

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

- and -

IN THE MATTER OF BUCKINGHAM SECURITIES CORPORATION

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. On the 6th day of July, 2001, the Ontario Securities Commission (the “Commission”) ordered, among other things, pursuant to clause 1 of subsection 127(1) of the *Securities Act*, R.S.O. 1990, c.S.5, as amended (the “Act”), that the registration of Buckingham Securities Corporation (“Buckingham”) be suspended for a period of fifteen days from the date of the order (the “Temporary Order”).

2. On the 20th day of July, 2001 the Commission ordered pursuant to subsection 127(7) of the Act, that the Temporary Order, among other things, be extended against Buckingham until the hearing is concluded and that the hearing be adjourned *sine die*.

3. By Notice of Hearing dated April 15, 2004, the Ontario Securities Commission announced that it proposed to hold a hearing to consider whether, pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended, it is in the public interest for the Commission to make certain orders as specified therein.

4. BDO Dunwoody Limited was appointed Receiver and Manager (the "Receiver") of the assets and undertaking of Buckingham by Order of the Honourable Madame Justice Swinton dated July 26, 2001 (the "Court Order").

5. On the 30th day of March 2004, the Commission ordered pursuant to section 144(1) of the Act that the Temporary Order made by the Commission on July 6, 2001, as varied and extended by Order dated July 20, 2001, cease to apply as against certain brokerage firms (as described therein) and the Receiver, to the extent necessary to permit trading to be conducted by, on behalf of or with the consent of the Receiver, in any securities held in an account or accounts in the name of Buckingham.

II. JOINT SETTLEMENT RECOMMENDATION

6. Staff recommend settlement of the allegations against the respondent Buckingham in accordance with the terms and conditions set out below. Buckingham agrees to the settlement on the basis of the facts and conclusions agreed to as provided in Part IV and consents to the making of an order against it in the form attached as Schedule "A" on the basis of the facts set out in Part IV. Pursuant to the Court Order referred to in paragraph 4 above, the Receiver is authorized to enter into any settlement of any proceedings, including administrative hearings.

7. This settlement agreement, including the attached Schedule "A" (collectively, the "Settlement Agreement") will be released to the public only if and when the Settlement Agreement is approved by the Commission.

III. ACKNOWLEDGEMENT

8. Staff and Buckingham agree with the facts and conclusions set out in Part IV for the purpose of this settlement proceeding.

IV. AGREED FACTS AND CONCLUSIONS

Background

9. Buckingham is incorporated pursuant to the laws of Ontario. Buckingham was registered under Ontario securities law as a securities dealer during the period from March 17, 1997 to July 6, 2001 (the “Material Time”). Buckingham commenced trading for clients in or about April 1997.

10. The registration of Buckingham was suspended on July 6, 2001 by Temporary Order made by the Commission, and extended by Order of the Commission dated July 20, 2001. As noted above, BDO Dunwoody Limited was appointed Receiver of the assets and undertaking of Buckingham by Order of the Honourable Madame Justice Swinton dated July 26, 2001.

Buckingham’s Trading Activities - Accounts held with Executing Brokers

11. Buckingham was not a member of the Investment Dealers Association of Canada (“IDA”) or any other self-regulatory organization (“SRO”). During the Material Time, Buckingham engaged in trading on an agency basis for clients. Buckingham had approximately 2400 client cash, margin or RRSP accounts (1000 of which were active accounts at the time of the suspension of Buckingham’s operations in July 2001). Buckingham’s clients purchased securities through Buckingham salespeople for cash or on margin. Client orders were executed through various IDA member firms.

12. During the Material Time, Buckingham entered into executing broker arrangements with various firms including Canaccord Capital Corporation (“Canaccord”) and W.D. Latimer Co. Ltd. (“Latimer”) to process Buckingham’s client orders.

13. From approximately May 1997 to July 2000, Buckingham conducted the majority of its trading for its clients using cash or margin accounts at Canaccord (the “Canaccord Accounts”). The Canaccord Accounts were held in the name of Buckingham and were operated as omnibus accounts. These accounts held clients’ securities in aggregate, and

did not identify individual Buckingham client names and the corresponding security positions of individual clients.

14. In April 2000, Canaccord notified Buckingham that it intended to close the Canaccord Accounts because of its concerns with the form and operation of the Canaccord Accounts.

15. On or about July 28, 2000, Buckingham transferred the securities it held at Canaccord to cash and margin accounts at Latimer. The accounts held in the name of Buckingham at Latimer operated as omnibus accounts, in the same manner as described in paragraph 13 above.

16. During the Material Time, Latimer and Buckingham entered into an agreement in respect of the Latimer Accounts, which provided, in part:

[T]hat all securities and credit balances held by LATIMER for the Customer's account shall be subject to a general lien for any and all indebtedness to LATIMER howsoever arising and in whatever account appearing, including any liability arising by reason of any guarantee by the Customer of the account or of any other person; that LATIMER is authorized hereby to sell, purchase, pledge, or repledge any or all such securities without notice of advertisement to satisfy this lien, and that LATIMER may at any time without notice whenever LATIMER carries more than one account for the Customer enter credit or debit balances, whether in respect of securities or money, to any of such accounts and make such adjustments between such accounts as LATIMER may in its sole discretion deem fit; and that any reference to the Customer's account in this clause shall include any account in which the Customer has an interest whether jointly or otherwise.

17. The trades processed by Buckingham through the Canaccord, Latimer and other brokerage accounts involved both securities that had been fully paid and securities purchased on margin by Buckingham's clients. As described below, it was Buckingham's responsibility to ensure that the securities owned by clients, including excess margin securities, were properly segregated, and that such securities were not available for pledging as collateral security for any indebtedness owing by Buckingham to Latimer, or other brokers who had similar executing broker arrangements with Buckingham.

Buckingham's Failure to Segregate Clients' Securities

18. Section 117 of the Regulation to the Act requires that "securities held by a registrant for a client that are unencumbered and that are either fully paid for or are excess margin securities...shall be (a) segregated and identified as being held in trust for the client; and (b) described as being held in segregation on the registrant's security position record, client ledger and statement of account."

19. During the Material Time, Buckingham failed to segregate fully paid or excess margin securities owned by its clients and held in Buckingham's omnibus accounts with other brokerage firms, as outlined above, contrary to the requirements contained in section 117 of Regulation to the Act.

20. Buckingham, in failing to comply with the segregation requirements contained in section 117 of the Regulation to the Act, put client assets at risk (ie. client assets were available to be used as collateral in support of Buckingham's indebtedness to brokerage firms.) In the ongoing receivership proceeding, two firms have asserted a security interest or lien over securities held in the Buckingham accounts. The Receiver has advised Commission Staff that as a consequence of Buckingham's failure to segregate, many of Buckingham's clients have suffered financial losses as it has been determined in the receivership proceeding that one of the secured claims of the two brokers include fully-paid-for client securities improperly pledged by Buckingham.

Buckingham's Failure to Maintain Adequate Capital

21. All registrants must maintain adequate capital at all times in accordance with section 107 of the Regulation to the Act. As set out in paragraph 26 below, Buckingham had a deficiency of net free capital in excess of \$9,000,000 for its financial year ending March 31, 1999, and a deficiency of net free capital in excess of \$27,500,000 for its financial year ending March 31, 2000. Buckingham failed to report such information in the audited financial Form 9 reports it was required to file under Ontario securities law, and instead reported excess net free capital which was misleading or untrue.

22. During the Material Time, Buckingham contravened the requirement contained in section 107 of the Regulation to the Act to maintain adequate capital at all times.

Failure to Maintain Books and Records

23. During the Material Time, Buckingham failed to keep necessary records required under Ontario securities law, contrary to section 113 of the Regulation to the Act. In particular, during the Material Time, Buckingham failed to prepare documents on a monthly basis to record reasonable calculations of minimum free capital, adjusted liabilities and capital required by the firm in order to ensure that Buckingham complied with its capital requirements pursuant to section 107 of the Regulation to the Act.

Misleading or Untrue Statements in 1999 and 2000 Form 9 Reports

24. Buckingham prepared Form 9 reports for the financial years ending March 31, 1999 and March 31, 2000 (hereafter, referred to as the “1999 Form 9 Report” and the “2000 Form 9 Report”). Section 142 of the Regulation to the Act requires a securities dealer, who is not a member of an SRO, to deliver to the Commission within 90 days after the end of each financial year a report prepared in accordance with Form 9. The Form 9 reports, among other things, record the capital position and requirements of the securities dealer, and confirm the segregation of clients’ fully paid and excess margin securities. Section 144 of the Regulation to the Act requires that the Form 9 Reports be audited by an auditor appointed by the securities dealer, in accordance with generally accepted auditing standards and the audit requirements published by the Commission.

25. The 1999 and 2000 Form 9 Reports were submitted to the Commission. The Form 9 Reports each contained a Certificate of Partners or Directors certifying, among other things, that:

- (a) the financial statements and other information presented fairly the financial position of Buckingham; and
- (b) information stated in the Certificate was true and correct, including the statement that Buckingham promptly segregated all clients’ free securities.

26. Buckingham, for the fiscal years ending March 31, 1999 and March 31, 2000, made statements in the 1999 and 2000 Form 9 Reports required to be filed or furnished under Ontario securities law that, in a material respect and at the time and in the light of the circumstances under which they were made, were misleading or untrue or did not state a fact that was required to be stated or that was necessary to make the statements not misleading, specifically;

- (i)
 - a. the 1999 Statement of Assets and Liabilities and Capital stated that the amount of Buckingham's total liabilities (excluding subordinated loans) was \$4,402,608 when such amount was in excess of \$12,000,000;
 - b. the 1999 Statement of Net Free Capital stated that Buckingham had excess net free capital, before taking account of capital requirements, in the amount of \$521,766, when Buckingham had a deficiency of net free capital in excess of \$8,000,000;
 - c. the 1999 Statement of Adjusted Liabilities stated that the amount of Buckingham's adjusted liabilities was \$3,527,784, when the amount was in excess of \$11,500,000;
 - d. the 1999 Statement of Minimum Free Capital stated that Buckingham had excess net free capital, after deducting capital requirements in the amount of \$179,544, when Buckingham had a deficiency of net free capital in excess of \$9,000,000;
 - e. the 1999 Certificate of Partners or Directors stated that Buckingham properly segregated all clients' free securities, when Buckingham was not segregating clients' free securities.
- (ii)
 - a. the 2000 Statements of Assets and Liabilities and Capital stated that the amount of Buckingham's total liabilities (excluding subordinated loans) was \$11,085,049, when such amount was in excess of \$36,000,000;

- b. the 2000 Statement of Net Free Capital stated that Buckingham had excess net free capital, before taking account of capital requirements, in the amount of \$738,675, when Buckingham had a deficiency of net free capital in excess of \$25,500,000;
- c. the 2000 Statement of Adjusted Liabilities stated that the amount of Buckingham's adjusted liabilities was \$6,914,102, when such amount was in excess of \$31,000,000;
- d. the 2000 Statement of Minimum Free Capital stated that Buckingham had excess net free capital, after deducting capital requirements, in the amount of \$144,778, when Buckingham had a deficiency of net free capital in excess of \$27,500,000;
- e. the 2000 Certificate of Partners or Directors stated that Buckingham had properly segregated all clients' free securities, when Buckingham was not segregating clients' free securities.

Breach of Requirement to File Form 9 (Financial Questionnaire and Report)

27. Section 142 of the Regulation to the Act provides that every securities dealer, that is not a member of an SRO, must deliver to the Commission within ninety days after the end of its financial year a report prepared in accordance with Form 9 (Financial Questionnaire and Report).

28. Buckingham's Form 9 report for the fiscal year ending March 31, 2001 was due on June 30, 2001. Staff received a request for an extension to file the 2001 Form 9 on the basis that Buckingham's auditor was not prepared to certify the Form 9.

29. Buckingham failed to comply with the requirement contained in section 142 of the Regulation to the Act to file the required audited form 9 for the fiscal year ending March 31, 2001.

Conduct Contrary to the Public Interest

30. Buckingham's conduct was contrary to the public interest in that:
- (a) During the Material Time, Buckingham failed to segregate fully paid or excess margin securities owned by its clients contrary to the requirements contained in section 117 of the Regulation to the Act.
 - (b) During the Material Time, Buckingham failed to maintain adequate capital at all times contrary to the requirements of section 107 of the Regulation to the Act.
 - (c) During the Material Time, Buckingham failed to keep such books and records required under section 113 of the Regulation to the Act, and in particular, failed to maintain on a monthly basis a record of a reasonable calculation of minimum free capital, adjusted liabilities, and capital required by the firm to meet its capital requirements.
 - (d) Buckingham failed to comply with the requirement contained in section 142 of the Regulation to the Act to deliver the required audited Form 9 Report for the fiscal year ending March 31, 2001; and
 - (e) Buckingham, for the fiscal years ending March 31, 1999 and March 31, 2000, made statements in the 1999 and 2000 Form 9 Reports required to be filed or furnished under Ontario securities law that, in a material respect and at the time and in the light of the circumstances under which they were made, were misleading or untrue or did not state a fact that was required to be stated or that was necessary to make the statements not misleading.

V. TERMS OF SETTLEMENT

31. Buckingham agrees to the following settlement term:
- (i) pursuant to clause 1 of subsection 127(1) of the Act, the registration of Buckingham is terminated.

VI. STAFF COMMITMENT

32. If this settlement is approved by the Commission, Staff will not initiate any other proceeding under the Act against Buckingham in relation to the facts set out in Part IV of this Settlement Agreement, subject to the provisions contained in paragraphs 33 and 37 below.

33. If this Settlement Agreement is approved by the Commission, and at any subsequent time Buckingham fails to honour the settlement term contained in Part V herein, Staff reserve the right to bring proceedings under Ontario securities law against Buckingham based on the facts set out in Part IV of the Settlement Agreement, as well as the breach of the settlement term.

VII. PROCEDURE FOR APPROVAL OF SETTLEMENT

34. Approval of the settlement set out in the Settlement Agreement shall be sought at a public hearing of the Commission scheduled on a date to be determined by the Secretary to the Commission, or such other date as may be agreed to by the parties for the scheduling of the hearing to consider the Settlement Agreement.

35. Staff and Buckingham may refer to any part, or all, of the Settlement Agreement at the Settlement Hearing. Staff and Buckingham agree that the Settlement Agreement will constitute the entirety of the evidence to be submitted at the Settlement Hearing, unless the parties later agree that further evidence should be submitted at the Settlement Hearing.

36. If the Settlement Agreement is approved by the Commission, Buckingham agrees to waive its right to a full hearing, judicial review or appeal of the matter under the Act.

37. Staff and Buckingham agree and undertake that if the Settlement Agreement is approved by the Commission, they will not make any statement inconsistent with the Settlement Agreement. Notwithstanding this paragraph, nothing in this Settlement Agreement shall prevent Buckingham or the Receiver from raising any defence that may

be available to Buckingham or the Receiver in any civil or administrative proceeding commenced by or against Buckingham or the Receiver.

38. Whether or not the Settlement Agreement is approved by the Commission, Buckingham agrees that it will not, in any proceeding, refer to or rely upon the Settlement Agreement or the settlement negotiations 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.

39. If, for any reason whatsoever, the Settlement Agreement is not approved by the Commission, or an order in the form attached as Schedule "A" is not made by the Commission;

- a. the Settlement Agreement and its terms, including all settlement negotiations between Staff and Buckingham leading up to its presentation at the Settlement Hearing, shall be without prejudice to Staff and Buckingham;
- b. Staff and Buckingham shall be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations in the Notice of Hearing and Statement of Allegations of Staff, unaffected by the Settlement Agreement or the settlement negotiations; and
- c. the terms of the Settlement Agreement will not be referred to in any subsequent proceeding, or disclosed to any person except with the written consent of Staff and Buckingham or as may be required by law.

VIII. DISCLOSURE OF SETTLEMENT AGREEMENT

40. The Settlement Agreement and its terms will be treated as confidential by Staff and Buckingham, until approved by the Commission, and forever if, for any reason whatsoever, the Settlement Agreement is not approved by the Commission, except with the written consent of Staff and Buckingham or as may be required by law.

41. Any obligations of confidentiality shall terminate upon approval of the Settlement Agreement by the Commission.

IX. EXECUTION OF SETTLEMENT AGREEMENT

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

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

DATED this 2nd day of June, 2005

Signed in the presence of:

Buckingham Securities Corporation
by BDO Dunwoody Limited,
Receiver and Manager of
Buckingham Securities Corporation

“Apolonia D’Sa”

“Uwe Manski”

“Michael Watson”
Michael Watson
Director, Enforcement Branch