



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 NEWER TECHNOLOGIES LIMITED, RYAN PICKERING  
AND RODGER FREY**

**- and -**

**IN THE MATTER OF A  
SETTLEMENT AGREEMENT BETWEEN  
STAFF OF THE ONTARIO SECURITIES COMMISSION  
AND RODGER FREY**

**SETTLEMENT AGREEMENT  
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 approve this Settlement Agreement and to make certain orders in respect of Rodger Frey (“**Frey**” or the “**Respondent**”).

**PART II - JOINT SETTLEMENT RECOMMENDATION**

2. Staff of the Commission (“**Staff**”) agree to recommend settlement of the proceeding commenced against Frey by Notice of Hearing dated December 4, 2012 (the “**Proceeding**”) according to the terms and conditions set out in Part V of this Settlement Agreement (this “**Settlement Agreement**”). Frey agrees to the making of an order in the form attached as Schedule "A", based on the facts set out below.

3. For the purposes of this proceeding, and any other regulatory proceeding commenced by a securities regulatory authority, Frey agrees with the facts as set out in Part III and the conclusion in Part IV of this Settlement Agreement.

### **PART III - AGREED FACTS**

#### **A. OVERVIEW**

4. Between 2006 and 2010 (the “**Material Time**”), Newer Technologies Limited (“**NTL**”) and Ryan Pickering (“**Pickering**”) (collectively, the “**Pickering Respondents**”), borrowed approximately \$11,921,895 from approximately 140 lenders, at interest rates ranging from 8% to 15%, and provided demand promissory notes (the “**NTL Promissory Notes**”) to the lenders as evidence of its indebtedness. Some of the loans were sourced by the respondent, Frey, who was paid a fee based on the aggregate amount of the loans he referred to NTL. The sale of NTL Promissory Notes were trades in securities not previously issued and were therefore distributions. NTL has never filed a preliminary prospectus or a prospectus with the Commission, and no prospectus receipt has ever been issued to qualify the sale of these securities. None of Frey or the Pickering Respondents has ever been registered with the Commission, and exemptions from registration were, for most of these trades, not available to them under the Act when they traded these securities. Frey breached sections 25 and 53 of the Act, and acted in a manner contrary to Ontario securities law and the public interest.

#### **B. THE RESPONDENTS**

5. NTL is an automated teller machine (“**ATM**”) management company that was incorporated in Ontario in 2003. NTL owns, sells, operates and services ATMs in Ontario. NTL currently processes transactions for approximately 900 ATMs, of which it owns approximately 250.
6. Pickering is a resident of Conestogo, Ontario. He is the president, director and the only signing officer of NTL.
7. Rodger Frey (“**Frey**”) is a resident of Elmira, Ontario.

8. NTL, Pickering and Frey have never been registered to trade in securities in Ontario and were not registered with the Commission in any capacity during the Material Time or at any other time.

### **C. CONDUCT AT ISSUE**

9. During the Material Time, NTL borrowed a total of approximately \$11,921,895 from approximately one hundred and forty (140) lenders at interest rates ranging from 8% to 15%. Each lender received an NTL Promissory Note in respect of its loan.
10. Many of NTL's lenders have since requested the repayment of their loans and NTL has repaid \$6,845,895 in principal, plus interest, to those lenders. As of July 10, 2014, NTL had \$5,076,000 in outstanding loans owing to sixty-one (61) separate lenders. The Pickering Respondents have represented to Staff that at all times NTL has been current on all of its loans and has never defaulted on a loan.
11. Some of NTL's loans were sourced by the respondent, Frey, who was paid a fee based on the aggregate amount of the loans he referred to NTL.

### **D. THE RESPONDENT'S POSITION**

12. Before becoming involved with NTL, Frey received his high school diploma and was subsequently employed as a mill worker and driver at a feed and supply company servicing local farms covering the Southern Ontario region.
13. Frey had never worked in the securities industry and was not aware that his conduct was contrary to securities law.
14. Of the monies received by Frey, Frey has represented that he has paid out approximately \$183,000 to persons who referred clients to him, whom he then referred to NTL. Further, Frey has represented that between 2007 and 2011, he and his spouse donated more than \$101,000 to various charities and to their local church. Frey also claims to have incurred approximately \$120,000 in costs, including mileage expenses, arising from his involvement with NTL's business.

15. Since ceasing his involvement with NTL, Frey has returned to working for the feed and supply company and has experienced significant financial hardship.
16. Frey has represented that none of the clients he referred to NTL have suffered any losses.

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

17. Each NTL Promissory Note evidenced indebtedness and the NTL Promissory Notes were therefore securities under the Act.
18. The sale of NTL Promissory Notes were trades in securities not previously issued and were therefore distributions. NTL has never filed a preliminary prospectus or a prospectus with the Commission, and no prospectus receipt has ever been issued to qualify the sale of these securities.
19. Not all of the 140 investors qualified as accredited investors or met applicable exemptions from the prospectus requirement. Further, NTL, Pickering and Frey failed to make any appropriate inquiries relating to investors' financial condition.
20. Frey traded in NTL Promissory Notes when he was not registered with the Commission and when no exemptions from the registration and prospectus requirements were available to him under the Act.
21. By engaging in the conduct described above, Frey admits and acknowledges that he has breached Ontario securities law and engaged in conduct contrary to the public interest. In particular:
  - a. Frey traded and engaged in, or held himself out as engaging in, the business of trading in securities without being registered to do so in circumstances in which no exemption was available, contrary to subsection 25(1)(a) of the Act as that section existed at the time the conduct at issue commenced in 2006, and, after September 28, 2009, contrary to subsection 25(1) of the Act; and

- b. Frey distributed securities where no preliminary prospectus and prospectus were issued nor received by the Director under the Act, and where no exemptions were available, contrary to section 53 of the Act.

#### **PART V - TERMS OF SETTLEMENT**

- 22. Frey agrees to the following terms of settlement listed below and to the Order attached hereto, made by the Commission pursuant to section 127(1) and section 127.1 of the Act:
  - a. This Settlement Agreement is approved;
  - b. Frey be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;
  - c. trading in any securities by Frey shall cease permanently, commencing on the date of the Commission's order approving this Settlement Agreement, pursuant to paragraph 2 of subsection 127(1) of the Act;
  - d. acquisition of any securities by Frey is prohibited permanently, commencing on the date of the Commission's order approving this Settlement Agreement, pursuant to paragraph 2.1 of subsection 127(1) of the Act;
  - e. any exemptions contained in Ontario securities law do not apply to Frey permanently, commencing on the date of the Commission's order approving this Settlement Agreement, pursuant to paragraph 3 of subsection 127(1) of the Act;
  - f. Frey shall immediately resign all positions that he holds as a director or officer of any issuer (except as set out in subparagraph 22(h) below), registrant or investment fund manager, pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act;
  - g. Frey is prohibited from becoming or acting as a director or officer of any reporting issuer, registrant or investment fund manager, permanently, commencing on the date of the Commission's order approving this Settlement Agreement pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act;

- h. Frey is prohibited from becoming or acting as a director or officer of any issuer permanently, commencing on the date of the Commission's order approving this Settlement Agreement pursuant to paragraph 8 of subsection 127(1) of the Act, with the exception that Frey is permitted to act or continue to act as a director and officer of any company through which he carries on business, so long as there are no more than 6 holders of the securities of the company;
  - i. Frey is prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter, permanently, commencing on the date of the Commission's order approving this Settlement Agreement, pursuant to paragraph 8.5 of section 127(1) of the Act;
  - j. Frey shall pay costs in the amount of \$5,000, payable within two years commencing on the date of the Commission's order approving this Settlement Agreement, pursuant to section 127.1 of the Act. Frey agrees to pay at least \$1250.00 by cheque six months after the Commission approves this Settlement Agreement and to pay at least \$1250.00 by cheque every six months thereafter until the entire amount of the \$5,000 penalty is paid in full;
  - k. after the payment of \$5,000 set out in paragraph 22 (j) above is made in full, as an exception to the provisions of paragraphs 22 (c), (d), and (e) above, Frey is permitted to: (1) trade on his own behalf in his own accounts, and (2) acquire securities on his own behalf in his own accounts. Until the entire amount of \$5,000 set out in paragraph 22 (j) above is paid in full, the provisions of paragraphs 22 (c), (d), and (e) above shall continue in force without any limitation as to time.
23. Frey hereby consents 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 subparagraphs 22 (b) to (i) above. These prohibitions and orders may be modified to reflect the provisions of the relevant provincial or territorial securities law.

## **PART VI - STAFF COMMITMENT**

24. If the Commission approves this Settlement Agreement, Staff will not commence or continue any proceeding against Frey under Ontario securities law in relation to the facts set out in Part III of this Settlement Agreement, subject to the provisions of paragraph 25 below.
25. If the Commission approves this Settlement Agreement and Frey fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Ontario securities law against Frey. These proceedings may be based on, but will not be limited to, the facts set out in Part III of this Settlement Agreement as well as the breach of this Settlement Agreement. In addition, if this Settlement Agreement is approved by the Commission, and Frey fails to comply with its terms, the Commission is entitled to bring any proceedings necessary to recover the amounts set out in sub-paragraph 22 (j) above.

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

26. The parties will seek approval of this Settlement Agreement at a public hearing before the Commission scheduled for September 3, 2014, or on another date agreed to by Staff and Frey, according to the procedures set out in this Settlement Agreement and the Commission's Rules of Procedure.
27. This Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing on Frey's conduct, unless the parties agree that additional facts should be submitted at the settlement hearing.
28. If the Commission approves this Settlement Agreement, Frey irrevocably waives all right to a full hearing, judicial review or appeal of this matter under the Act.
29. If the Commission approves this Settlement Agreement, neither Staff nor Frey will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the settlement hearing.

30. Whether or not the Commission approves this Settlement Agreement, Frey 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 X - DISCLOSURE OF SETTLEMENT AGREEMENT**

31. 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 Frey before the settlement hearing takes place will be without prejudice to Staff and Frey; and
  - b. Staff and Frey 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 of Staff dated December 4, 2012. Any proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this agreement.
32. Both Staff and Frey will keep the terms of this Settlement Agreement confidential until the Commission approves this Settlement Agreement. Any obligations of confidentiality shall terminate upon the commencement of the public settlement hearing. If, for whatever reason, the Commission does not approve this Settlement Agreement, the terms of this Settlement Agreement remain confidential indefinitely, unless Staff and the Respondent otherwise agree or if required by law.

#### **PART X - EXECUTION OF SETTLEMENT AGREEMENT**

33. This agreement may be signed in one or more counterparts which, together, constitute a binding agreement.
34. A facsimile copy or other electronic copy of any signature will be as effective as an original signature.

Dated this 2<sup>nd</sup> day of September, 2014.

“Tom Atkinson”

Director, Enforcement Branch

Dated this 29<sup>th</sup> day of August, 2014.

“Rodger Frey”

Rodger Frey

“Karla Frey”

[Name]

Witness

## SCHEDULE "A"



Ontario  
Securities  
Commission

Commission des  
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de l'Ontario

22<sup>nd</sup> Floor  
20 Queen Street West  
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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 NEWER TECHNOLOGIES LIMITED, RYAN PICKERING AND RODGER FREY

- AND -

### IN THE MATTER OF A SETTLEMENT AGREEMENT BETWEEN STAFF OF THE ONTARIO SECURITIES COMMISSION AND RODGER FREY

### ORDER

(Sections 127 and 127.1 of the *Securities Act*)

**WHEREAS** on December 4, 2012, 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**") to consider whether it is in the public interest to make orders, as specified therein, against and in respect of Newer Technologies Limited ("**NTL**"), Ryan Pickering ("**Pickering**") and Rodger Frey ("**Frey**"). The Notice of Hearing was issued in connection with the allegations as set out in the Statement of Allegations of Staff of the Commission ("**Staff**") dated December 4, 2012;

**AND WHEREAS** Frey has entered into a Settlement Agreement with Staff of the Commission dated \_\_\_\_\_, 2014 (the "**Settlement Agreement**") in which Frey agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing dated December 4, 2012, subject to the approval of the Commission;

**AND WHEREAS** on August 29, 2014, 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 a Settlement Agreement entered into between Staff and Frey;

**AND UPON** reviewing the Settlement Agreement, the Notices of Hearing, and the Statement of Allegations of Staff of the Commission, and upon hearing submissions from counsel for Frey, and from Staff of the Commission;

**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 Agreement is approved;
- (b) pursuant to paragraph 6 of subsection 127(1) of the Act, Frey is reprimanded;
- (c) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Frey shall cease permanently;
- (d) pursuant to paragraph 2.1 of subsection 127(1) of the Act, acquisition of any securities by Frey is prohibited permanently;
- (e) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Frey permanently;
- (f) pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Frey shall immediately resign all positions that he holds as a director or officer of any issuer (except as set out in subparagraph (h) of this Order, below), registrant or investment fund manager;
- (g) pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Frey is permanently prohibited from becoming or acting as a director or officer of any reporting issuer, registrant or investment fund manager;

- (h) pursuant to paragraph 8 of subsection 127(1) of the Act, Frey is permanently prohibited from becoming or acting as a director or officer of any issuer, with the exception that Frey is permitted to act or continue to act as a director and officer of any company through which he carries on business, so long as there are no more than 6 holders of the securities of the company;
- (i) pursuant to paragraph 8.5 of subsection 127(1) of the Act, Frey is permanently prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter;
- (j) pursuant to section 127.1 of the Act, Frey shall pay to the Commission the amount of \$5,000.00, representing a portion of Staff's costs in this matter, within two years of the approval by the Commission of this Settlement Agreement. Frey shall pay at least \$1250.00 by cheque six months after the Commission approves this Settlement Agreement and to pay at least \$1250.00 by cheque every six months thereafter until the entire amount of the \$5,000 penalty is paid in full;
- (k) After the payment of \$5,000.00 set out in paragraph (j) above is made in full, as an exception to the provisions of paragraphs (c), (d) and (e) of this Order above, Frey is permitted to:
  - i. trade on his own behalf in his own accounts; and
  - ii. acquire securities on his own behalf in his own accounts.
- (l) Until the entire amount of \$5,000.00 set out in paragraph (j) above is paid in full, the prohibitions set out in subparagraphs (c), (d) and (e) above shall continue in force without any limitation as to time.

**DATED** at Toronto this 3<sup>rd</sup> day of September, 2014.

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