

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

- and -

**IN THE MATTER OF
MICHAEL GOSELIN, IRVINE DYCK,
DONALD McCrORY and ROGER CHIASSON**

**SETTLEMENT AGREEMENT BETWEEN STAFF OF THE
ONTARIO SECURITIES COMMISSION AND DONALD McCRORY**

I. INTRODUCTION

1. By Notice of Hearing dated November 9, 2001 (the "Notice of Hearing"), the Ontario Securities Commission (the "Commission") announced that it proposed to hold a hearing to consider, among other things, whether pursuant to subsection 127(1) and section 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:

- (a) that trading in any securities by the respondent Donald McCrory ("McCrory") cease permanently or for such time as the Commission may direct;
- (b) prohibiting McCrory from becoming or acting as a director or officer of any issuer permanently or for such period as specified by the Commission;
- (c) reprimanding McCrory;
- (d) requiring McCrory to pay the costs of the Commission's investigation and the hearing; and
- (e) such other terms and conditions as the Commission may deem appropriate.

II. JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission ("Staff") agrees to recommend settlement of the proceeding respecting McCrory initiated by the Notice of Hearing in accordance with the terms and conditions set out below. McCrory 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

3. Solely for the purposes of this proceeding, and of any other proceeding commenced by a securities regulatory agency, Staff and McCrory agree with the facts set out in paragraphs 4 through 24 of this Settlement Agreement.

Facts

(i) McCrory's Registration

4. In early May 1996, McCrory became registered with the Commission to sell mutual funds and limited market products. McCrory was sponsored by Triple A Financial Services Inc. ("Triple A"). Triple A's sponsorship of McCrory continued until mid-October 1998. McCrory subsequently was sponsored by the Investment and Tax Centre. McCrory has not been registered with the Commission since the end of September 2001.

5. During the time that Triple A employed and sponsored McCrory, Roderick Alton ("Alton") was Triple A's President and a director and McCrory's Branch Manager.

(ii) The North George Capital Limited Partnerships

6. In the mid-nineteen nineties, Alton and Michael Magee ("Magee") formed several limited partnerships. North George Capital Limited Partnership was formed on September 8, 1995 pursuant to the laws of Ontario. North George Capital II Limited Partnership, North George Capital III Limited Partnership, North George Capital IV Limited Partnership and North George Capital V Limited Partnership (collectively with North George Capital Limited Partnership, the "North George Limited Partnerships" or the "Partnerships") were formed on August 16, 1996.

7. The general partner of the North George Limited Partnerships was North George Capital Management Limited ("North George Management"). North George Management was a private corporation owned equally by Alton and Magee.

(iii) The Distribution of Units of the North George Limited Partnerships

8. The North George Limited Partnerships raised funds by offering investors/subscribers the opportunity to purchase units in one or more of the Partnerships. Each subscriber became a limited partner of the Partnership(s) in which he or she

invested. Through the sale of units, the North George Limited Partnerships raised approximately US\$4.4 million.

9. The distribution of the North George Limited Partnerships securities contravened section 53 of the Act. None of the Partnerships filed a preliminary prospectus or prospectus with the Commission.

10. The North George Limited Partnerships prepared Offering Memoranda, according to which the Partnerships relied on the seed capital prospectus exemption contained in paragraph 72(1)(p) of the Act. Neither this, nor any other, prospectus exemption under the Act was available to the Partnerships.

11. Effectively, the Partnerships were one issuer. Among other things, such Partnerships raised funds based on virtually identical Offering Memoranda and co-mingled investors' funds to be used for a common purpose. Several Partnerships were formed as an attempt to circumvent the seed capital exemption requirement that sales be made to no more than 25 purchasers.

12. Only the Offering Memorandum of North George Capital IV Limited Partnership was filed with the Commission. Only North George Capital IV Limited Partnership filed reports (Form 20's) as required by the Act.

13. The Partnerships' Offering Memoranda provided insufficient information about and/or inadequate explanation of how the investment worked and how the Partnerships would render a rate of return of at least 48% to 120% per year (24% to 60% to investors).

14. The North George Limited Partnerships generated little income. Any "interest" paid to subscribers came largely out of other subscribers' capital. Most investors lost a significant portion of their investment.

(iv) The Distribution of Lionaird Capital Corp. Promissory Notes

15. In May 1997, Lionaird Capital Corp. ("Lionaird") was incorporated pursuant to the laws of Ontario. Lionaird was a private corporation the shares of which were held by Alton, Magee and others in trust for an unnamed party. Alton was the President, Chief Operating Officer and a director of Lionaird. Magee was Lionaird's Vice-President and a director. Kenneth Gill ("Gill") also was an officer and a director.

16. Lionaird raised monies through the sale of promissory notes to investors. Through the purchase of promissory notes by investors, Lionaird raised in excess of \$3.4 million. Such sales did not go through Triple A or any other registered dealer.

17. The distribution of Lionaird promissory notes contravened section 53 of the Act. Lionaird did not file a preliminary prospectus or a prospectus with the Commission. On September 12, 1997, Lionaird filed with the Commission an Offering Memorandum dated July 25, 1997. The Lionaird Offering Memorandum related to a purported private placement of 12% secured redeemable promissory notes. Such notes were described in

the Offering Memorandum as having a five year term and paying interest of 12% per year (with a potential bonus payment of up to 12%).

18. According to its Offering Memorandum, Lionaird relied on the private placement and seed capital prospectus exemptions contained in paragraphs 72(1)(d) and (p) of the Act. Neither these, nor any other, prospectus exemptions under the Act were available to Lionaird.

19. Further, the Lionaird Offering Memorandum provided insufficient information about, or inadequate explanation of, among other things, how Lionaird would realize the promised rate of return of 12% to 24% to investors.

20. Most of the investors in Lionaird lost all, or substantially all, of their investment.

(v) McCrory's Conduct

21. Between September 1996 and February 1998, McCrory sold approximately US\$312,100 worth of units in the North George Limited Partnerships to 7 Ontario investors and approximately \$447,000 worth of Lionaird promissory notes to 25 clients.

22. McCrory participated in illegal distributions of a security and engaged in other conduct contrary to Ontario securities law and the public interest by:

- (a) failing to act in the best interests of his clients. The North George Limited Partnerships and Lionaird investments were the first and only limited market products McCrory ever sold. McCrory failed to conduct the appropriate due diligence, and only made inquiries of the principals of the Partnerships and Lionaird who were in an obvious conflict position, to educate himself concerning limited market products in general and the nature and quality of the North George Limited Partnerships and Lionaird investments specifically.

McCrory did not have sufficient regard to the Partnerships and Lionaird Offering Memoranda. Further, in at least one case, he did not provide his client with a copy of the Offering Memorandum prior to the client's purchase. McCrory pursued his sales of the Partnerships units notwithstanding that the financial statements indicated that the "interest" being paid to investors was taken largely from other investors' capital;

- (b) representing to his clients:
 - (i) that the North George Limited Partnerships and Lionaird investments were safe and that an investor's principal was 100% guaranteed notwithstanding, among other

things, that the Offering Memoranda stated that the securities were speculative;

- (ii) that all his or her funds could be retrieved on 30 days notice notwithstanding, among other things, that only Lionaird had the right to redeem its promissory notes; and
- (iii) that the rate of return for investors would be at least 24% to 60% in the case of the North George Limited Partnerships and 12% to 24% respecting Lionaird; and
- (c) selling Lionaird notes to investors once he was aware that the North George Limited Partnerships were facing difficulties and were failing to pay the promised return. McCrory knew that Alton was a principal of both and that the investment programs were similar; and
- (d) recommending and selling investments unsuitable for his clients. One elderly client invested the vast majority of her money in the Partnerships and Lionaird on the recommendation of McCrory.

23. As a result of selling units in the North George Limited Partnerships and promissory notes of Lionaird to clients, McCrory earned commissions and trailer fees of approximately \$62,000.

24. McCrory and his wife invested approximately US\$68,000 worth of units in the North George Limited Partnerships and \$20,000 in Lionaird.

IV. MCCRORY'S POSITION

25. McCrory represents to Staff that:

- (a) as a newly-registered salesperson, he relied on the representations of Alton that the North George Limited Partnerships and Lionaird investments were legal and that clients' original principal was guaranteed and refundable;
- (b) he believed that the North George Limited Partnerships and Lionaird investments were legitimate; and
- (c) the majority of his clients were family members and friends.

V. TERMS OF SETTLEMENT

26. McCrory agrees to the following terms of settlement:

- (a) the making of an order:
 - (i) approving this settlement;
 - (ii) that trading in any securities by McCrory cease for 5 years with the exceptions that:
 - (a) McCrory is permitted to trade securities through a registered dealer pursuant to his powers of attorney for property of Helen and (Stanley) Emmett McCrory (McCrory's parents) and/or as the executor of either of their estates; and
 - (b) after three years from the date of the approval of this settlement, McCrory is permitted to trade securities through a registered dealer for the account of his registered retirement savings plan (as defined in the *Income Tax Act (Canada)*); and
 - (iii) reprimanding McCrory;
- (b) McCrory will undertake to the Commission in writing that he will not apply to the Commission for registration in any capacity for 10 years;
- (c) within one year prior to applying for registration with the Commission, McCrory will successfully complete the Canadian Securities Course and Conduct Practices Handbook Course; and
- (d) in the event that McCrory becomes registered with the Commission, he agrees to be subject to close supervision for the first year of his registration.

VI. STAFF COMMITMENT

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

VII. APPROVAL OF SETTLEMENT

28. Approval of the settlement set out in this Settlement Agreement shall be sought at the public hearing of the Commission scheduled for November 15, 2002 or such other date as may be agreed to by Staff and McCrory (the "Settlement Hearing"). McCrory will attend in person at the Settlement Hearing.

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

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

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

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

VIII. DISCLOSURE OF SETTLEMENT AGREEMENT

33. Except as permitted under paragraph 29 above, this Settlement Agreement and its terms will be treated as confidential by Staff and McCrory 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 McCrory, or as may be required by law.

34. Any obligations of confidentiality shall terminate upon approval of this settlement by the Commission.

IX. EXECUTION OF SETTLEMENT AGREEMENT

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

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

DATED this 14th day of November, 2002

WITNESS

DONALD McCRORY

DATED this 14th day of November, 2002

**STAFF OF THE ONTARIO
SECURITIES COMMISSION**

BRIAN BUTLER
For **MICHAEL WATSON**,
Director, Enforcement Branch