



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**

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

Staff of the Ontario Securities Commission (the "Commission") make the following allegations:

**I. OVERVIEW**

1. Between 2006 and 2010 (the "Material Time"), Newer Technologies Ltd ("NTL"), Ryan Pickering ("Pickering") and Rodger Frey ("Frey") sold promissory notes in the amount of approximately \$11,900,000 to approximately 140 investors when they were not registered with the Commission and when no exemptions from registration were available to them under the *Securities Act*, R.S.O. 1990, as amended (the "Act").
2. 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 NTL securities.
3. During the Relevant Period, the Respondents breached sections 25 and 53 of the Act, and Pickering breached section 129.2 of the Act. The Respondents have therefore acted in a manner contrary to Ontario securities law and contrary to the public interest.

## **II. BACKGROUND**

### **a. The Respondents**

4. NTL is an Ontario company incorporated on October, 2003. NTL is an automated teller machine (“ATM”) management company that owns, sells, operates and services white label ATMs in Ontario that are found in corner stores, bars and other locations. It operates and services approximately 1315 ATMs, of which it owns approximately 365.

5. Pickering is a resident of Conestogo, Ontario. He is the President and only signing officer of NTL.

6. Frey is a resident of Elmira, Ontario.

7. 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.

### **b. Trading of NTL Promissory Notes without Registration and/or Distribution of Securities without a Prospectus**

8. During the Material Time, NTL, Pickering and Frey sold NTL Promissory Notes in the amount of approximately \$11,901,895 to approximately 140 investors offering interest rates ranging from 8% to 15%. Many of those investors have since redeemed their promissory notes and NTL has repaid approximately \$6,111,818 in principal, plus interest, to those investors. As of June 12, 2012, NTL had \$5,790,077 outstanding in NTL Promissory Notes that were owing to approximately 75 different investor entities.

9. From October 2006 through to September 2011, Frey received in excess of \$489,000 as commissions or other payments from NTL in connection with his involvement in the sale of NTL Promissory Notes.

10. Each NTL Promissory Note evidenced indebtedness and/or was an investment contract, and the NTL Promissory Notes were thereby securities under the Act.

11. 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 NTL securities.

12. 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.

13. NTL, Pickering and Frey therefore traded in NTL Promissory Notes when they were not registered with the Commission and when no exemptions from the registration prospectus requirements were available to them under the Act.

### **III. STAFF'S ALLEGATIONS - Conduct Contrary to Ontario Securities Law and Contrary to the Public Interest**

14. The specific allegations advanced by Staff are:

- (a) NTL, Pickering and Frey traded and engaged in, or held themselves 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;
- (b) NTL, Pickering and Frey distributed NTL Securities where no preliminary prospectus and prospectus were issued nor receipted by the Director, and where no exemptions were available, contrary to section 53 of the Act; and
- (c) Pickering, as a director and officer of NTL, authorized, permitted or acquiesced in the commission of the violations of sections 25 and 53 of the Act, as set out above, contrary to section 129.2 of the Act.

15. By reason of the forgoing, the Respondents violated the requirements of Ontario securities law and/or engaged in conduct contrary to the public interest.

16. Staff reserve the right to make such other allegations as Staff may advise and the Commission may permit.

Dated at Toronto this 4<sup>th</sup> day of December, 2012