

**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 DAVID ARTHUR BENDING**

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 David Arthur Bending ("Bending") 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 Bending 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 Bending initiated by the Notice of Hearing in accordance with the terms and conditions set out below. Bending 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, Staff and Bending agree with the facts set out in paragraphs 5 through 19 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. Bending became registered with the Commission under the Act to sell mutual fund securities and limited market products on January 25, 1994.

9. Between October 1996 and November 1996, Bending sold to Ontario investors securities of one or more of the Offering Corporations (the “Saxton Securities”). Bending sold the Saxton Securities to 9 Ontario investors for a total amount sold of approximately \$847,000.

10. All of the Offering Corporations were incorporated pursuant to the laws of Ontario. Bending’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, Bending 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. Bending 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. Bending had in his possession a copy of one of the Offering Memoranda respecting the Saxton Securities. He did not provide any of his clients with this Offering Memorandum prior to their purchase of the Saxton Securities. Saxton also provided to Bending vague promotional material which he, in turn, provided to clients without any supplemental information.

13. Bending received commissions and trailer fees of approximately \$63,500 on the sales described in paragraph 9 above.

14. Bending failed to adequately assess the suitability of his clients' investments in the Saxton Securities. One client of Bending's invested approximately 90% of his portfolio (approximately \$250,000) in the Saxton Securities.
15. Bending failed to inform his sponsoring firm that he was selling the Saxton Securities.
16. Bending's conduct in selling the Saxton Securities was contrary to Ontario securities law and the public interest.
17. Bending informs Staff that, prior to trading in the Saxton Securities, he was advised by the respondents Richard Fangeat and Luke McGee, the latter of whom represented himself to be a Vice-President of Saxton and a lawyer, that Bending did not need to be registered with the Commission in order to trade in the Saxton Securities. Bending did not make any inquiries of his sponsor, or any one independent of Saxton, to verify this information.
18. Bending co-operated with the Commission's investigation respecting the sale of Saxton Securities.
19. Bending has been subject to close supervision by his sponsor since February 2001.

IV. TERMS OF SETTLEMENT

20. Bending agrees to the following terms of settlement:
 - (a) the making of an order:
 - (i) approving this settlement;
 - (ii) suspending Bending's registration with the Commission for eight months;
 - (iii) that trading in any securities by Bending cease for eight months;
 - (iv) that Bending must successfully complete the Canadian Securities Course in order for his registration to be reinstated following the suspension;
 - (v) reprimanding Bending;
 - (vi) that the Temporary Order no longer has any force or effect; and
 - (vii) that Bending will pay costs to the Commission in the amount of \$2,000.

V. STAFF COMMITMENT

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

VI. APPROVAL OF SETTLEMENT

22. Approval of the settlement set out in this Settlement Agreement shall be sought at the public hearing of the Commission scheduled for October 9, 2002, or such other date as may be agreed to by Staff and Bending (the "Settlement Hearing"). Bending will attend in person at the Settlement Hearing.

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

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

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

26. 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 Bending leading up to its presentation at the Settlement Hearing, shall be without prejudice to Staff and Bending;
- (b) Staff and Bending 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 Bending or as may be required by law; and
- (d) Bending 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

- 27. Except as permitted under paragraph 23 above, this Settlement Agreement and its terms will be treated as confidential by Staff and Bending 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 Bending, or as may be required by law.
- 28. Any obligations of confidentiality shall terminate upon approval of this settlement by the Commission.

VIII. EXECUTION OF SETTLEMENT AGREEMENT

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

DATED this 1st day of October , 2002

WITNESS

DAVID ARTHUR BENDING

DATED this 4th day of October , 2002

**STAFF OF THE ONTARIO
SECURITIES COMMISSION**

MICHAEL WATSON
Director, Enforcement Branch

SCHEDULE "A"

**IN THE MATTER OF THE SECURITIES ACT,
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ORDER

(Subsection 127(1) and section 127.1)

WHEREAS on September 24, 1998, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") respecting David Arthur Bending ("Bending") and others;

AND WHEREAS on September 24, 1998, the Commission made a Temporary Order as against Bending and others, such Temporary Order which was extended by Commission Orders dated October 9, 1998 and February 5, 1999 (the "Temporary Order");

AND WHEREAS Bending entered into a Settlement Agreement dated • (the "Settlement Agreement") in which he agreed to a proposed settlement of the proceedings, subject to the approval of the Commission;

AND UPON reviewing the Settlement Agreement and the Statement of Allegations of Staff of the Commission and upon hearing submissions from Bending 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 pursuant to subsection 127(1) and section 127.1 of the Act;

IT IS ORDERED THAT:

1. the attached Settlement Agreement is approved;
2. pursuant to subsection 127(1), paragraph 1, Bending's registration with the Commission is suspended for eight months commencing on the date of this Order;
3. pursuant to subsection 127(1), paragraph 2, trading in any securities by Bending cease for eight months commencing on the date of this Order;
4. pursuant to subsection 127(1), paragraph 2, Bending must successfully complete the Canadian Securities Course in order for his registration to be reinstated following the suspension;
5. pursuant to subsection 127(1), paragraph 6, Bending is reprimanded;
6. the Temporary Order as against Bending no longer has any force or effect; and
7. pursuant to section 127.1, Bending will pay costs to the Commission in the amount of \$2,000.

DATED at Toronto this 9th day of October, 2002
