

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

- and -

**IN THE MATTER OF
MARK BONHAM AND BONHAM & CO. INC.**

SETTLEMENT AGREEMENT

INTRODUCTION

1. By Amended Amended Notice of Hearing dated November 6th, 2000 (the "Notice of Hearing"), the Ontario Securities Commission (the "Commission") announced that it proposed to hold a hearing to consider whether, pursuant to sections 127(1) 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 an order that:
 - (a) the registration of Mark Bonham, StrategicNova Funds Management Inc. and Bonham & Co. Inc. (together referred to as the "Respondents") be suspended or restricted permanently or for such time as the Commission may direct;
 - (b) terms and conditions be imposed on the registrations of the Respondents;
 - (c) the Respondents cease trading in securities permanently or for such period as the Commission may direct;
 - (d) the Respondent, StrategicNova Funds Management Inc. submit to a review of its practices and procedures and institute such changes as may be ordered by the Commission;
 - (e) the Respondent, Mark Bonham be prohibited from becoming or acting as a director or officer of an issuer;

- (f) the Respondents pay the costs of the Commission's investigation;
- (g) the Respondents pay the costs of the Commission's hearing; and
- (h) such other terms and conditions as the Commission may deem appropriate.

II. JOINT SETTLEMENT RECOMMENDATION

- 2. Staff of the Commission ("Staff") agree to recommend settlement of the proceedings initiated in respect of the respondents, Mark Bonham and Bonham & Co. Inc. by the Notice of Hearing dated November 6th, 2000 in accordance with the terms and conditions set out below. Mark Bonham and Bonham & Co. Inc. agree to the settlement on the basis of the facts agreed to as hereinafter provided and each consents to the making of an order in the form attached as Schedule "A" on the basis of the facts set out below.
- 3. This settlement agreement, including the attached Schedule "A" (collectively, the "Settlement Agreement"), will be released to the public only if and when the settlement is approved by the Commission.

III. STATEMENT OF FACTS

ACKNOWLEDGEMENT

- 4. Staff, Mark Bonham and Bonham & Co. Inc. agree with the facts set out in this Part III.
- 5. SVC O'Donnell Fund Management Inc. ("SVC") is a corporation which during the period July 31, 1997 to June 30, 1998 (the "material time") was registered with the Commission as an Investment Counsel/Portfolio Manager. On July 26, 2000, SVC formally changed its name to StrategicNova Funds Management Inc.

6. Bonham & Co. Inc. ("Bonham & Co.") is a corporation which during the material time was registered with the Commission as an Investment Counsel/Portfolio Manager and was the sponsor of Mark Bonham's registration.
7. During the material time, Mark Bonham held over 20% of the shares of Strategic Value Corporation, the parent company of SVC and Bonham & Co., and acted as the Portfolio Manager with respect to three mutual funds managed by SVC and Bonham & Co. As well, Bonham was the Chief Executive Officer of SVC and related companies.
8. During the material time, Bonham manually priced certain shares held by the three mutual funds that he managed for SVC and Bonham & Co.
9. SVC received a price feed from a third party source on a daily basis. The price feed contained end of the day share prices to be used in the valuation of SVC's mutual funds. SVC's accounting department highlighted items on the price feed if a) a share price on the computer price feed was 5% higher or lower than the previous day's closing price of the share or b) the computer price feed did not contain a price for the shares. Mark Bonham would review the share prices and determine a value for shares based on his own discretion. If the price determined by Mark Bonham was different than the price received via the price feed, Mark Bonham's price would be recorded on a Daily Manual Pricing Sheet. Mark Bonham did not apply a specific or consistent methodology in manually pricing shares and did not adequately maintain records with respect to the determination of the manual prices.
10. SVC was responsible for establishing policies when a valuation methodology other than share prices as shown in the daily price feed would be used for the shares held in the portfolio of the mutual funds.
11. The valuation of the mutual fund is used to calculate the net asset value per share ("NAVPS"). The NAVPS is used to determine the purchase and redemption prices that

investors pay or receive. SVC did not have any written policies or procedures in place regarding the valuation of securities held in the mutual fund portfolios. SVC relied on Mark Bonham to ensure that the day-to-day security valuation determinations were effected in an appropriate manner. SVC did not, during the material time, implement policies regarding internal controls in order to ensure a segregation of duties in the performance of the daily valuation of the mutual funds. There was no supervision or review of manual prices determined by Bonham.

12. Canada does not have a standard benchmark for materiality for regulatory reporting and/or client compensation. Staff have employed 0.5% of net asset value as the benchmark level for materiality, a benchmark used by member jurisdictions of IOSCO including France, the United Kingdom and the United States in determining standards for regulatory reporting and/or client compensation. The result of the manual pricing undertaken by Mark Bonham with respect to each of the relevant mutual funds he managed based on such standard of materiality and during the material time is as follows.
 - (a) The Strategic Value Fund was overvalued (i.e. dollar difference as a percentage of net asset value per share) for 201 of the 231 trading days during the material time, and materially overstated between 0.52% and 4.2%.
 - (b) The Canadian Equity Value Fund was overvalued for 123 of the 231 trading days during the material time and materially overstated between 0.5% and 2.7%.
 - (c) The Dividend Fund was overvalued for 60 of the 231 trading days during the material time and materially overstated between 0.5% and 0.69%.
13. The estimated impact of the overvaluation was:
 - a) \$64,519.64 as regards the Strategic Value Fund;
 - b) \$115,458.14 as regards the Canadian Equity Value Fund; and
 - c) \$197,674.92 as regards the Dividend Fund for the material time.

14. In approximately June of 1998, the issue of Bonham's manual pricing was the subject of a review performed by the compliance officer of SVC and the matter was ultimately referred to SVC's Audit Committee. The Audit Committee concluded that the manual pricing that had occurred was reasonable and consistent with what the funds permitted. Subsequently, the Board of Directors decided that a formal procedure should be implemented with respect to manual pricing. The policy adopted was that as a general rule, manual pricing should not occur. A policy was adopted whereby on the exceptional occasions when a manual price was considered appropriate, the matter would be referred to the Chief Financial Officer and a portfolio manager (other than the portfolio manager raising the issue) to determine an appropriate manual price.
15. In June of 2000, SVC and related companies were acquired by an arm's length third party and new management was put in place. Neither Mark Bonham nor Bonham & Co. has had any further involvement with SVC or related companies.
16. By Settlement Agreement dated November 1, 2000, SVC entered into a Settlement Agreement with Staff by which it agreed to the following terms:
 - (a) On or before December 31, 2000, SVC made payments of or otherwise credited \$64,519.64 to the Strategic Value Fund, \$115,458.14 to the Canadian Equity Value Fund and \$197,674.92 to the Dividend Fund to compensate for the overpayment made by investors to those funds during the material time;
 - (b) SVC made a payment of \$50,000.00 to the Commission to be allocated to such third parties as the Commission may determine for purposes that will benefit investors in Ontario;
 - (c) SVC submitted to a review of the valuation practices and procedures involving the Strategic Value Fund, Canadian Equity Value Fund and Dividend Fund, performed by a third party (the "expert") approved by Staff at SVC's expense and implemented such reasonable changes as were recommended by the expert in a

report within reasonable time frames set out by the expert after consultation with SVC. SVC provided Staff with a copy of the report and the recommendations of the expert and with progress reports concerning the implementation of the expert's recommendations;

- (d) SVC submitted to a review of the manual prices used in the calculation of net asset value per share for any day during the period July 1, 1998 to September 30, 2000 inclusive on which manual pricing occurred in any relevant mutual fund. Such review was carried out by the expert at SVC's expense to determine whether the manual pricing activity that formed the basis of this proceeding was repeated during this time period. As part of this review SVC agreed to produce to the expert at SVC's expense, all of the manual pricing sheets for this period. If it was determined that Strategic Value Corporation or SVC engaged in this material and improper manual pricing activity during this period then the expert was to determine the impact, if any, on Strategic Value Corporation or SVC's clients as a result of manual pricing. SVC provided Staff with a copy of the review carried out by the expert;
 - (e) If, as a result of the reviews set out in paragraphs (d) and (e), it was determined that the fund values and/or published results, communicated either to the public or to individual clients, were materially misstated, then SVC would recalculate such fund values and make any required restitution to any relevant mutual fund; and
 - (f) SVC was reprimanded.
17. SVC completed its obligations under the terms of settlement as set out in the above paragraph.
18. The manual pricing did not have any material impact on the compensation paid to Mark Bonham and Bonham & Co. during the material time.

19. Effective July 31, 2002, Mark Bonham and Bonham & Co. Inc. have agreed to surrender their registration with the Commission and agree not to apply for registration for a period of three years thereafter.

CONDUCT CONTRARY TO THE PUBLIC INTEREST

20. By the conduct described above, Mark Bonham failed to act in good faith and in the best interest of the mutual funds and failed to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances, contrary to section 116(l) of the Securities Act, and contrary to the public interest.
21. In failing to properly supervise the activities of Mark Bonham, Bonham & Co. acted contrary to Ontario Securities Rule 31-5-5(3.1), and contrary to the public interest.

IV. TERMS OF SETTLEMENT

22. Mark Bonham and Bonham & Co. agree to the following terms of settlement:
 - (a) Mark Bonham and Bonham & Co. will, on or before August 30, 2002, make a payment of \$50,000.00 to the Commission to be allocated to such third parties as the Commission may determine for purposes that will benefit investors in Ontario;
 - (b) Mark Bonham and Bonham & Co. will, on or before August 30, 2002, make a payment of \$150,000.00 to the Commission as their contribution to the costs of the investigation and hearing of this matter;
 - (c) Mark Bonham and Bonham & Co. will be reprimanded;
 - (d) Mark Bonham will not be an officer or director of a registrant for a period of three years;

- (e) pursuant to paragraph 2 of subsection 127(1) of the Act, Mark Bonham will cease trading in securities for a period of three years, with the exception of trading in personal accounts held in his name or in the name of his holding company, 1256205 Ontario Inc., or for the account of his registered retirement savings plan (as defined in the *Income Tax Act* (Canada));
- (f) Mark Bonham and Bonham & Co. undertake that they will not be involved, either directly or indirectly, in the pricing or valuation of a mutual fund for a period of three years. If Bonham and/or Bonham & Co. are registered pursuant to Ontario securities laws after three years and are involved in the pricing or valuation of a mutual fund, they agree to be subjected to appropriate supervision by another registrant of any such valuation;
- (g) in the event that either Mark Bonham and/or Bonham & Co. are involved directly or indirectly, in initiating a mutual fund within three years of the date of this Order, the material terms of this Settlement Agreement including paragraphs 19 to 22 must be disclosed in any prospectus, public disclosure document or enabling instrument.

STAFF COMMITMENT

- 23. If this Settlement Agreement is approved by the Commission, Staff will not initiate any complaint to the Commission or request the Commission to hold a hearing or issue any order in respect of any conduct or alleged conduct of Mark Bonham & Bonham & Co. in relation to the facts set out in Part III of this Settlement Agreement.
- 24. If either Mark Bonham or Bonham & Co. reapply for registration with the Commission at any time after July 31, 2005, Enforcement Staff will not oppose the application by reason of the facts set out in this agreement and/or the Commission's order resulting from this Settlement Agreement.

VI. PROCEDURE FOR APPROVAL OF SETTLEMENT

25. The approval of the settlement as set out in this Settlement Agreement shall be sought at a public hearing before the Commission scheduled for such date as is agreed to by Staff and Mark Bonham & Bonham & Co. in accordance with the procedures described herein and such further procedures as may be agreed upon between Staff and Mark Bonham & Bonham & Co.
26. If this Settlement Agreement is approved by the Commission, it will constitute the entirety of the evidence to be submitted respecting Mark Bonham & Bonham & Co. in this matter and Mark Bonham & Bonham & Co. agree to waive any right to a full hearing and appeal of this matter under the Act.
27. If this Settlement Agreement is approved by the Commission, the parties to this Settlement Agreement will not make any statement that is inconsistent with this Settlement Agreement.
28. If, at the conclusion of the settlement hearing, and 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 including all discussions and negotiations leading up to its presentation at a hearing, and all negotiations between Staff and counsel for Mark Bonham & Bonham & Co. concerning the matter of the terms of settlement proposed for Mark Bonham & Bonham & Co., shall be without prejudice to Staff and to Mark Bonham & Bonham & Co.. Staff and Mark Bonham & Bonham & Co. will 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, unaffected by this agreement or the settlement negotiations;

- (b) 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 Mark Bonham & Bonham & Co. or as may be required by law; and
- (c) Mark Bonham & Bonham & Co. agree that they will not, in any proceeding, refer to or rely upon 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, appearance of bias, alleged unfairness or any other remedies or challenges that may otherwise be available.

VII. DISCLOSURE OF AGREEMENT

- 29. Counsel for Staff or Mark Bonham & Bonham & Co. may refer to any part or all of this Settlement Agreement in the course of the hearing convened to consider this settlement agreement. Otherwise, this Settlement Agreement and its terms will be treated as confidential by all parties to the Settlement Agreement until approved by the Commission, and forever if, for any reason whatsoever, this settlement is not approved by the Commission.
- 30. Any obligation as to confidentiality shall terminate upon the approval of this Settlement Agreement by the Commission.

VIII. EXECUTION OF SETTLEMENT AGREEMENT

31. This Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement and a facsimile copy of any signature shall be as effective as an original signature.

DATED this 25th day of July, 2002.

WITNESS

MARK BONHAM

DATED this 25th day of July, 2002.

BONHAM & CO. INC.

(Per) _____
Authorized Signing Officer

DATED this 8th day of August, 2002.

**STAFF OF THE
ONTARIO SECURITIES COMMISSION**

(Per) _____
Michael Watson
Director, Enforcement Branch

Schedule "A"

**IN THE MATTER OF THE SECURITIES ACT
R.S.O. 1990, c. S.5, as amended**

- and -

**IN THE MATTER OF
MARK BONHAM AND BONHAM & CO. INC.**

ORDER

WHEREAS on November 6, 2000, the Ontario Securities Commission (the "Commission") issued an Amended Amended Notice of Hearing pursuant to sections 127(1) and 127.1 of the Securities Act, R.S.O. 1990 c. S.5, as amended (the "Act") in respect of Mark Bonham and Bonham & Co. Inc.;

AND WHEREAS Mark Bonham & Bonham & Co. Inc. entered into a settlement agreement dated July 25, 2002 (the "Settlement Agreement") in which they agreed to a proposed settlement of the proceeding, subject to the approval of the Commission;

AND UPON reviewing the Settlement Agreement and the Statement of Allegations of Staff of the Commission ("Staff"), and upon hearing submissions from counsel for Mark Bonham and Bonham & Co. Inc. and for Staff;

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

IT IS HEREBY ORDERED THAT:

1. the Settlement Agreement dated July 25, 2002, attached to this Order, is hereby approved;
2. the surrender of Mark Bonham and Bonham & Co. Inc's registrations as Investment Counsel/Portfolio Managers is hereby accepted, effective July 31, 2002;
3. pursuant to subsection 127(1)(6) of the Act, Mark Bonham and Bonham & Co. Inc. are hereby reprimanded;
4. pursuant to paragraph 2 of subsection 127(1) of the Act, Mark Bonham will cease trading in securities for a period of three years, with the exception of trading in personal accounts held in his name or in the name of his holding company, 1256205 Ontario Inc., or for the account of his registered retirement savings plan (as defined in the *Income Tax Act* (Canada));
5. pursuant to paragraph 8 of subsection 127(1) of the Act, Mark Bonham is prohibited from becoming or acting as a director or officer of any registrant for a period of three years; and
6. pursuant to subsection 127.1(2)(b) of the Act, at the time of approval of this settlement, Mark Bonham and Bonham & Co. Inc. are ordered to pay \$150,000 to the Commission in respect of a portion of the Commission's costs with respect to this matter.

DATED at Toronto this 20th day of August, 2002.
