under the direction of Dunn, prepared and signed Proof of Funds Letters and caused others to prepare and sign these letters, contrary to the public interest.

16. As set out paragraph 28 below, Nesbitt failed to adequately supervise the Lett Accounts and Dunn’s actions in relation to the Lett Accounts, contrary to the public interest and contrary to sections 1.2, 1.5(a) and 3.1 of Ontario Securities Commission Rule 31-505.

### **III. UNREGISTERED TRADING**

17. In late 1995, Lett opened accounts in the name of Milehouse at the Mississauga Branch and at the Nesbitt branch located at 1 First Canadian Place, Toronto, Ontario. Lett also opened an account in the name of Pierrepont Trading Inc. (collectively, these accounts will be referred to as the “Lett Accounts”). Dunn was the Investment Advisor responsible for the Milehouse and Pierrepont accounts at the Mississauga Branch.

18. Seven investors (the “Investors”) deposited approximately US \$21 million into the Lett Accounts at Nesbitt or the Milehouse account at the Bank of Montreal for the purpose of investing in an intended trading program.

19. The Investors were as follows:

| <b>INVESTOR</b> | <b>DESCRIPTION</b>                                                                                         | <b>AMOUNT INVESTED</b> |
|-----------------|------------------------------------------------------------------------------------------------------------|------------------------|
| 1               | Constantin Nasses - A resident of Monaco who was charged with insider trading in the United States in 1986 | US \$8,000,000         |

| INVESTOR | DESCRIPTION                                                                                                                                                                                                                                           | AMOUNT INVESTED |
|----------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
|          | but has failed to respond to the charges.                                                                                                                                                                                                             |                 |
| 2        | V.A. Velarde - A resident of Virginia who, in June of 1999, was charged by the Securities and Exchange Commission with aiding and abetting two lawyers in a prime bank scheme. This individual settled the charges.                                   | US \$5,200,000  |
| 3        | Lenzburg Capital Corp. - An Alberta corporation who was later subject to a freeze order, obtained by the Alberta Securities Commission for failing to return funds to investors, as required pursuant to the terms set out in a Settlement Agreement. | US \$4,500,000  |
| 4        | Greater Ministries International Inc. ("GMI") - A Florida corporation purportedly involved in evangelical missionary work. In 2001, the founder of this organization was convicted of fraud and conspiracy.                                           | US \$1,275,000  |
| 5        | A resident of New York.                                                                                                                                                                                                                               | US \$1,000,000  |
| 6        | A resident of New York.                                                                                                                                                                                                                               | US \$1,000,000  |
| 7        | A resident of Florida.                                                                                                                                                                                                                                | US \$ 250,000   |

20. Between January 1996 and October 1999, Dunn provided and caused others to provide Lett with approximately 18 Proof of Funds Letters regarding the accounts of Milehouse and Pierrepont at Nesbitt. Dunn knew that the Proof of Funds Letters would be provided to third parties regarding the status of the Lett Accounts.

21. The Proof of Fund Letters were provided to a third party and were a necessary component of the intended trading "program". The Program has characteristics of a prime bank instrument scheme and, as such, has no basis in reality. This Program was to include the purchase on margin of a bank guarantee or debenture, issued by a foreign bank, through the Lett Accounts at Nesbitt. The proceeds from the purchase were to be directed to the third party who was represented as having access to a high yield trading program. The high yield trading program was represented as involving the purchase and sale of medium term bank notes. The bank notes were to be purchased at a substantial discount based upon a commitment issued by the United States Treasury Department. Substantial profits were to be earned because of the ability of the commitment holder to purchase at a discount. A portion of the profits on the subsequent sale of the bank notes were represented to be used for projects associated with the United States government (ie an American foreign policy initiative) or for humanitarian purposes. The balance of the profits would be left in the hands of the commitment holder.

Profits in the range of 100% to 480% would allegedly be earned by the commitment holder which would be shared with Lett and the parties who would have provided funds in the first instance.

22. Lett did not purchase a bank guarantee or debenture and was never able to access the high yield trading program. However, Lett, Milehouse and Pierrepont acted in furtherance of a trade by accepting the funds from the Investors, attempting to forward the funds to purchase the bank guarantee or debenture, (the proceeds would be used to access the high yield trading program), and by repeatedly providing the Proof of Funds letters to third parties.

23. During the material period, Milehouse and Pierrepont had no discernible business activity other than its involvement in the intended trading program.

#### **IV. PROOF OF FUNDS LETTERS – INACCURATE REPRESENTATIONS**

24. During the material period, Dunn prepared and signed Proof of Fund Letters and caused others to prepare and sign such letters.

25. During the material period, Hawkyard, while employed at the Bank of Montreal and later at Nesbitt, under the direction of Dunn, prepared and signed Proof of Funds Letters and caused others to prepare and sign these letters. Some of the Proof of Funds Letters were written on Bank of Montreal letterhead and attempted to confirm the availability of funds in the Lett Accounts at Nesbitt.

26. The Proof of Funds Letters were prepared at the request of Lett. At times, Lett provided draft wording for these letters.

27. The Proof of Funds Letters contained the following inaccurate representations regarding the Lett Accounts:

| <b>INACCURATE REPRESENTATION</b>                       | <b>FACT</b>                        |
|--------------------------------------------------------|------------------------------------|
| i) The letters indicated that, as of a certain date, a | In all cases, the stated amount of |

|      |                                                                                                                                                                                                                  |                                                                                                                            |
|------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------|
|      | stated amount of money (ranging from US \$10 million to US \$100 million) was in the Lett Accounts or was available in the Lett Accounts.                                                                        | money was not in the Lett Accounts.                                                                                        |
| ii)  | Some of the letters indicated that, for a period of time, the stated amount of money would be “held” in the Lett Accounts.                                                                                       | Nesbitt did not have a mechanism to place a “hold” on funds in the Lett Accounts.                                          |
| iii) | Some of the letters attested to the legitimacy of the funds; for example, the letters stated that the funds were “clear”, “clean” “of non-criminal origin”, “unencumbered” or “legitimately earned or obtained”. | Neither Nesbitt, Dunn nor Hawkyard attempted to verify the source of the funds that were deposited into the Lett Accounts. |

## V. FAILURE TO SUPERVISE

28. Nesbitt failed to adequately supervise the Lett Accounts and Dunn’s actions in relation to the Lett Accounts, despite numerous indications that, at a minimum, close supervision was required:

- i. Nesbitt was aware that, in 1993, Lett had been the subject of an Ontario Securities Commission proceeding and was sanctioned.
- ii. In early 1996, the Investment Adviser for the First Canadian Place account signed a letter drafted by Lett in which Lett was seeking to present an inflated impression of the value of assets held in his account. Nesbitt’s Branch Manager and Retail Compliance Officer became aware of this occurrence at the time and the Investment Adviser was instructed never to author such a letter again.
- iii. In 1996, a member of the Investigation Department of the Toronto Stock Exchange advised a compliance officer at Nesbitt that he had learned of an inquiry in relation to Lett and advised Nesbitt that it had shut down an operation that involved Lett and was dealing in prime bank notes.
- iv. On April 16, 1998, the Alberta Securities Commission issued an Order to Freeze Property in the Milehouse account at the Mississauga Branch with respect to the deposit of funds by Lenzburg Capital Corporation in the Milehouse account. On May 22, 1998, the Ontario Securities Commission issued a similar direction.
- v. In May 1998, Nesbitt became aware that Lett was depositing funds from certain of the Investors into the Milehouse account.

- vi. In May 1998, Nesbitt became aware that Dunn, in March 1998, had agreed in writing to terms and conditions with respect to funds deposited by third parties into the Milehouse account. One of the terms referred to funds remaining credited to the Milehouse account at Nesbitt for 1 year. After becoming aware of these terms, Nesbitt permitted the bulk of the funds in the Lett Accounts, other than the Lenzburg funds, to be transferred out.
  - vii. In May 1998, Dunn advised a Senior Compliance Officer that he signed the letter referred to in subsection vi. above, simply because he was asked to do so by Lett.
  - viii. In May 1998, a Senior Compliance Officer recommended that the Lett accounts be closed.
  - ix. In May 1998, Nesbitt placed restrictions on Dunn and his actions in relation to the Lett Accounts. Dunn was told not to sign any letters unless the letter was approved by Compliance or the legal department and was told that Lett could not deposit funds into the Milehouse account unless Nesbitt was satisfied that the funds belonged to Milehouse or Lett. In spite of the restrictions, Dunn continued to prepare, sign and caused others to sign Proof of Funds Letters. The restrictions were ineffectual because Nesbitt relied on Dunn to provide information.
29. Staff reserves the right to make such further and other allegations as the Commission may permit.

**DATED AT TORONTO** this 18<sup>th</sup> day of September, 2002, as amended on April 15, 2003.