

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

**- and -**

**IN THE MATTER OF RICHARD BRUCE MOORE**

**SETTLEMENT AGREEMENT BETWEEN  
STAFF OF THE ONTARIO SECURITIES COMMISSION  
AND RICHARD BRUCE MOORE**

**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 (Richard) Bruce Moore (“Moore” 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 April 11, 2013 (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.

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 and the conclusions in Part IV of this Settlement Agreement (the “Settlement Agreement”).

**PART III – AGREED FACTS**

**A. OVERVIEW**

4. The Proceeding relates to Staff’s allegations concerning trading by Moore in the securities of two issuers:

- (a) trading in 2010 in the securities of Tomkins plc (“Tomkins”), an issuer with securities trading on the London Stock Exchange (“LSE”). Tomkins was not a reporting issuer in Ontario (the “Tomkins Conduct”); and
- (b) trading in 2012 in the securities of HOMEQ Corporation (“HOMEQ”) (the “HOMEQ Conduct”)

## **II. THE RESPONDENT**

5. Moore is a resident of Toronto, Ontario. Moore was employed by CIBC World Markets (“CIBC”) for approximately 20 years in commercial banking, corporate banking, and investment banking. For approximately 9 years, he worked from CIBC’s office in London, England, returning to Canada in August, 2008.

6. In 2010, Moore was a Managing Director, Investment Banking (Diversified) at CIBC in Toronto, Ontario. In this role, Moore was responsible for covering clients in a broad range of business sectors, including Canada Pension Plan Investment Board (“CPPIB”).

7. In 2012, Moore was an employee of UBS Securities Canada Inc. (“UBS”) in Toronto, Ontario. His title was Managing Director, Investment Banking, Diversified Industrials. In this role, Moore was responsible for covering clients in a broad range of business sectors, including Birch Hill Equity Partners (“Birch Hill”).

## **III. MOORE’S CONDUCT**

### **A. The Tomkins Conduct**

8. In June and July 2010, Moore placed orders to purchase securities of Tomkins in two brokerage accounts located on the Channel Island of Jersey (the “offshore accounts”). The offshore accounts were opened in 2008 and were linked to two international pension plans that Moore established in 2002 to hold earnings from Moore’s work for CIBC in the United Kingdom. Moore transferred the international pension plans to a new trustee in Jersey in 2008 in anticipation of his return to Canada. The Tomkins purchases were the first transactions in the offshore accounts. Moore did not disclose the offshore accounts to CIBC in Toronto as required by its compliance policies.

9. In total, Moore purchased 212,000 shares of Tomkins on the LSE (at a cost of £508,249.90). He also bought 51,350 ADR securities on the New York Stock Exchange (“NYSE”) (at a cost of US\$747,860.81). The purchases were the single-largest equity purchases of Moore’s life by value.

10. In June 2010 Moore decided to purchase securities of Tomkins because he deduced that it would likely be acquired by CPPIB.

11. Moore reached this conclusion as a result of his previous knowledge of Tomkins obtained from public sources including rumours that it would be the subject of a takeover, his observations of a friend and senior representative of CPPIB (“Mr. A.”) and comments of a general nature made by Mr. A. about work that he was involved in for CPPIB. These interactions with Mr. A. occurred over the course of several months, including on social occasions.

12. Among other information, Moore learned from Mr. A. that he was working on a transaction for CPPIB that required US \$2 billion in financing involving a company in Europe and the U.S. The final piece of information that ultimately led Moore to deduce that the identity of CPPIB’s target was Tomkins was Moore’s observation of Mr. A’s chance interaction with the CEO of Tomkins (the “CEO”) at a charity event. Mr. A. declined to introduce Moore to the CEO, or to reveal his identity. Later that day another person volunteered the CEO’s identity to Moore.

13. The following business day, Moore took steps to initiate the purchase of a portion of the Tomkins securities described above.

14. In no specific instance did Mr. A ever provide Moore with any material, generally undisclosed information.

15. On July 19, 2010, the day of the announcement by Tomkins of the approach by CPPIB and Onex Corporation, the closing price of Tomkins shares increased 31.6% from the previous day’s close.

16. Moore’s profit from the LSE trades based on the 20-day average price of the Tomkins shares following July 19, 2010 was CDN \$275,611.54.

17. The United States Securities and Exchange Commission (the “SEC”) is commencing a parallel proceeding against Moore in the United States District Court, which addresses conduct in its jurisdiction. It is expected that Moore will settle the SEC civil enforcement action concurrently with the Proceeding.

**B. The HOMEQ Conduct**

**a) Moore Received Material Information Inadvertently**

18. On March 22, 2012, Moore received an email from a partner at Birch Hill (Mr. “B”), which had an attachment entitled *Birch Hill Equity Partners, Project Monaco, Summit (Investment Recommendation), March 26, 2012, A confidential presentation* – (the “Recommendation”).

19. The Recommendation disclosed a material fact concerning Birch Hill’s proposal to acquire HOMEQ. In particular, the Recommendation stated that the “[HOMEQ] Board has concluded the auction process with Birch Hill emerging as the winning bidder at \$9.50/share price” (the “Material Fact”).

20. The email containing the Material Fact was sent to Moore in error through inadvertence by Mr. B in addressing the email with the Auto-Complete addressing function of Birch Hill’s email software. Even though Birch Hill was a client of UBS, Moore was not supposed to receive the email and the confidential information attached to it. Although Moore was frequently interacting with Mr. B in relation to another matter in or about March 2012, Moore had no involvement in the HOMEQ transaction. Instead of returning the email and advising Mr. B that he had received the email in error, Moore took steps to purchase securities of HOMEQ.

**b) Moore’s Purchases of HOMEQ Securities**

21. Moore took immediate steps to purchase shares of HOMEQ. Between March 23 and March 27, Moore purchased HOMEQ securities in a brokerage account that was located on the Channel Island of Jersey as follows:

<b>Date</b>	<b>Volume Purchased</b>	<b>Total Cost (CDN)</b>
Mar 23/12	11,200	\$89,033.59
Mar 26/12	7,400	\$59,108.60
Mar 27/12	12,000	\$96,381.87
<b>Total</b>	<b>30,600</b>	<b>\$244,524.06</b>

22. When purchased by Birch Hill, Moore's shares in HOMEQ would have generated proceeds of approximately \$290,700, representing a gross profit of approximately \$46,175. The profit of the HOMEQ trades based on the 20-day average price of the HOMEQ shares following the public announcement made by HOMEQ and Birch Hill on March 30, 2012 was \$43,268.94.

**c) Moore in a Special Relationship with HOMEQ**

23. Moore was in a special relationship with HOMEQ pursuant to section 76(5)(a)(iii) of the Act. Moore learned of the Material Facts from Mr. B, who was in a special relationship with HOMEQ, in circumstances where Moore knew or ought reasonably to have known that Mr. B was a person in such a relationship.

24. As of March 22, 2012, Birch Hill had taken the following steps:

- (i) restricted trading internally on HOMEQ securities as of August 5, 2010;
- (ii) completed a substantial amount of due diligence;
- (iii) retained lawyers to assist them with the bid in August 2010 and had ongoing discussions concerning the acquisition with the lawyers from January 2012;
- (iv) retained financial advisors to assist them with the bid on November 24, 2011 and had ongoing discussions concerning the acquisition with the financial advisors from then;

- (v) signed a confidentiality agreement with HOMEQ as of Jan. 31, 2012; and
- (vi) negotiated a price of \$9.50 with HOMEQ's board on or about March 15, 2012, which was the winning bid in HOMEQ's auction process.

25. Consequently, as of March 22, 2012, Birch Hill's interest in acquiring HOMEQ had evolved into a proposal to do so.

**d) Moore Had Knowledge of the Material Fact with Respect to HOMEQ that Had Not Been Generally Disclosed**

26. At the time of the HOMEQ purchases, Moore had knowledge of the Material Fact with respect to HOMEQ that had not been generally disclosed.

**C. Credit for Cooperation and Mitigating Circumstances**

27. Moore voluntarily brought the HOMEQ Conduct to the attention of Staff during the investigation of the Tomkins Conduct. Consequently, pursuant to Staff Notice 15-702, Moore is entitled to credit for his cooperation with Staff.

28. Moore appreciates that his conduct in relation to both Tomkins and HOMEQ was inappropriate and has expressed remorse for his actions.

29. Moore voluntarily resigned his position at UBS immediately prior to bringing the HOMEQ Conduct to the attention of staff.

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

**A. The Tomkins Conduct**

30. Moore's conduct involving the purchase of securities of Tomkins as outlined above fell below the standard of behaviour expected from someone in Moore's position and given his extensive experience in the capital markets industry. In particular, he ought not to have made

use of information obtained in part by virtue of his position as an employee of a registrant prior to its general disclosure to the public.

31. Consequently Moore's conduct was contrary to the public interest.

**B. The HOMEQ Conduct**

32. Moore's HOMEQ Conduct was contrary to s. 76(1) of the Act and contrary to the public interest. It was abusive of the capital markets and to confidence in the capital markets.

33. In particular, Moore misused confidential information belonging to Birch Hill for his personal profit. This conduct fell markedly below the high standard of behaviour expected from someone in Moore's position and given his extensive experience in capital markets industry.

**PART V – TERMS OF SETTLEMENT**

34. Moore agrees to the term of settlement listed below.

35. The Commission will make an order, pursuant to sections 127 and 127.1 of the Act, that:

- (a) the settlement agreement is approved;
- (b) trading in any securities by Moore including as the term "security" is defined in subsections 1(1) and 76(6) of the Act, whether direct or indirect, shall cease for a period of 10 years from the date of the order approving the settlement agreement except as follows:
  - (i) trading shall be permitted only in 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)) in which Moore and/or his spouse have sole legal and beneficial ownership, and such trading is carried out through a registered dealer in Canada to whom he must give a copy of this Order at the time he opens or modifies these accounts; and

- (ii) trading shall be permitted only in mutual fund, exchange-traded fund or index fund securities for the account of any registered education savings plans (as defined in the *Income Tax Act* (Canada)) in which Moore and/or his spouse are subscribers and one or more of his children have beneficial ownership, and such trading is carried out through a registered dealer in Canada to whom he must give a copy of this Order at the time he opens or modifies these accounts;
  
- (c) the acquisition of any securities by Moore, including as the term “security” is defined in subsections 1(1) and 76(6) of the Act, whether direct or indirect, is prohibited for a period of 10 years from the date of the order approving the settlement agreement, except as follows:
  - (i) the acquisition of any securities by Moore shall be permitted only in 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)) in which Moore and/or his spouse have sole legal and beneficial ownership, and such trading is carried out through a registered dealer in Canada to whom he must give a copy of this Order at the time he opens or modifies these accounts;
  
  - (ii) the acquisition of any securities by Moore shall be permitted only in mutual fund, exchange-traded fund or index fund securities for the account of any registered education savings plans (as defined in the *Income Tax Act* (Canada)) in which Moore and/or his spouse are subscribers and one or more of his children have beneficial ownership, and such trading is carried out through a registered dealer in Canada to whom he must give a copy of this Order at the time he opens or modifies these accounts; and
  
  - (iii) the acquisition by Moore of any securities of a “private issuer” as defined in section 2.4 of National Instrument 45-106 shall be permitted

for investment purposes for (i) his own account, (ii) the account of a corporation of which he and/or his spouse have sole legal and beneficial ownership, or (iii) the account of a trust in which his children are the sole beneficiaries, except that Moore shall not be permitted to acquire securities in a private issuer that holds, directly or indirectly, securities of a reporting issuer as defined in sections 1(1) and 76(5) of the Act or any other issuer with a real and substantial connection to Ontario, any securities of which are publicly traded;

- (d) any exemptions contained in Ontario securities law do not apply to Moore for a period of 10 years from the date of the order approving the settlement agreement except for the purpose of trades described in subparagraphs (b)(i) and (ii), and (c)(i), (ii), and (iii), above;
- (e) Moore is reprimanded;
- (f) Moore shall immediately resign any position he holds as a director or officer of any reporting issuer or registrant;
- (g) Moore is prohibited for a period of 10 years from the date of the order approving the settlement agreement from becoming or acting as a director or officer of any reporting issuer;
- (h) Moore is prohibited for a period of 15 years from the date of the order approving the settlement agreement from becoming or acting as a registrant, an investment fund manager, a promoter (in respect of a reporting issuer), or as a director or officer of any registrant or investment fund manager;
- (i) Moore shall disgorge to the Commission \$43,268.94, being the profits obtained by him through the HOMEQ Conduct as a result of his non-compliance with Ontario securities law. The disgorged amount shall be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act;

- (j) Moore shall pay an administrative penalty of \$86,000 for his failure to comply with Ontario securities law in respect of the HOMEQ Conduct, which represents approximately two (2) times the profit made by the Respondent through the HOMEQ Conduct. The administrative penalty shall be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act; and
- (k) Moore shall pay investigation costs with respect to the Tomkins Conduct to the Commission in the amount of \$75,000.

36. Moore undertakes to make a voluntary payment to the Commission in the amount of \$300,000 with respect to the Tomkins Conduct, which will be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii).

37. Moore 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 the Settlement Agreement. These prohibitions may be modified to reflect the provisions of the relevant provincial or territorial securities law.

38. Moore agrees to attend in person at the hearing before the Commission to consider the proposed settlement.

#### **PART VI – STAFF COMMITMENT**

39. 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 40 below.

40. If the Commission approves this Settlement Agreement and the Respondent fails 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.

## **PART VII – PROCEDURE FOR APPROVAL OF SETTLEMENT**

41. The parties will seek approval of this Settlement Agreement at a public hearing before the Commission scheduled on a date to be determined by the Secretary to the Commission, or such other date as may be agreed to by Staff and the Respondent, according to the procedures set out in this Settlement Agreement and the Commission's *Rules of Procedure*.

42. 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.

43. 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.

44. 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.

45. 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**

46. 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.

47. 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**

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

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

**DATED AT TORONTO** this 8<sup>th</sup> day of April 2013

“Richard Bruce Moore”

“Linda Fuerst”

\_\_\_\_\_  
Richard Bruce Moore

\_\_\_\_\_  
witness  
(signature and printed name)

“Tom Atkinson”

\_\_\_\_\_  
Tom Atkinson  
Director, Enforcement Branch

**Schedule “A”**



Ontario  
Securities  
Commission

Commission des  
valeurs mobilières  
de l'Ontario

P.O. Box 55, 19<sup>th</sup> Floor  
20 Queen Street West  
Toronto ON M5H 3S8

CP 55, 19<sup>e</sup> 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 RICHARD BRUCE MOORE**

**ORDER**

**(Pursuant to sections 127 and 127.1 of the Securities Act and  
Rule 12 of the Commission’s *Rules of Procedure*)**

**WHEREAS** on April 11, 2013 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 (the “Statement of Allegations”) in respect of Richard Bruce Moore (“Moore”);

**AND WHEREAS** Moore has entered into a settlement agreement with Staff dated April 8, 2013 (the “Settlement Agreement”) in relation to the matters set out in the Notice of Hearing and the Statement of Allegations;

**AND WHEREAS** in the Notice of Hearing the Commission announced that it proposed to hold a hearing to consider whether it is in the public interest to approve the Settlement Agreement between Staff and Moore;

**AND WHEREAS** the Commission has reviewed the Notice of Hearing, the Statement of Allegations, and the Settlement Agreement, and has heard submissions from counsel for Moore and for Staff;

**AND WHEREAS** Moore has entered into an undertaking as part of the Settlement Agreement whereby he shall make a voluntary payment to the Commission in the amount of \$300,000, which will be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act;

**AND WHEREAS** Moore has provided to Staff certified cheques in full payment of all monetary amounts provided and described in this Order including the above-described voluntary payment;

**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 is approved;
- (b) pursuant to subsection 127(1)2 of the Act, trading in any securities by Moore including as the term “security” is defined in subsections 1(1) and 76(6) of the Act, whether direct or indirect, shall cease for a period of 10 years from the date of this order except as follows:

trading shall be permitted only in 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)) in which Moore and/or his spouse have sole legal and beneficial ownership, and such trading is carried out through a registered dealer in Canada to whom he must give a copy of this Order at the time he opens or modifies these accounts; and

trading shall be permitted only in mutual fund, exchange-traded fund or index fund securities for the account of any registered education savings plans (as defined in the *Income Tax Act* (Canada)) in which Moore and/or his spouse are subscribers and one or more of his children have beneficial ownership, and such trading is carried out through a registered dealer in Canada to whom he must give a copy of this Order at the time he opens or modifies these accounts;

- (c) pursuant to subsection 127(1)2.1 of the Act, the acquisition of any securities by Moore, including as the term “security” is defined in subsections 1(1) and 76(6) of the Act, whether direct or indirect, is prohibited for a period of 10 years from the date of this order, except as follows:

the acquisition of any securities by Moore shall be permitted only in 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)) in which Moore and/or his spouse have sole legal and beneficial ownership, and such trading is carried out through a registered dealer in Canada to whom he must give a copy of this Order at the time he opens or modifies these accounts;

the acquisition of any securities by Moore shall be permitted only in mutual fund, exchange-traded fund or index fund securities for the account of any registered education savings plans (as defined in the *Income Tax Act* (Canada)) in which Moore and/or his spouse are subscribers and one or more of his children have beneficial ownership, and such trading is carried out through a registered dealer in Canada to whom he must give a copy of this Order at the time he opens or modifies these accounts; and

the acquisition by Moore of any securities of a “private issuer” as defined in section 2.4 of National Instrument 45-106 shall be permitted for investment purposes for (i) his own account, (ii) the account of a corporation of which he and/or his spouse have sole legal and beneficial ownership, or (iii) the account of a trust in which his children are the sole beneficiaries, except that Moore shall not be permitted to acquire securities in a private issuer that holds, directly or indirectly, securities of a reporting issuer as defined in sections 1(1) and 76(5) of the Act or any other issuer with a real and substantial connection to Ontario, any securities of which are publicly traded;

- (d) pursuant to subsection 127(1)3 of the Act, any exemptions contained in Ontario securities law do not apply to Moore for a period of 10 years from the date of this order except for the purpose of trades described in subparagraphs (b)(i) and (ii), and (c)(i), (ii), and (iii) set forth above in this Order;
- (e) pursuant to subsection 127(1)6 of the Act, Moore is reprimanded;
- (f) pursuant to subsections 127(1)7 and 8.1 of the Act, Moore shall immediately resign any position he holds as a director or officer of any reporting issuer or registrant;
- (g) pursuant to subsection 127(1)8 of the Act, Moore is prohibited for a period of 10 years from the date of this order from becoming or acting as a director or officer of any reporting issuer;
- (h) pursuant to subsections 127(1)8.2, 8.4, and 8.5 of the Act, Moore is prohibited for a period of 15 years from the date of this order from becoming or acting as a registrant, an investment fund manager, a promoter (in respect of a reporting issuer), or as a director or officer of any registrant or investment fund manager;
- (i) pursuant to subsection 127(1)10 of the Act, Moore shall disgorge to the Commission the amount of \$43,268.94, which shall be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act;
- (j) pursuant to subsection 127(1)9 of the Act, Moore shall pay an administrative penalty in the amount of \$86,000, which shall be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act; and

- (k) pursuant to subsection 127.1(1) of the Act, Moore shall pay investigation costs to the Commission in the amount of \$75,000.

Dated at Toronto this \_\_\_ day of April 2013.