



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 NEW FOUND FREEDOM FINANCIAL,
RON DEONARINE SINGH, WAYNE GERARD MARTINEZ, PAULINE LEVY,
DAVID WHIDDEN, PAUL SWABY AND ZOMPAS CONSULTING**

**SETTLEMENT AGREEMENT
BETWEEN STAFF OF THE ONTARIO SECURITIES COMMISSION
AND DAVID WHIDDEN**

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 section 127 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 Whidden (“Whidden”).

PART II – JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission (“Staff”) agree to recommend settlement of the proceeding commenced by Notice of Hearing dated November 2, 2011 against Whidden (the “Proceeding”) in accordance with the terms and conditions set out below. Whidden consents 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, Whidden agrees with the facts as set out in Part III of this Settlement Agreement. To the extent Whidden does not have personal knowledge of certain facts as described below, he believes those facts to be true and accurate.
4. Whidden is 63 years old, a professional engineer, and a resident of Windsor, Ontario. He has never been registered with the Commission in any capacity.
5. New Found Freedom Financial (“NFF”) is a general partnership owned and operated by Ron Deonarine Singh (“Singh”) and Wayne Gerard Martinez (“Martinez”). NFF has never been a reporting issuer in Ontario and has never been registered with the Commission in any capacity, nor have Singh or Martinez ever been registered with the Commission in any capacity.
6. Between April 2008 and October 2009 (the “Material Time”), NFF accepted funds from Ontario residents for a foreign exchange investment program (the “NFF Investment”). The NFF Investment was an “investment contract” within the definition of a “security” in section 1(1) of the Act.
7. The characterization of the NFF Investment changed over time. It was initially described as managed foreign exchange (“Forex”) accounts. In or about the summer of 2009, NFF began to characterize the NFF Investment as a marketing program in which investors made a principal payment characterized as a “membership fee”, and received monthly payments characterized as “marketing fees”.
8. Regardless of the characterization of the NFF Investment, the key elements remained the same. Investors entered into a written agreement with NFF with respect to their investment. They were told that NFF would engage Forex traders who would trade with their funds. Investors were typically promised a fixed return of 5% per month (or

60% per annum) on their invested principal, although some investors were promised fixed returns of up to 8% per month (or 96% per annum).

9. Whidden referred Ontario residents to the NFF Investment. Between October 2008 and October 2009, at least 10 people invested a total of approximately \$332,000 as a result of Whidden's promotional and trading activities (the "Whidden Investors"). These activities included discussing the features of the NFF Investment with the Whidden Investors, providing them with promotional materials and providing blank investment agreements for them to complete.
10. In exchange for these activities, NFF agreed to pay Whidden referral fees of 3% per month (or 36% per annum) of the principal invested by most of the Whidden Investors. Whidden received a total of approximately \$47,000 in referral fees from NFF during the Material Time.
11. NFF raised a total of approximately \$1.8 million from 57 investors during the Material Time, including the Whidden Investors. However, NFF only paid back a total of approximately \$704,000 for both monthly returns and redemptions during this period. NFF suspended payments to investors in October 2009.
12. Whidden made payments from his own funds to several of the Whidden Investors. Between July 2009 and June 2012, Whidden personally paid a total of \$47,235 to several of the Whidden Investors in relation to their investments in the NFF Investment, including \$6,400 paid to his son-in-law.

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

13. By engaging in the conduct described above, Whidden traded and engaged in or held himself out as engaging in the business of trading in securities without being registered to do so and without an exemption from the dealer registration requirement, 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.

14. Whidden's activities in respect of the NFF Investment constituted trades in securities which were distributions, for which no preliminary prospectus or prospectus was filed or receipted by the Director, contrary to s. 53(1) of the Act.
15. Whidden's conduct was contrary to the public interest and harmful to the integrity of the capital markets.

PART V – RESPONDENT'S POSITION

16. Whidden requests that the settlement hearing panel consider the following mitigating circumstances:
 - (a) Whidden was not initially aware that he would receive referral fees for referring people to the NFF Investment;
 - (b) Whidden states that he did not obtain legal advice prior to referring people to NFF, and he mistakenly believed that no registration was required;
 - (c) The people Whidden referred to the NFF Investment were primarily his family, friends and business associates;
 - (d) Whidden states that he explained to the Whidden Investors that there were risks involved in the NFF Investment and suggested they make only minimal investments. Upon learning of potential problems with NFF, Whidden advised the Whidden Investors not to make any further investments;
 - (e) Whidden personally invested \$20,000 in the NFF Investment, and he gifted \$10,050 to his son-in-law to invest in the NFF Investment;
 - (f) Whidden cooperated with Staff's investigation; and

- (g) Whidden states that as a result of his involvement in the matters referred to above, he has incurred significant debts and has had to delay his retirement.

PART VI – TERMS OF SETTLEMENT

17. Whidden agrees to the terms of settlement listed below.
18. The Commission will make an order pursuant to section 127(1) and section 127.1 of the Act that:
- (a) The settlement agreement is approved;
 - (b) Whidden shall cease trading in any securities for a period of 4 years commencing from the date of the order approving this settlement agreement (this “Order”), with the exception that, once the entire amount set out in sub-paragraph 18(i) is paid in full, Whidden be permitted to trade securities for the account of his registered retirement savings plans 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) in (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;
 - (c) Whidden shall cease acquisitions of any securities for a period of 4 years commencing from the date of this Order, with the exception that Whidden be permitted to acquire securities for the account of his registered retirement savings plans and his registered pension plan as defined in the *Income Tax Act* once the entire amount set out in sub-paragraph 18(i) is paid in full, in accordance with the exception requirements as set out in sub-paragraph (b) above;

- (d) Any exemptions contained in Ontario securities law do not apply to Whidden for a period of 4 years commencing from the date of this Order, except to the extent such exemption is necessary for trades undertaken in connection with his registered retirement savings plans and his registered pension plan as defined in the *Income Tax Act*, once the entire amount set out in sub-paragraph 18(i) is paid in full;
 - (e) Whidden is reprimanded;
 - (f) Whidden shall resign any positions he holds as a director or officer of an issuer, with the exception that Whidden may continue his activities as a director and officer of Alternative Strategies by DAW Inc. and Profitable Giving Canada as those activities relate to charitable gifting arrangements, excluding any such arrangements involving securities;
 - (g) Whidden is prohibited for a period of 4 years from the date of this Order from becoming or acting as a director or officer of an issuer, registrant or investment fund manager, with the exception that Whidden may continue his activities as a director and officer of Alternative Strategies by DAW Inc. and Profitable Giving Canada as those activities relate to charitable gifting arrangements, excluding any such arrangements involving securities;
 - (h) Whidden is prohibited for a period of 4 years from the date of this Order from becoming or acting as a registrant, investment fund manager or promoter; and
 - (i) Whidden shall pay to the Commission an administrative penalty in the amount of \$6,000 for his failure to comply with Ontario securities law, to be designated under subsection 3.4(2)(b) of the Act for allocation to or for the benefit of third parties.
19. Whidden agrees to personally make any payments ordered above by certified cheque or bank draft when the Commission approves this Settlement Agreement. Whidden

will not be reimbursed for, or receive a contribution toward, this payment from any other person or company.

20. Whidden 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 18(b) to (h) above. These prohibitions may be modified to reflect the provisions of the relevant provincial or territorial securities law.

PART VI – STAFF COMMITMENT

21. If the Commission approves this Settlement Agreement, Staff will not initiate any other 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 22 below.
22. If the Commission approves this Settlement Agreement and Whidden fails to comply with any of the terms of the Settlement Agreement, Staff reserve the right to bring proceedings under Ontario securities law against Whidden. 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 Whidden fails to comply with the terms of the Settlement Agreement, the Commission is entitled to bring any proceedings necessary to recover the amount set out in sub-paragraph 18(i) above.

PART VII – PROCEDURE FOR APPROVAL OF SETTLEMENT

23. The parties will seek approval of this Settlement Agreement at a public hearing before the Commission scheduled for September 7, 2012, or on another date agreed to by Staff and Whidden, according to the procedures set out in this Settlement Agreement and the Commission's Rules of Procedure.

24. Staff and Whidden agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing regarding Whidden's conduct, unless the parties agree that additional facts should be submitted at the settlement hearing.
25. If the Commission approves this Settlement Agreement, Whidden agrees to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.
26. 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.
27. Whether or not the Commission approves this Settlement Agreement, Whidden 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

28. If the Commission does not approve this Settlement Agreement or does not make the order attached as Schedule "A" to this Settlement Agreement:
 - i. this Settlement Agreement and all discussions and negotiations between Staff and Whidden before the settlement hearing takes place will be without prejudice to Staff and Whidden; and
 - ii. Staff and Whidden 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.

29. 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

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

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

Dated this 23rd day of August, 2012

“Tina Walton”

Witness

“David Whidden”

David Whidden

Dated this 24th day of August, 2012

STAFF OF THE ONTARIO
SECURITIES COMMISSION

“per Karen Manarin”

Tom Atkinson
Director, Enforcement Branch



Ontario

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P.O. Box 55, 19th 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 NEW FOUND FREEDOM FINANCIAL, RON DEONARINE SINGH, WAYNE GERARD MARTINEZ, PAULINE LEVY, DAVID WHIDDEN, PAUL SWABY AND ZOMPAS CONSULTING

ORDER

WHEREAS on November 2, 2011, the Ontario Securities Commission (the "Commission") issued a 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"), in connection with the allegations set out in the Statement of Allegations filed by Staff of the Commission ("Staff") on November 1, 2011;

AND WHEREAS David Whidden ("Whidden") entered into a settlement agreement with Staff dated • (the "Settlement Agreement") in relation to the matters set out in the Statement of Allegations;

AND WHEREAS on •, 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 the Settlement Agreement;

AND UPON reviewing the Settlement Agreement, the Notice of Hearing, and the Statement of Allegations, and upon hearing submissions from Staff and from Whidden;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this Order;

IT IS HEREBY ORDERED, PURSUANT TO SECTION 127(1) OF THE ACT, THAT:

- (a) the Settlement Agreement is approved;
- (b) pursuant to clause 2 of subsection 127(1) of the Act, trading in any securities by Whidden shall cease for a period of four (4) years commencing from the date of this Order, with the exception that, once the entire amount set out in paragraph (i) below is paid in full, Whidden shall be permitted to trade securities for the account of his registered retirement savings plans 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) in (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;
- (c) pursuant to clause 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Whidden is prohibited for a period of four (4) years commencing from the date of this Order, with the exception that Whidden shall be permitted to acquire securities for the account of his registered retirement savings plans and his registered pension plan as defined in the *Income Tax Act* once the entire amount set out in paragraph (i) below is paid in full, in accordance with the exception requirements as set out in paragraph (b) above;
- (d) pursuant to clause 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Whidden for a period of four (4) years

commencing from the date of this Order, except to the extent such exemption is necessary for trades undertaken in connection with his registered retirement savings plans and his registered pension plan as defined in the *Income Tax Act*, once the entire amount set out in paragraph (i) below is paid in full;

- (e) pursuant to clause 6 of subsection 127(1) of the Act, Whidden is reprimanded;
- (f) pursuant to clause 7 of subsection 127(1) of the Act, Whidden shall resign any positions he holds as a director or officer of an issuer, with the exception that Whidden may continue his activities as a director and officer of Alternative Strategies by DAW Inc. and Profitable Giving Canada as those activities relate to charitable gifting arrangements, excluding any such arrangements involving securities;
- (g) pursuant to clauses 8, 8.2 and 8.4 of subsection 127(1) of the Act, Whidden is prohibited for a period of four (4) years from the date of this Order from becoming or acting as a director or officer of an issuer, registrant or investment fund manager, with the exception that Whidden may continue his activities as a director and officer of Alternative Strategies by DAW Inc. and Profitable Giving Canada as those activities relate to charitable gifting arrangements, excluding any such arrangements involving securities;
- (h) pursuant to clause 8.5 of subsection 127(1) of the Act, Whidden is prohibited for a period of four (4) years from the date of this Order from becoming or acting as a registrant, investment fund manager or promoter; and
- (i) pursuant to clause 9 of subsection 127(1) of the Act, Whidden shall pay to the Commission an administrative penalty in the amount of \$6,000 for his failure to comply with Ontario securities law, which is designated under subsection 3.4(2)(b) of the Act for allocation to or for the benefit of third parties.

DATED at Toronto this ____ day of ●, 2012

