

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

- and -

**IN THE MATTER OF
ROBERT THOMISLAV ADZIJA, LARRY ALLEN AYRES,
DAVID ARTHUR BENDING, MARLENE BERRY, DOUGLAS CROSS,
ALLAN JOSEPH DORSEY, ALLAN EIZENGA, GUY FANGEAT, RICHARD JULES
FANGEAT, MICHAEL HERSEY, GEORGE EDWARD HOLMES, TODD MICHAEL
JOHNSTON, MICHAEL THOMAS PETER KENNELLY, JOHN DOUGLAS KIRBY,
ERNEST KISS, ARTHUR KRICK, FRANK ALAN LATAM, BRIAN LAWRENCE,
LUKE JOHN MCGEE, RON MASSCHAELE, JOHN NEWMAN, RANDALL NOVAK,
NORMAND RIOPELLE, ROBERT LOUIS RIZZUTO AND MICHAEL VAUGHAN**

**SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION
AND ROBERT THOMISLAV ADZIJA**

I. INTRODUCTION

1. By Notice of Hearing dated September 24, 1998 (the "Notice of Hearing"), the Ontario Securities Commission (the "Commission") announced that it proposed to hold a hearing to consider, among other things:

- (a) whether, pursuant to subsection 127(1) of the *Securities Act*, R.S.O. 1990, c. S.5 (the "Act"), it is in the public interest for the Commission to make an order that the exemptions contained in Ontario securities law do not apply to the respondent Robert Thomislav Adzija ("Adzija") permanently or for such time as the Commission may direct; and
- (b) such other orders as the Commission deems appropriate.

2. By Temporary Order dated September 24, 1998, the Commission ordered that trading in securities by Adzija cease immediately except for trades in mutual fund securities and trades for his personal account (the "Temporary Order"). The Temporary Order was extended by Commission Orders dated October 9, 1998 and February 4, 1999.

II. JOINT SETTLEMENT RECOMMENDATION

3. Staff of the Commission (“Staff”) agrees to recommend settlement of the proceeding respecting Adzija initiated by the Notice of Hearing in accordance with the terms and conditions set out below. Adzija consents to the making of an order against him in the form attached as Schedule “A” based on the facts set out in Part III of this Settlement Agreement.

III. STATEMENT OF FACTS

Acknowledgement

4. Solely for the purposes of this proceeding, and of any other proceeding commenced by a securities regulatory agency, Staff and Adzija agree with the facts set out in paragraphs 5 through 20 of this Settlement Agreement.

Facts

5. Saxton Investment Ltd. (“Saxton”) was incorporated on January 13, 1995. The respondent 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.

6. Saxton and the Offering Corporations represented to the public that they were investing in businesses in Cuba and other Caribbean companies.

7. 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.

8. Adzija became registered with the Commission under the Act to sell mutual fund securities and limited market products in September 1996. Adzija has not been registered since September, 2001.

9. Between March 1996 and July 1998, Adzija sold to Ontario investors securities of one or more of the Offering Corporations (the “Saxton Securities”). Adzija sold the Saxton Securities to approximately 60 Ontario investors for a total amount sold of approximately \$2,963,790. Many of these investors were members of a small community in the St. Thomas area.

10. All of the Offering Corporations were incorporated pursuant to the laws of Ontario. Adzija’s sales of the Saxton Securities constituted trades in securities of an issuer that had not been previously issued.

11. None of the Offering Corporations filed a prospectus with the Commission. By selling the Saxton Securities to his clients, Adzija traded in securities, which trades were distributions, without a prospectus being filed or receipted by the Commission and with no exemption from the prospectus requirements of Ontario securities law being available.

12. Adzija failed to provide his clients with access to substantially the same information concerning the Saxton Securities that a prospectus filed under the Act would provide. Although clients who purchased Saxton’s “Equity Dividend Account” product were provided with an Offering Memorandum, such Memorandum provided little information about Saxton other than

the geographic location in which the company conducted business. Adzija did not supplement this information for clients. The only documentation provided by Adzija to clients purchasing Saxton's "GIC" or "Fixed Dividend Account" products was vague promotional material prepared by Saxton.

13. With respect to certain sales of the Saxton securities, Adzija traded in securities without being registered with the Commission and with no exemption from the registration requirements being available to him.

14. Adzija failed to adequately assess the suitability of his clients' investments in the Saxton Securities. He did not have a sufficient understanding of the Saxton products to effectively evaluate the risk to his clients in purchasing the Saxton Securities.

15. Adzija failed to inform his sponsoring firm that he was selling the Saxton Securities. Adzija informs Staff that at no time did a compliance officer representing his sponsoring firm visit him, review his files or discuss any of the products he sold. Further, in or about the fall of 1997, the respondent Rick Fangeat ("Fangeat") informed Adzija (who shared the same sponsor) that they were authorized to sell the Saxton Securities.

16. Adzija received commissions of approximately \$148,000 on the sales described in paragraph 9 above.

17. Adzija's conduct in selling the Saxton Securities was contrary to Ontario securities law and the public interest.

18. Adzija informs Staff that, since he had little experience in the securities industry, he relied heavily on Fangeat. Fangeat was Adzija's Branch Manager and "mentor". Fangeat had over 20 years' experience in the investment and insurance industries. Fangeat endorsed and recommended the Saxton Securities to Adzija as suitable for a conservative investor. Adzija informs Staff that he was not aware until 1997 that Fangeat held a position with Saxton.

19. Adzija invested \$160,000 in the Saxton Securities. Adzija informs Staff that he sold his parents Saxton Securities worth approximately \$265,000. Adzija and his parents invested after he had sold the Saxton Securities to other clients.

20. Adzija co-operated with the Commission's investigation respecting the sale of Saxton Securities.

IV TERMS OF SETTLEMENT

21. Adzija agrees to the following terms of settlement:

- (a) the making of an order:
 - (i) approving this settlement;
 - (ii) that trading in any securities by Adzija cease for 4 years with the exception that, after one year from the date of the approval of this settlement, Adzija is permitted to trade securities for the account of his registered retirement savings plan (as defined in the *Income Tax Act (Canada)*);
 - (iii) reprimanding Adzija; and
 - (iv) that the Temporary Order no longer has any force or effect;
- (b) Adzija will undertake to the Commission that:
 - (i) he will not apply to the Commission for registration for 4 years; and
 - (ii) within one year prior to applying to the Commission for registration Adzija will successfully complete the Canadian Securities Course and Conduct and Practices Handbook Course.

V. STAFF COMMITMENT

- 22. If this settlement is approved by the Commission, Staff will not initiate any other proceeding under the Act against Adzija in relation to the facts set out in Part III of this Settlement Agreement.

VI. APPROVAL OF SETTLEMENT

- 23. Approval of the settlement set out in this Settlement Agreement shall be sought at the public hearing of the Commission scheduled for August 8, 2002 , or such other date as may be agreed to by Staff and Adzija (the "Settlement Hearing"). Adzija will attend in person at the Settlement Hearing.
- 24. Counsel for Staff or Adzija may refer to any part, or all, of this Settlement Agreement at the Settlement Hearing. Staff and Adzija agree that this Settlement Agreement will constitute the entirety of the evidence to be submitted at the Settlement Hearing.
- 25. If this settlement is approved by the Commission, Adzija agrees to waive his rights to a full hearing, judicial review or appeal of the matter under the Act.

26. Staff and Adzija agree that if this settlement is approved by the Commission, they will not make any public statement inconsistent with this Settlement Agreement.
27. If, for any reason whatsoever, this settlement is not approved by the Commission, or an order in the form attached as Schedule "A" is not made by the Commission:
 - (a) this Settlement Agreement and its terms, including all discussions and negotiations between Staff and Adzija leading up to its presentation at the Settlement Hearing, shall be without prejudice to Staff and Adzija;
 - (b) Staff and Adzija shall be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations in the Notice of Hearing and Statement of Allegations of Staff, unaffected by this Agreement or the settlement discussions/negotiations;
 - (c) the terms of this Settlement Agreement will not be referred to in any subsequent proceeding, or disclosed to any person, except with the written consent of Staff and Adzija or as may be required by law; and
 - (d) Adzija agrees that he will not, in any proceeding, refer to or rely upon this Settlement Agreement, the settlement discussions/negotiations or the process of approval of this Settlement Agreement as the basis for any attack on the Commission's jurisdiction, alleged bias or appearance of bias, alleged unfairness or any other remedies or challenges that may otherwise be available.

VII. DISCLOSURE OF SETTLEMENT AGREEMENT

28. Except as permitted under paragraph 24 above, this Settlement Agreement and its terms will be treated as confidential by Staff and Adzija until approved by the Commission, and forever, if for any reason whatsoever this settlement is not approved by the Commission, except with the consent of Staff and Adzija, or as may be required by law.
29. Any obligations of confidentiality shall terminate upon approval of this settlement by the Commission.

VIII. EXECUTION OF SETTLEMENT AGREEMENT

30. This Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement.

31. A facsimile copy of any signature shall be as effective as an original signature.

DATED this 6th day of August, 2002

WITNESS

ROBERT THOMISLAV ADZIJA

DATED this 6th day of August, 2002

**STAFF OF THE ONTARIO
SECURITIES COMMISSION**

MICHAEL WATSON
Director, Enforcement Branch