

**IN THE MATTER OF THE SECURITIES ACT,  
R.S.O. 1990, c. S. 5, as amended**

**-and-**

**IN THE MATTER OF ROBERT DAVIES**

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

Staff of the Ontario Securities Commission (“Staff”) makes the following allegations:

**THE RESPONDENT**

1. The respondent, Robert Davies (“Davies”), is a chartered accountant and a certified management accountant. He has never been registered with the Ontario Securities Commission (the “Commission”).

**DISTRIBUTIONS OF THE SAXTON SECURITIES**

2. Saxton Investment Ltd. (“Saxton”) was incorporated on January 13, 1995. Allan Eizenga (“Eizenga”) was Saxton’s registered director. Saxton and Eizenga established numerous offering corporations, as listed below (the “Offering Corporations”).

The Saxton Trading Corp.  
The Saxton Export Corp.  
The Saxton Export (II) Corp.  
The Saxton Export (III) Corp.  
The Saxton Export (IV) Corp.  
The Saxton Export (V) Corp.  
The Saxton Export (VI) Corp.  
The Saxton Export (VII) Corp.  
The Saxton Export (VIII) Corp.  
The Saxton Export (IX) Corp.  
The Saxton Export (X) Corp.  
The Saxton Export (XI) Corp.  
The Saxton Export (XII) Corp.  
The Saxton Export (XIII) Corp.  
The Saxton Export (XIV) Corp.  
The Saxton Export (XV) Corp.  
The Saxton Export (XVI) Corp.  
The Saxton Export (XVII) Corp.

The Saxton Export (XVIII) Corp.  
The Saxton Export (XIX) Corp.  
The Saxton Export (XX) Corp.  
The Saxton Export (XXI) Corp.  
The Saxton Export (XXII) Corp.  
The Saxton Export (XXIII) Corp.  
The Saxton Export (XXIV) Corp.  
The Saxton Export (XXV) Corp.  
The Saxton Export (XXVI) Corp.  
The Saxton Export (XXVII) Corp.  
The Saxton Export (XXVIII) Corp.  
The Saxton Export (XXIX) Corp.  
The Saxton Export (XXX) Corp.  
The Saxton Export (XXXI) Corp.  
The Saxton Export (XXXII) Corp.  
The Saxton Export (XXXIII) Corp.  
The Saxton Export (XXXIV) Corp.  
The Saxton Export (XXXV) Corp.  
The Saxton Export (XXXVI) Corp.  
The Saxton Export (XXXVII) Corp.  
The Saxton Export (XXXVIII) Corp.

3. Saxton and the Offering Corporations represented to the public that they were investing in businesses in Cuba and other Caribbean companies.
4. On or about October 7, 1998, the Court appointed KPMG Inc. (“KPMG”) as the custodian of Saxton’s assets. In early 1999, KPMG reported that the Offering Corporations had raised approximately \$37 million from investors. All funds invested in the Offering Corporations had been transferred to Saxton. At that time, KPMG held the view that the value of the Saxton assets, at its highest (as reported by related companies), was approximately \$5.5 million.
5. Saxton marketed two investment products namely: (i) a “GIC” which was later re-named a “Fixed Dividend Account”; and (ii) an “Equity Dividend Account”. In either case, the investor purchased securities in one or more of the Offering Corporations (the “Saxton Securities”).
6. The Fixed Dividend Account products promised investors either 10.25% annual return for a three year term compounded or 12% annual return for a five year term compounded. Investors in the Equity Dividend Account were told to expect 25% to 30% annual growth in their investment.
7. The Saxton Securities were distributed in violation of the *Securities Act*, R.S.O. 1990, c. S.5 (the “Act”). All of the Offering Corporations were incorporated pursuant to the laws of Ontario. Sales of the Saxton Securities constituted trades in securities of an issuer that had not been previously issued.
8. None of the Offering Corporations filed a preliminary prospectus or prospectus with the Commission. The Offering Corporations purported to rely on the “seed capital”

prospectus exemption under subparagraph 72(1)(p) of the Act. Neither this exemption, nor any other prospectus exemption, was available to them.

#### **CONDUCT OF DAVIES**

9. Between October 1996 and December 1997, Davies was employed as Saxton's controller. As such, Davies' responsibilities included establishing and maintaining proper internal accounting controls and books of account, preparing financial statements and producing quarterly account statements for investors.

10. Davies failed to keep and maintain the proper books and records and failed to ensure that the basic accounting controls were in place. Among other things:

- (a) the general ledger did not reflect all transactions pertaining to the Saxton operations and were incomplete for the purposes of preparing financial statements in accordance with GAAP;
- (b) the general ledger was not "closed-off" after the financial year end for the purpose of establishing proper financial statements;
- (c) investor funds were not reconciled and controlled to the shareholder register and the respective company's financial records;
- (d) interest accruing on the Fixed Dividend Accounts were not recorded in the books of account;
- (e) Saxton's use of funds were not properly recorded;
- (f) funds generated through investments and/or revenue from the Cuban or other Saxton operations, if any, were not reflected in the books of account; and
- (g) financial statements were never prepared.

11. Shareholders who invested in the Fixed Dividend Account products received quarterly statements which reflected a market value increase in their investment of 10.25% or 12%. The Equity Dividend Account holders' quarterly statements reflected a market value increase of between 25% and 30%. To Davies' knowledge, there was no financial foundation to support the historic and/or the market value contained in the quarterly account statements.

12. Davies knew that the quarterly statements were unsubstantiated by any accounting or financial data in Saxton's possession. He also knew that the statements misrepresented the value of the shareholders' investments and thus, were misleading to investors and the Saxton salespeople.

13. Davies knew, or ought reasonably to have known, that the investing public, and Saxton salespeople, relied upon the quarterly account statements and his professional expertise. Thus, Davies provided misguided comfort respecting the nature and quality of, and gave unwarranted credibility to, the Saxton Securities.

14. Davies failed to exercise the appropriate due diligence concerning Saxton's activities. Moreover, he continued to participate in Saxton after becoming aware that investor funds were being diverted to Eizenga's personal use.

15. Davies' conduct was contrary to Ontario securities law and the public interest.

16. Such other allegations as Staff may make and the Commission may permit.

Date: May 12, 2003