

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

**- and -**

**IN THE MATTER OF  
PATRICK FRASER KENYON PIERREPONT LETT,  
MILEHOUSE INVESTMENT MANAGEMENT LIMITED,  
PIERREPONT TRADING INC.,  
BMO NESBITT BURNS INC., JOHN STEVEN HAWKYARD  
AND JOHN CRAIG DUNN**

**SETTLEMENT AGREEMENT  
OF BMO NESBITT BURNS INC.**

**I. INTRODUCTION**

1. By Notice of Hearing dated September 18, 2002, the Ontario Securities Commission announced that it proposed to hold a hearing to consider whether, pursuant to sections 127(1) and 127.1 of the *Securities Act*, as amended it is in the public interest for the Commission:

- (a) to make an order approving the proposed settlement entered into between Staff of the Commission and the respondent, BMO Nesbitt Burns Inc. of this proceeding, pursuant to sections 127 and 127.1 of the Act, which approval will be sought jointly by Staff and Nesbitt;
- (b) to make an order that Nesbitt be reprimanded;
- (c) to make an order that Nesbitt pay costs to the Commission; and,
- (d) to make an order that Nesbitt make a voluntary payment to the Commission.

## II. JOINT SETTLEMENT RECOMMENDATION

2. Staff recommends settlement of allegations against Nesbitt in accordance with the terms and conditions set out below. Nesbitt agrees to the settlement and consents to the making of an Order in the form attached as Schedule "A" on the basis of the facts set out below.

## III. FACTS

### Acknowledgement

3. Staff and the respondent agree with the facts and conclusions set out in Part III of the Settlement Agreement, except in relation to paragraphs 9, 10, 11, 17, 18, 19, 20 and 21 of which the Respondent indicates it has no knowledge.

### BMO Nesbitt Burns Inc.

4. The conduct of Nesbitt that is the subject matter of this settlement agreement occurred between January 1996 and October 1999.

5. Patrick Fraser Kenyon Pierrepont Lett is an individual residing in Ontario and is, and was, between the material period, the President, a Director and the directing mind of Milehouse Investment Management Limited and Pierrepont Trading Inc. (collectively referred to as the "Companies").

6. Each of the Companies is incorporated under the laws of Ontario. Neither of the Companies has been registered in any capacity under the Act.

7. Lett was sanctioned by the Commission in June of 1993. Lett was named as a respondent *In the Matter of Gordon Capital Corporation*. Lett exposed Gordon Capital to risk and participated in transactions which placed Gordon Capital in breach of Ontario securities law and the By-Law's of the Toronto Stock Exchange. In addition, Lett misled Staff of the Commission before approaching Staff to cooperate in its investigation. The Commission ordered that Lett's

registration be suspended for a six month period and that Lett complete a number of securities-related courses as a condition of future registration.

8. In April of 1998, the Alberta Securities Commission issued an Order to Freeze Property in the Milehouse account at Nesbitt in an attempt to satisfy an outstanding Settlement Agreement it had entered into with Lenzburg Capital Corporation, Lenzburg International Ltd. and William Lenz (the "Respondents"). The Respondents had deposited \$4,500,000 into the Milehouse account. On April 22, 1998, the Commission issued a similar direction. Eventually, Lett transferred out all the funds in the Milehouse account, except those that had been deposited by the Respondents, in accordance with the freeze orders.

9. The Respondents solicited investors to provide funds for investments that constituted trades which were distributions. Their actions breached the Alberta Securities Act and were contrary to the public interest as the Respondents were not registered and a preliminary prospectus and prospectus were not filed with the ASC as required. According to the Settlement Agreement, the Respondents were to return \$1,850,000 to the investors by August 30, 1997. The Order to Freeze Property was issued because the money was not returned.

10. Lett is currently not registered under the Act and was not registered during the material period. He was previously registered as follows:

- i) from 1989 to 1995, with Trafalgar Capital Management Inc. which was registered as an Adviser in the categories of Investment Counsel and Portfolio Manager. Lett was registered as an Investment Counsel and Portfolio Manager, and, during the same time period, approved as a Director;
- ii) in January 1991, approved as a Director of Arbitrage Risk Management Ltd., a Limited Market Dealer;
- iii) Lett's registrations were suspended in June 1993 for a six month period pursuant to the Settlement Agreement in Gordon Capital;
- iv) Lett's registration as a Director and Investment Counsel and Portfolio Manager with Trafalgar was suspended on June 15, 1995 due to involuntary non-renewal of the registration of Trafalgar; and,

- v) in June 1994, under the *Commodity Futures Act* R.S.O. 1990, chapter C.20, as a Director and Counselling Officer with Trafalgar, which was an Adviser in the category of Commodity Trading Manager. Lett's registration was suspended on June 15, 1995 due to the involuntary non-renewal of the registration of Trafalgar.
11. Lett has never been registered as a market intermediary.
12. BMO Nesbitt Burns Inc. is registered as a Broker/Investment Dealer under the Act.
13. John Craig Dunn was registered under the Act from October 1994 to August 2002 as a trading officer with Nesbitt at its branch located at 1 Robert Speck Parkway, Mississauga, Ontario. From July 1986 to February 2002, Dunn was the Branch Manager of the Nesbitt branch located at 1 Robert Speck Parkway, Mississauga, Ontario.
14. John Steven Hawkyard was registered under the Act from October 1989 to April 1997 as a salesperson of Bank of Montreal Investment Management Limited, a dealer in the category of Mutual Fund Dealer. From March 1996 to April 1997, Hawkyard was the Manager of the Bank of Montreal - Private Banking Services Branch located at 1 Robert Speck Parkway, Mississauga, Ontario.
15. From November 1997 to August 2002, Hawkyard was registered as a salesperson of Nesbitt working out of the Nesbitt branch located at 1 Robert Speck Parkway, Mississauga, Ontario, the branch which was managed by Dunn.

### **Unregistered Trading**

16. In late 1995, Lett opened accounts in the name of Milehouse at the Mississauga Branch and at the Nesbitt branch located at 1 First Canadian Place, Toronto, Ontario. Lett also opened an account in the name of Pierrepont Trading Inc. (collectively, these accounts will be referred to as the "Lett Accounts"). Dunn was the Investment Advisor responsible for the Milehouse and Pierrepont accounts at the Mississauga Branch.

17. Approximately US \$21 million was deposited into the accounts of Milehouse and Pierrepont at Nesbitt and the Milehouse account at the Bank of Montreal for the purpose of investing in an intended trading program.

18. Between January 1996 and October 1999, Dunn provided and caused others to provide Lett with approximately 18 letters that contained inaccurate representations (referred to as the "Proof of Funds Letters") regarding the accounts of Milehouse and Pierrepont at Nesbitt (referred to collectively as the "Lett Accounts"). Dunn knew that the Proof of Funds Letters would be provided to third parties regarding the status of the Lett Accounts.

19. The Proof of Fund Letters were provided to a third party and were a necessary component of the intended trading "program" scam. This Program was to include the purchase on margin of a bank guarantee or debenture, issued by a foreign bank, through the Lett Accounts at Nesbitt. The proceeds from the purchase were to be directed to the third party who was represented as having access to a high yield trading program. The high yield trading program was represented as involving the purchase and sale of medium term bank notes. The bank notes were purchased at a substantial discount based upon a commitment issued by the United States Treasury Department. Substantial profits were purportedly to be earned because of the ability of the commitment holder to purchase at a discount. A portion of the profits on the subsequent sale of the bank notes were represented to be used for projects associated with the United States government (ie an American foreign policy initiative) or for humanitarian purposes. The balance of the profits were then supposed to be left in the hands of the commitment holder. Profits in the range of 100% to 480% would allegedly be earned by the commitment holder which would be shared with Lett and the parties who would have provided funds in the first instance.

20. Lett acted in furtherance of a trade by accepting the funds from the Investors, attempting to forward the funds to purchase the bank guarantee or debenture, (the proceeds would be used to access the high yield trading program), and by repeatedly providing the Proof of Funds letters to third parties.

21. During the material period, Milehouse and Pierrepont had no discernible business activity other than this involvement in the intended trading program.

### **Proof of Funds Letters – Inaccurate Representations**

22. During the material period, Dunn prepared and signed Proof of Fund Letters and caused others to prepare and sign such letters.

23. During the material period, Hawkyard, while employed at the Bank of Montreal and later at Nesbitt, under the direction of Dunn, prepared and signed Proof of Funds Letters and caused others to prepare and sign these letters. Some of the Proof of Funds Letters were written on Bank of Montreal letterhead and attempted to confirm the availability of funds in the Lett Accounts at Nesbitt.

24. The Proof of Funds Letters were prepared at the request of Lett. At times, Lett provided draft wording for these letters.

25. The Proof of Funds Letters contained the following inaccurate representations regarding the Lett Accounts:

<b>INACCURATE REPRESENTATION</b>		<b>FACT</b>
i)	The letters indicated that, as of a certain date, a stated amount of money (ranging from US \$10 million to US \$100 million) was in the Lett Accounts or was available in the Lett Accounts.	In all cases, the stated amount of money was not in the Lett Accounts.
ii)	Some of the letters indicated that, for a period of time, the stated amount of money would be “held” in the Lett Accounts.	Nesbitt did not have a mechanism to place a “hold” on funds in the Lett Accounts.
iii)	Some of the letters attested to the legitimacy of the funds; for example, the letters stated that the funds were “clear”, “clean” “of non-criminal origin”, “unencumbered” or “legitimately earned or obtained”.	Neither Nesbitt, Dunn nor Hawkyard attempted to verify the source of the funds that were deposited into the Lett Accounts.

## Failure to Supervise

26. Nesbitt failed to adequately supervise the Lett Accounts and Dunn's actions in relation to the Lett Accounts, despite numerous indications that, at a minimum, close supervision was required:

- i. Nesbitt was aware that, in 1993, Lett had been the subject of an Ontario Securities Commission proceeding and was sanctioned.
- ii. In early 1996, the Investment Adviser for the First Canadian Place account signed a letter drafted by Lett in which Lett was seeking to present an inflated impression of the value of assets held in his account. Nesbitt's Branch Manager and Retail Compliance Officer became aware of this occurrence at the time and the Investment Adviser was instructed never to author such a letter again.
- iii. In 1996, a member of the Investigations Department of the Toronto Stock Exchange advised a compliance officer at Nesbitt that he had learned of an inquiry by the Monetary Authority in Bermuda in relation to Lett and advised Nesbitt that it had shut down an operation that involved Lett and prime bank notes.
- iv. On April 16, 1998, the Alberta Securities Commission issued an Order to Freeze Property in the Milehouse account at the Mississauga Branch with respect to the deposit of funds by Lenzburg Capital Corporation into the Milehouse account. On May 22, 1998, the Ontario Securities Commission issued a similar direction.
- v. In May 1998, Nesbitt became aware that Lett was depositing funds from third parties, other than Lenzburg, into the Milehouse account.
- vi. In May 1998, Nesbitt became aware that Dunn, in March 1998, had agreed in writing to terms and conditions with respect to funds deposited by third parties into the Milehouse account. One of the terms referred to funds remaining credited to the Milehouse account at Nesbitt for 1 year. After becoming aware of these terms, Nesbitt permitted the bulk of the funds in the Lett Accounts, other than the Lenzburg funds, to be transferred out.
- vii. In May 1998, Dunn advised a Senior Compliance Officer that he signed the letter referred to in subsection vi. above, simply because he was asked to do so by Lett.
- viii. In May 1998, a Senior Compliance Officer recommended that the Lett accounts be closed.

- ix. In May 1998, Nesbitt placed restrictions on Dunn and his actions in relation to the Lett Accounts. Dunn was told not to sign any letters unless the letter was approved by Compliance or legal department and was told that Lett could not deposit funds into the Milehouse account unless Nesbitt was satisfied that the funds belonged to Milehouse or Lett. In spite of the restrictions, Dunn continued to prepare, sign and caused others to sign Proof of Funds Letters. The restrictions were ineffectual because Nesbitt relied on Dunn to provide information.

#### **IV. CONDUCT CONTRARY TO THE PUBLIC INTEREST**

27. Nesbitt failed to adequately supervise the Lett Accounts and Dunn's actions in relation to the Lett Accounts, contrary to the public interest and contrary to sections 1.2, 1.5 (a) and 3.1 of Ontario Securities Commission Rule 31-505.

#### **V. TERMS OF SETTLEMENT**

28. Nesbitt agrees to the following terms of settlement:
- (a) at the time of approval of this settlement agreement, Nesbitt will make a voluntary payment to the Commission in the amount of \$100,000, such payment to be allocated to such third parties as the Commission may determine for purposes that will benefit Ontario investors;
  - (b) the Commission will make an Order under subsection 127(1)(6) of the Act that Nesbitt be reprimanded;
  - (c) the Commission will make an Order under subsection 127(1)(4) of the Act, effective the date of the Order of the Commission approving this Settlement Agreement, that Nesbitt identify and implement new policies with respect to internal compliance reviews and non-trading activities in clients' accounts to address concerns identified by Staff. Nesbitt will report to Staff within six months of the date of the Order of the Commission approving this Settlement Agreement identifying the policies and procedures that have been implemented; and,
  - (d) the Commission will make an Order under subsection 127.1(1)(b) of the Act that Nesbitt make payment to the Commission in the amount of \$45,000 in respect of the costs of the Commission's investigation in relation to Nesbitt, such payment to be made at the time of approval of this settlement.

**VI. STAFF COMMITMENT**

29. If this settlement is approved by the Commission, Staff will not initiate any other proceeding under the Act against Nesbitt respecting the facts set out in Part III of this Settlement Agreement.

**VIII. PROCEDURE FOR APPROVAL OF SETTLEMENT**

30. Approval of the settlement set out in this Settlement Agreement shall be sought at a public hearing of the Commission scheduled for such date as is agreed to by Staff and Nesbitt.

31. Counsel for Staff or for Nesbitt may refer to any part, or all, of this Settlement Agreement at the Settlement Hearing. Staff and Nesbitt agree that this Settlement Agreement will constitute the entirety of the evidence to be submitted at the Settlement Hearing,

32. If this settlement is approved by the Commission, Nesbitt agrees to waive its rights to a full hearing, judicial review or appeal of the matter under the Act.

33. Staff and Nesbitt agree that if this settlement is approved by the Commission, they will not make any public statement inconsistent with this Settlement Agreement.

34. Whether or not the settlement is approved by the Commission, Nesbitt agrees that it 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 of 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.

35. 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 Nesbitt leading up to its presentation at the Settlement Hearing, shall be without prejudice to Staff and Nesbitt;
- (b) Except as set out in paragraph 34 above, Staff and Nesbitt 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 Settlement Agreement or the settlement discussions/negotiations; and,
- (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 Nesbitt, or as may be required by law.

## **VII. DISCLOSURE OF AGREEMENT**

36. Except as permitted under paragraph 31 above, this Settlement Agreement and its terms will be treated as confidential by Staff and Nesbitt until approved by the Commission, and forever if, for any reason whatsoever, this settlement is not approved by the Commission, except with the written consent of Staff and Nesbitt, or as may be required by law.

37. Any obligations of confidentiality attaching to this Settlement Agreement shall terminate upon approval of this settlement by the Commission.

## **IX. EXECUTION OF SETTLEMENT AGREEMENT**

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

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

**DATED** this 18<sup>th</sup> day of September, 2002.

**Signed in the presence of:**

**BMO Nesbitt Burns Inc.**

**"M. L. O'Brien"**

Per:           "Dean Manjuris"            
Managing Director and Executive Vice President

**DATED** this 18<sup>th</sup> day of September, 2002.

**Signed in the presence of:**

**Staff of the Ontario Securities Commission**

**Per:**

**"Brian Clarkin"**

**"J. Fallon"**

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