

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

- and -

**IN THE MATTER OF EUGENE N. MELNYK, ROGER D. ROWAN,
WATT CARMICHAEL INC., HARRY J. CARMICHAEL
AND G. MICHAEL MCKENNEY**

**SETTLEMENT AGREEMENT
OF EUGENE N. MELNYK**

I. INTRODUCTION

1. By Notice of Hearing and Statement of Allegations dated July 28, 2006 (the “Statement of Allegations”), the Ontario Securities Commission (the “Commission”) announced that it proposed to hold a hearing in this matter to consider whether, pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “Act”), it would be in the public interest for the Commission to make certain orders as specified therein.

II. JOINT SETTLEMENT RECOMMENDATION

2. Staff recommend settlement of this proceeding as against the respondent Eugene N. Melnyk (“Melnyk”) in accordance with the terms and conditions set out below. Melnyk agrees to the settlement on the basis of the facts and conclusions set out in Part IV of this agreement and consents to the making of an order against him in the form attached as Schedule “A”.

III. ACKNOWLEDGEMENT

3. Melnyk agrees with the facts and conclusions set out in Part IV of this agreement solely for the purpose of this proceeding. Melnyk expressly denies that the terms of this agreement are

intended to be an admission of liability, misconduct or wrongdoing by him in any other context to any person or company or other entity.

IV. AGREED FACTS AND CONCLUSIONS

4. Biovail Corporation (“Biovail”) is a reporting issuer in the province of Ontario. The common shares of Biovail are listed and posted for trading on the Toronto Stock Exchange (the “TSX”) and the New York Stock Exchange.

5. Melnyk is the Chairman of the Board of Directors of Biovail. From December 2001 to October 2004, Melnyk was Chairman and Chief Executive Officer of Biovail. Melnyk became Executive Chairman of the Board of Biovail in November of 2004 and relinquished that title on June 27, 2006. He has been a Director of Biovail since March 1994. Melnyk is, and was at all material times, an insider of Biovail. On May 16, 2007, Melnyk announced that he was retiring from the Board of Biovail effective June 30, 2007.

6. Melnyk is a Canadian citizen. He has resided in Barbados since 1991.

7. Watt Carmichael Inc. (“Watt Carmichael”) is registered as a broker and investment dealer under the Act, and is a participating organization of the TSX and a member of the Investment Dealers Association of Canada (the “IDA”).

8. Roger D. Rowan (“Rowan”) is, and was at all material times, the President and Chief Operating Officer of Watt Carmichael. Rowan was a Director of Biovail from 1997 until his resignation in 2005. Rowan also served as a member of the Biovail audit committee during his tenure as a Director of Biovail. Rowan is, and was at all material times, the registered representative at Watt Carmichael with responsibility for trading in certain accounts, described below as the Conset, Congor and Southridge Accounts.

The Cayman Trusts

9. Melnyk represents the following:

- (a) in 1991, he settled a trust in the Cayman Islands named the Evergreen Trust;

- (b) RHB Trust Co. Ltd., an institutional trustee in the Cayman Islands, was the trustee of the Evergreen Trust;
- (c) The beneficiaries of the Evergreen Trust included certain members of Melnyk's family, but did not include Melnyk;
- (d) Shares of Trimel Corporation owned by Melnyk were transferred to the Evergreen Trust between 1991 and 1995; and
- (e) Melnyk filed insider reports disclosing dispositions of the shares that were transferred to the Evergreen Trust. Insider reports do not disclose the recipients of shares that have been disposed of and the Evergreen Trust was established more than 10 years before MI 55-103, discussed below, came into force in 2004. There was, in the circumstances, no disclosure that shares had been transferred from Melnyk to the Evergreen Trust.

Trimel Corporation is a predecessor to Biovail, and the shares of Trimel ultimately became shares of Biovail.

10. In 1996, Melnyk established the following trusts under the laws of the Cayman Islands: the Conset Trust, the Congor Trust, the Southridge Trust, and the Archer Trust (collectively referred to as the "Trusts"). Melnyk was the settlor of the Trusts, and Melnyk was also listed as a beneficiary in the Deeds of Settlement for the Trusts. Other beneficiaries of the Trusts included certain of Melnyk's family members (including his wife and children) and certain of his friends. The trustees for each of the Trusts are institutional trust administrators located in the Cayman Islands (the "Trustees"). The Trustees include Barclays Private Bank & Trust, Coutts & Co. and the R & H Trust Co. Ltd.

11. The assets of the Trusts were held by investment companies and consisted primarily of shares of Biovail, as well as nominal amounts of shares of other publicly traded companies. The investment companies are: Conset Investments Limited ("Conset"), Congor Investments

Limited (“Congor”), Southridge Management Limited (“Southridge”) and Archer Investments Limited (“Archer”) (collectively, the “Investment Companies”). The Investment Companies were incorporated under the laws of the Cayman Islands.

12. In 1996, Melnyk requested that the trustees of the Evergreen Trust transfer approximately 4,900,000 shares of Biovail from the Evergreen Trust to the Investment Companies. The trustees complied with this request and transferred the Biovail shares. These shares represented approximately 19% of the outstanding shares of Biovail at that time.

Canadian and U.S. Accounts

13. In 1996, at Melnyk’s suggestion, trading accounts for securities owned by the Trusts were opened at Watt Carmichael for Congor (the “Congor Account”), Conset (the “Conset Account”), Southridge (the “Southridge Account”) and Archer (the “Archer Account”). The contents of the Archer Account were later transferred to an account held at BMO Nesbit Burns (the “BMO Archer Account”). The Congor, Conset and Southridge Accounts at Watt Carmichael are referred to collectively as the “Watt Carmichael Accounts”.

14. Rowan is the registered representative for the Congor, Conset and Southridge Accounts. At all material times, Rowan exercised discretionary trading authority over the Congor and Conset Accounts pursuant to written authorizations provided by Congor and Conset.

15. In 1996, at Melnyk’s suggestion, U.S. trading accounts for securities owned by the Trusts were opened in 1996 with Sands Brothers. & Co. Ltd. for Congor, and in 1997 with Monness Crespi, Hardt. & Co. Inc. for Southridge. In 2002, at Melnyk’s suggestion, a U.S. trading account was opened with Lehman Brothers Inc. for Archer.

16. The Watt Carmichael Accounts, the BMO Archer Account, and the U.S. trading accounts are referred to collectively as the “Accounts”.

Trading in Biovail Securities held in Canadian and U.S. Accounts

17. During 2002, the following trading in Biovail securities (or derivatives in respect of Biovail securities) occurred in the Accounts:

- (a) acquisitions in excess of 4,800,000 Biovail common shares at a cost of approximately US\$ 170,000,000 and dispositions in excess of 4,800,000 Biovail common shares for proceeds of approximately US\$ 160,000,000 in the Conset Account at Watt Carmichael;
- (b) acquisitions of 9,000 Biovail call options (in respect of common shares of Biovail) at a cost of approximately US\$ 4,000,000 in the Conset Account at Watt Carmichael;
- (c) acquisitions in excess of 1,700,000 Biovail common shares at a cost of approximately US\$ 70,000,000 and dispositions of 1,500,000 Biovail common shares for proceeds of approximately US\$ 60,000,000 in the Congor Account at Watt Carmichael;
- (d) acquisitions in excess of 600,000 Biovail common shares at a cost of approximately US\$ 25,000,000 and dispositions in excess of 700,000 Biovail common shares for proceeds of approximately US\$ 30,000,000 in the Southridge Account at Watt Carmichael;
- (e) acquisitions in excess of 3,500 Biovail call options (in respect of common shares of Biovail) at a cost of approximately US\$ 2,000,000 in the Southridge Account at Watt Carmichael;
- (f) acquisitions in excess of 640,000 Biovail common shares at a cost of approximately US\$ 20,000,000 and dispositions in excess of 450,000 Biovail common shares for proceeds of approximately US\$ 20,000,000 in the Congor Account at Sands Brothers; and

- (g) dispositions of 100,000 Biovail common shares for proceeds of approximately US\$ 5,000,000 in the Southridge Account at Monness Crespi.

18. During 2003, the following trading in Biovail securities (and derivatives in respect of Biovail securities) occurred in the Accounts:

- (a) acquisitions in excess of 7,800,000 Biovail common shares at a cost of approximately US\$ 265,000,000 and dispositions in excess of 8,800,000 Biovail common shares for proceeds of approximately US\$ 290,000,000 in the Conset Account at Watt Carmichael;
- (b) acquisitions in excess of 12,000 Biovail call options (in respect of Biovail common shares) at a cost of approximately US\$ 4,000,000 in the Conset Account at Watt Carmichael;
- (c) the exercise of Biovail call options to purchase 900,000 Biovail common shares at a cost of approximately US\$ 25,000,000 in the Conset Account at Watt Carmichael;
- (d) acquisitions in excess of 25,000 Biovail common shares at a cost of approximately US\$ 1,000,000 and dispositions in excess of 650,000 Biovail common shares for proceeds of approximately US\$ 25,000,000 in the Congor Account at Watt Carmichael
- (e) acquisitions in excess of 800,000 Biovail common shares at a cost of approximately US\$ 25,000,000 and dispositions in excess of 800,000 Biovail common shares for proceeds of approximately US\$ 25,000,000 in the Southridge Account at Watt Carmichael;
- (f) dispositions in excess of 1,300,000 Biovail common shares for proceeds of approximately US\$ 30,000,000 in the BMO Archer Account;

- (g) acquisitions of 300,000 Biovail common shares at a cost of approximately US\$ 8,000,000 and dispositions in excess of 450,000 Biovail common shares for proceeds of approximately US\$ 8,000,000 in the Archer Account at Lehman Bros.; and
- (h) acquisitions of 300,000 Biovail common shares at a cost of approximately US\$ 5,000,000 in the Southridge Account at Monness Crespi.

19. During 2004, the following trading in Biovail securities (and derivatives in respect of Biovail securities) occurred in the Watt Carmichael Accounts:

- (a) acquisitions in excess of 150,000 Biovail common shares at a cost of approximately US\$ 2,000,000 and dispositions in excess of 350,000 Biovail common shares for proceeds of approximately US\$ 6,000,000 in the Conset Account at Watt Carmichael;
- (b) dispositions of 1,700 Biovail common shares for proceeds of approximately US\$ 30,000 in the Congor Account at Watt Carmichael; and
- (c) dispositions of in excess of 375,000 Biovail common shares for proceeds of approximately US\$ 8,000,000 in the Southridge Account at Watt Carmichael.

Current Status of Trusts and Accounts

20. During 2004 and 2005, Melnyk settled four new trusts, known as STAR trusts, in the Cayman Islands. Melnyk represents that STAR trusts are a new form of trust permitted by legislation enacted in the Cayman Islands after the original Trusts were established. These STAR trusts are known as the Breakwater, Edgewater, South Point and Highwater trusts (collectively, the "New Trusts").

21. The trustees of the New Trusts (the “New Trustees”) are institutional trust administrators located in the Cayman Islands and include Barclay’s Private Bank & Trust (Cayman) Limited, Coutts (Cayman) Limited and Caledonian Bank & Trust Limited.

22. After the New Trusts were established, Melnyk requested that the Trustees transfer the shares of the Investment Companies to holding companies owned by the New Trusts. The Trustees have complied with this request and the shares either have been or are in the process of being transferred.

23. The beneficiaries of the New Trusts include Melnyk’s wife and children. Melnyk represents that he is not now and has never been a beneficiary of the New Trusts, and holds no interest, contingent or otherwise, in the assets of the New Trusts. The power to add or remove beneficiaries of the New Trusts is held by the New Trustees and not by Melnyk. Furthermore, pursuant to the trust deeds of the New Trusts, Melnyk cannot be a beneficiary of the New Trusts as long as they hold shares of Biovail.

24. Melnyk represents that, to his knowledge, there has been no trading of the shares of Biovail, or derivative transactions directly or indirectly involving Biovail securities, in the Accounts since May of 2004, other than sales of Biovail shares required to:

- (a) fund a charitable donation; and
- (b) pay certain administrative expenses of the Trusts and New Trusts.

25. As at February 2006, the Canadian and U.S. Accounts held 9,408,232 Biovail common shares, as particularized below:

- (a) 827,500 shares in the Southridge Account;
- (b) 2,113,385 shares in the Southridge Account at Moness Crespi;
- (c) 676,566 shares in the Conset Account;
- (d) 3,495,841 shares in the Congor Account; and
- (e) 2,294,940 shares in the Archer Account at Lehman Brothers.

To Melnyk’s knowledge, the accounts do not hold any derivatives in respect of Biovail securities.

Melnyk's Relationships With and Activities Involving the Trusts

26. From the time that the Trusts were established in 1996, Melnyk maintained certain relationships with the Trusts and engaged in certain activities involving the Trusts, including the following:

- (a) Melnyk was the settlor of each of the Trusts;
- (b) Prior to August of 2000, Melnyk and members of Melnyk's family were beneficiaries of each of the Trusts. Thereafter, as explained more fully below, Melnyk revocably disclaimed his interest in the Congor and Conset Trusts, but had the power to re-acquire his interest in those Trusts at any time;
- (c) Melnyk was asked for and provided recommendations to the Trustees in relation to the opening of the Accounts and, on occasion, concerning the transfer of Biovail securities between the Accounts;
- (d) On a few occasions in 2002 and 2003, Melnyk was asked for and provided his recommendations to the Trustees in relation to certain acquisitions or dispositions of Biovail securities held in the Accounts;
- (e) As set out above, at the time of the creation of the Trusts in 1996 and the New Trusts in 2004 or 2005, Melnyk recommended that assets be transferred into and out of the Trusts, and the Trustees complied with these requests;
- (f) Between April 1998 and December 2003, Melnyk requested and received from the Trusts unsecured loans in the amounts of US\$ 88,375,778 and CDN\$ 4,050,830. Melnyk provided the Investment Companies with promissory notes requiring him to repay the loans together with interest calculated at a rate of 6% per annum. The repayment dates of the loans have been extended several times. Melnyk represents that his requests for loans were declined by the Trustees from time to time, and that from time to time he has repaid amounts outstanding on these loans.

- (g) As at December 22, 2003, the outstanding amounts owed by Melnyk on these loans were US\$ 100,184,324.39 and CDN\$ 5,150,864.85. Melnyk knew or should have known that his requests for loans in certain circumstances could reasonably be expected to trigger sales by the Trusts of Biovail securities.

Reporting Requirements under Ontario Securities Law

27. The term “insider” is defined in subsection 1(1) of the Act to include a director and senior officer of the reporting issuer, as well as any person who beneficially owns, directly or indirectly, or exercises control or direction over more than 10% of the voting securities of the reporting issuer.

28. Multilateral Instrument 55-103 *Insider Reporting for Certain Derivative Transactions* (“MI 55-103”) sets out certain insider reporting requirements. In particular, subsection 2.1 provides as follows:

Section 2.1 Reporting Requirement – If an insider of a reporting issuer

- (a) enters into, materially amends or terminates an agreement, arrangement or understanding of any nature or kind, the effect of which is to alter, directly or indirectly,
- (i) the insider’s economic interest in a security of the reporting issuer, or
 - (ii) the insider’s economic exposure to the reporting issuer; and
- (b) the insider is not otherwise required to file an insider report in respect of such event under any provision of Canadian securities legislation, then the insider shall file a report in accordance with Section 3.1 of this Instrument.

29. MI 55-103 came into force on February 28, 2004. Sections 2.3 and 3.2 of MI 55-103 require an insider to disclose the existence and material terms of pre-existing arrangements that were entered into prior to the effective date and continue in force after the effective date:

2.3 Existing agreements which continue in force – If an insider of a reporting issuer, prior to the effective date of this Instrument, entered into an agreement, arrangement or understanding in respect of which

- (a) the insider would have been required to file an insider report under this Instrument if the agreement, arrangement or understanding had been entered into on or after the effective date, and
- (b) the agreement, arrangement or understanding remains in effect on or after the effective date of this Instrument,

then the insider shall file a report in accordance with Section 3.2 of this Instrument.

...

3.2 A person or company who is required under Section 2.3 of this Instrument to file a report shall, within 10 days, or such shorter period as may be prescribed, from the effective date of this Instrument, file a report in the form prescribed for insider reports under securities legislation disclosing the existence and material terms of the agreement, arrangement or understanding.

30. The establishment of the Trusts and the transfer of Biovail securities to the Trusts in 1996, coupled with the fact that such arrangements remained in effect on and after February 28, 2004, together constitute a triggering event for disclosure for the purposes of the supplemental insider reporting requirement contained in MI 55-103.

31. In addition, Melnyk should have disclosed under Ontario law:

- (a) his ability to obtain loans from the Trusts, which in certain circumstances could reasonably be expected to trigger sales by the Trusts of Biovail securities; and
- (b) the fact that significant loans were outstanding

as these constituted material terms of the Trusts' arrangements.

32. Accordingly, Melnyk was required, pursuant to sections 2.3 and 3.2 of MI 55-103, to file a report disclosing the existence and material terms of the Trusts within 10 days of February 28, 2004. In failing to do so, he violated Ontario securities law.

33. On several occasions after the date MI 55-103 came into force, Melnyk took further actions in connection with the Trusts and the New Trusts that also triggered a supplementary insider reporting requirement pursuant to section 2.1 of MI 55-103. These actions included certain steps

associated with the formation of the New Trusts and the transfer of Biovail shares to the New Trusts.

34. In failing to file reports in respect of such subsequent actions, he violated Ontario securities law.

Biovail Management Proxy Circulars: 2002 and 2003

35. In May of 2002 and 2003, Biovail prepared management proxy circulars to solicit proxies to be used at its annual meetings of shareholders held on June 25, 2002 and June 20, 2003, respectively.

Melnyk's Failure to Make Required Disclosures in the 2002 and 2003 Circulars

36. Biovail's management proxy circular dated May 14, 2002 (the "2002 Circular") disclosed information concerning the number of Biovail common shares beneficially owned directly or indirectly or over which control or direction was exercised by the company's directors as at April 30, 2002. As a director, Melnyk was required to provide complete and accurate information to Biovail to be disclosed in the 2002 Circular.

37. The 2002 Circular stated that Melnyk beneficially owned directly or indirectly or exercised control or direction over 25,097,816 Biovail common shares as at April 30, 2002, which represented 16.7% of the outstanding common shares of Biovail. However, the 2002 Circular did not disclose the existence and material terms of the Trusts, including the fact that the Trusts held an additional 12,674,603 Biovail common shares.

38. Biovail's management proxy circular dated May 15, 2003 (the "2003 Circular") disclosed information concerning the number of Biovail common shares beneficially owned directly or indirectly or over which control or direction was exercised by directors as at April 30, 2003. As a director, Melnyk was required to provide complete and accurate information to Biovail to be disclosed in the 2003 Circular.

39. The 2003 Circular stated that Melnyk beneficially owned directly or indirectly or exercised control or direction over 26,101,816 Biovail common shares as at April 30, 2003, representing 16.5% of the outstanding common shares of Biovail. However, the 2003 Circular did not disclose the existence and material terms of the Trusts, including the fact that the Trusts held an additional 12,693,917 Biovail common shares.

40. The 2002 and 2003 Circulars also did not disclose the existence of the loans made by the Trusts to Melnyk, as well as Melnyk's ability to obtain these loans from the Trusts which would, in certain circumstances, reasonably be expected to trigger sales of Biovail shares.

41. This information outlined above had not previously been disclosed in any of Biovail's management circulars between 1996 and 2001, and was not disclosed in the 2004, 2005 and 2006 Biovail management circulars.

42. Melnyk engaged in conduct that was contrary to the public interest when he failed to provide complete and accurate information to Biovail regarding the Trusts' and the New Trusts' holdings of Biovail securities. As a consequence, while Biovail's management circulars between 1996 and 2006 (the "Management Circulars") did disclose the number of Biovail securities which Melnyk beneficially owned directly or indirectly or over which he exercised control or direction, the Management Circulars did not disclose:

- (a) Melnyk's relationship with the Trusts and New Trusts; and
- (b) The number of Biovail securities held by the Trusts and the New Trusts.

43. The disclosure contained in the Management Circulars was therefore incomplete and misleading.

Trading in the Accounts during Biovail Trading Blackout Periods: 2002 and 2003

44. Biovail adopted a policy effective December 5, 2001 entitled "Insider Trading, Reporting and Blackout Policy". The Biovail Insider Trading, Reporting and Blackout Policy stated, among other things, that:

It is illegal for any director, officer or employee of the Company or any subsidiary of the Company to trade in the securities of the Company while in the possession of material non-public information concerning the Company. It is also illegal for any director, officer or employee of the Company to give material non-public information to others who may trade on the basis of that information. In order to comply with applicable securities laws governing (i) trading in Company securities while in the possession of material non-public information concerning the Company and (ii) tipping or disclosing material non-public information to outsiders, and in order to prevent the appearance of improper trading or tipping, the Company has adopted its Insider Trading Policy for all of its directors, officers and employees, members of their families and others living in their households, and investment partnerships and other entities (such as trusts and corporations) over which such directors, officers or employees have or share voting or investment control.

Directors, officers and employees are responsible for ensuring compliance by their families and other members of their households and entities over which they exercise voting or investment control.

This Insider Trading Policy applies to any and all transactions in the Company's securities, including its common shares and options to purchase common shares, warrants and any other type of securities that the Company may issue in the future.

Black-Out Periods

There is a mandatory seven (7) days blackout period for all employees of the Company prior to the release of quarterly and annual financial statements which shall continue until two (2) trading days after the time such information has been released to the public.

Additionally, an employee who is working on a particular transaction may be prohibited from selling securities of the Company for an indefinite period. You will be advised if the Company believes that you should not trade in securities of the Company as a result of your involvement in a particular transaction.

No insider or employee shall trade in shares of Biovail until two trading days after the issuance of any news release in which material information is conveyed.

45. During 2002, there were three periods in which the members of the Biovail board of directors were prohibited by this policy from trading in Biovail securities ("Biovail Blackout Periods"). The Biovail Blackout Periods in 2002 were as follows: February 7 to April 29, July 16 to July 29, and October 18 to October 31, 2002.

46. During 2003, there were four Biovail Blackout Periods. These were: February 21 to March 6, April 18 to May 1, July 14 to July 31, and September 30 to November 3, 2003.

47. In 2002, Rowan engaged in trading of Biovail securities in the Watt Carmichael Accounts during each of the Biovail Blackout Periods. Specifically, there were acquisitions in excess of 2,000,000 Biovail common shares, and dispositions in excess of 2,000,000 Biovail common shares during the 2002 Blackout Periods.

48. In 2003, Rowan engaged in trading of Biovail securities in the Watt Carmichael Accounts during each of the Biovail Blackout Periods. Specifically, there were acquisitions in excess of 2,400,000 Biovail common shares and acquisitions of 10,000 call options (in respect of common shares of Biovail). Further, 300,000 Biovail call options (in respect of common shares of Biovail) were exercised, and in excess of 2,700,000 Biovail common shares were sold.

49. During the material time and from time to time, Melnyk or his assistant received copies of the monthly account statements sent to the Trustees for all of the Accounts including the Watt Carmichael Accounts. Melnyk represents that on occasion, copies of these statements were sent to him or his assistant several months after they were generated. Melnyk further represents that he typically reviewed summaries of the statements rather than the statements themselves. In circumstances when Melnyk had reviewed detailed trading information contained in the brokerage statements, he either knew or should have known that Rowan had engaged in trading in Biovail securities in the Watt Carmichael Accounts during the Biovail Blackout Periods in 2002 and 2003.

Melnyk's Conduct Regarding Blackout Periods Contrary to the Public Interest

50. In light of Melnyk's positions as Chairman of the Board and CEO of Biovail and in light of Biovail's Insider Trading, Reporting and Blackout Policy, Melnyk engaged in conduct contrary to the public interest by permitting such substantial trading in shares of Biovail by offshore trusts established by him for the benefit of his family without taking greater steps to ensure whether there was full compliance with applicable securities laws and by failing to direct Rowan to refrain from trading in Biovail common shares during the Biovail Blackout Periods.

51. Further, Melnyk engaged in conduct contrary to the public interest in that during the Biovail Blackout Period in October of 2003, he was asked for and provided his recommendations in respect of several trades of publicly traded securities that had been proposed to the Archer

Trustees by Lehman Brothers. One of these proposed trades involved a purchase of 300,000 Biovail shares in the Archer Account held there. Melnyk indicated that he was “o.k.” with the proposed investment and the purchase was made.

52. Also, on October 22, 2003, Melnyk’s assistant arranged for a matched trade in Biovail shares between the BMO Archer Account and the Conset Account wherein 360,000 Biovail shares were sold by Archer to Conset in order to generate proceeds for a loan to Melnyk of US\$ 10,000,000. Melnyk should have known that his request for this loan might trigger a sale of Biovail securities.

Communications with IDA Staff

53. On January 21, 2000, the IDA notified Watt Carmichael that it had completed a sales compliance review. In the course of this review, the IDA had requested various documents and information concerning the Conset and Congor Accounts. Specifically, the IDA requested that Watt Carmichael provide copies of the trust agreements for both the Conset and Congor Accounts and name the beneficial owners of these accounts.

54. On May 24, 2000, the IDA requested further information from Watt Carmichael in relation to these items. In its request, the IDA stated:

As mentioned in our 1999 SCR (Sales Compliance Review of Watt Carmichael) the activities surrounding Mr. Eugene Melnyk’s involvement in the Conset and Congor accounts do raise concerns regarding the beneficial ownership of these accounts since it appears that the Biovail holdings in these accounts may form part of Mr. Melnyk’s control position.

55. Following receipt of the IDA request, Rowan sent a memo dated June 7, 2000 to Melnyk enclosing a copy of the IDA’s May 24, 2000 request. In the memo, Rowan wrote:

Eugene, can we provide the IDA with some suitable response to get them to go away....If you do not wish to disclose the beneficiaries to the IDA (I don’t see any harm in doing so), is there some declaration we can provide the IDA which states that Eugene Melnyk is not a beneficiary of the trust and therefore has no beneficial ownership in them. If we can provide the above, I am confident that we can get the IDA to go away. Please call me regarding this.

56. At the time of Rowan's memo, Melnyk was listed as a beneficiary in the deeds of settlement for each of the Trusts. Subsequent to Rowan's memo, Melnyk's assistant asked for written confirmation from the Congor and Conset Trustees that he was not a beneficiary of either of the Congor or Conset Trusts.

57. In response to such requests, Melnyk received a letter from the Congor Trustees dated July 17, 2000 listing Melnyk as a beneficiary of the Congor Trust.

58. The Conset Trustees also responded on July 17, 2000 with a letter listing the beneficiaries of that trust except for Melnyk. At that time, however, the Conset deed of settlement specifically listed Melnyk as a beneficiary of the Conset trust.

59. On July 17, 2000, Melnyk forwarded the letters from the Congor and Conset Trustees to Rowan.

60. In letters dated July 24, 2000 from Melnyk to each of the Conset and Congor Trustees, Melnyk purported to revocably disclaim his interest in the Conset and Congor Trusts. Melnyk's letter to the Conset Trustees stated:

Dear Sirs:

As you are aware, I am the Settlor and a member of the Discretionary Class of Beneficiaries of the Conset Trust which was created by Deed of Settlement dated 23 September 1996. Clause 12(a) of the Deed of Settlement permits a beneficiary to disclaim his interest in the Settlement in whole or in part.

Pursuant to my power, and any other power which would enable me to do so, I hereby revocably disclaim my entire interest in the Conset Trust. **Please note that this disclaimer of interest is revocable and may be revoked by me by letter in writing to you.**

Please sign and date a copy of this letter acknowledging your receipt and agreement.

Yours sincerely, **[emphasis added]**

61. A substantially similar letter was sent to the Congor Trustees.

62. On August 1, 2000, Melnyk's U.S. counsel, Andrew J. Levander, provided Watt Carmichael with a letter addressed to Chris Dimitropoulos, the Manager of Sales Compliance for the IDA (the "August Letter") which stated:

Dear Mr. Dimitropoulos:

We have been asked to respond to your letter dated May 24, 2000 regarding the identity of the "beneficial owner(s) of the Congor and Conset accounts at Watt Carmichael Inc. As you are undoubtedly aware, the actual owners of those two accounts are, respectively, the Congor Trust and the Conset Trust. Both of those trusts were settled i.e. established by Eugene Melnyk under the laws of the Cayman Islands approximately four years ago. Each trust has as its trustee a different major financial institution: Caledonian Bank & Trust Limited is the trustee of the Conset Trust and Coutts (Cayman) Limited, the Cayman subsidiary of the Coutts Group which, in turn, is part of NatWest, is the trustee of the Congor Trust.

Under the law of the Cayman Islands, which governs those trusts, the identity of the beneficiaries of the Trusts is a matter of strictest confidence. Nonetheless, we have recently received written confirmation from each of the respective trustees of the Congor Trust and the Conset Trust regarding the current beneficiaries to the Trusts, and **we have been authorized to confirm that Eugene Melnyk is not a beneficiary of either Trust.** Nor, of course, is he a trustee of the Trusts.

Respectfully submitted, [emphasis added]

63. On August 10, 2000, G. Michael McKenney, the Vice-President of Compliance and Operations of Watt Carmichael wrote to Mr. Dimitropoulos to forward Mr. Levander's letter of August 1, 2000. He stated:

Dear Mr. Dimitropoulos:

Re: 1999 – Sales Compliance Review

I am responding on behalf of Mr. Harry J. Carmichael.

ITEM 2.3 – Trading Concerns

Please find a letter to your attention from Mr. Andrew J. Levander of Swidler Berlin Shereff Friedman, LLP, New York. Mr. Levander concludes verbally that because Mr. Melnyk is not a beneficiary or a trustee of Conset or Congor that the shares are not Control Stock.

Mr. Levander let it be known that he would be happy to talk to you about the contents of the letter for further clarification and any other issues related to your concerns about Congor and Conset.

The account suspension remains in place.

Yours truly,

64. Thereafter, Melnyk represents that there was no further communication between the IDA and either Levander or him.

65. Melnyk knew or should have known that the August Letter would be provided to the IDA by Watt Carmichael, and that it contained statements that were incomplete and misleading in responding to the IDA's inquiry.

66. In particular, the IDA was not informed of the following facts: that Melnyk had previously been listed as a beneficiary in the deeds of settlement for the Congor and Conset Trusts, the identity of the other beneficiaries of the Trusts (which included members of Melnyk's immediate family); and the fact that Melnyk had revocably (rather than irrevocably) disclaimed his interest in the Congor and Conset Trusts on July 24, 2000 and could therefore reacquire his interest in those Trusts at any time.

67. Melnyk engaged in conduct contrary to the public interest in authorizing his U.S. counsel to send the August Letter. In the circumstances in which it was sent, the August Letter was incomplete and misleading.

V. POSITION OF MELNYK

68. In June of 2004, Melnyk (then Chairman and CEO of Biovail) announced Biovail's intention to separate those two roles. In October of 2004, Biovail announced the appointment of Dr. Douglas Squires as CEO. Melnyk became Executive Chairman of Biovail at that time and in 2006 became its Chairman.

69. Later in 2004, at Melnyk's direction, Biovail initiated a full-scale corporate governance enhancement initiative. To ensure that Biovail is able to draw upon the most current practices, Biovail has also retained the services of leading experts and consulting firms to assist it in the enhancement of its governance practices. The governance enhancement measures approved to date have resulted in changes to Biovail's Board structure, composition, processes, practices and recruitment, and fall under three broad headings:

- (a) defining the responsibilities of the Board and management;
- (b) enhancing Board effectiveness; and
- (c) increasing transparency to, and communications with, shareholders.

70. In 2005, Biovail enhanced the independence and financial expertise of its Board and audit committee by recruiting two new directors with extensive experience as public company chief financial officers.

71. Biovail has also enhanced its legal and compliance capabilities. Among other things, it has recruited highly experienced lawyers to the positions of General Counsel and Chief Compliance Officer. It has adopted a corporate disclosure policy that reflects current standards for public companies and has created a disclosure committee that meets regularly and reports to the Board on its activities.

72. Biovail has adopted a new trading black out policy and a new insider trading policy, both of which have been reviewed and approved by the Board.

VI. TERMS OF SETTLEMENT

73. Melnyk agrees to the following terms of settlement if this agreement is approved by the Commission:

- (a) the Commission will make an order pursuant to paragraph 127(1)9 of the Act, requiring that Melnyk pay an administrative penalty in the amount of \$750,000. This payment will be made by certified cheque at the time of the Commission's approval of this Settlement Agreement. This payment will be made by Melnyk personally and he will not be reimbursed for or receive a contribution towards this payment from any other person or company. This payment will 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 paragraph 127(1)8 that Melnyk is prohibited from acting as a director of Biovail for a period of one year beginning from June 30, 2007;

(c) the Commission will make an order under paragraph 127(1)6 of the Act that Melnyk be reprimanded;

(d) the Commission will make an order under subsection 127.1(1) of the Act that Melnyk make a payment to the Commission in the amount of \$250,000 representing a portion of the costs of the Commission's investigation in relation to this proceeding. This payment will be made by certified cheque at the time of the Commission's approval of this Settlement Agreement. This payment will be made by Melnyk personally and he will not be reimbursed for or receive a contribution towards this payment from any other person or company;

(e) Melnyk will do the following things:

(i) Melnyk will continue to cooperate with the Commission and its Staff in this matter, and will appear and give truthful and accurate testimony in any investigation or proceeding under the Act relating to this matter at the request of the Commission or its Staff;

(ii) Melnyk will take all necessary steps within his control, including seeking to obtain the agreement of the trustees of the New Trusts (the "New Trustees") and, to the extent necessary, the agreement of the Trustees, to ensure that:

(A) the New Trustees will establish and maintain brokerage accounts at no more than two IDA member firms in relation to the investment companies owned by the New Trusts. These firms will not include either Watt Carmichael or BMO Nesbitt Burns, will be independent of Biovail and, in particular, will not employ any officer, director or member of management of Biovail. The Biovail securities owned by the New Trusts will be held in those accounts;

(B) the New Trusts (including any other trust established by, on behalf of, or for the benefit of, Melnyk or any associate (as that term is defined in the Act) of Melnyk that holds Biovail securities or derivatives in respect of Biovail securities) will provide an undertaking in form and content acceptable to Staff or the Commission that the New Trusts will treat themselves as if they were insiders of Biovail under the Act and file insider reports under section 107 of the Act in respect of all transactions by the New Trusts in Biovail securities or in derivatives in respect of Biovail securities. The form and content of the initial insider reports of the New Trusts must be acceptable to Staff or the Commission. The undertaking will be signed by authorized representatives of the New Trusts. If the New Trusts do not give this undertaking, Melnyk will make such other arrangements as may be acceptable to Staff or the Commission; and

(C) to the extent possible the steps referred to in paragraphs (A) and (B) above will be completed within 60 days of the date of the order approving this settlement agreement or such further period as Staff or the Commission may authorize;

(iii) Within 30 days of the date of the order approving this settlement agreement or such other date as Staff or the Commission may authorize (the “Deadline”), Melnyk will file insider reports under MI 55-103 on the System for Electronic Disclosure by Insiders (“SEDI”) under his name disclosing the existence and material terms of the Trusts and the New Trusts (the “Offshore Trust Arrangements”) as of February 28, 2004 in accordance with the terms set out in sections 1, 2 and 3 of Schedule “B” to this Settlement Agreement (or in any other manner approved in advance by Staff or the Commission);

(iv) By the Deadline, Melnyk will take all necessary steps within his control to cause Biovail to file a press release on SEDAR as described below. If Biovail does not file this press release, Melnyk will make such other arrangements as may

be acceptable to Staff or the Commission. The press release's form and content must be acceptable to Staff or the Commission. The press release will describe:

- (A) the terms of this Settlement Agreement;
 - (B) the existence and material terms of the Offshore Trust Arrangements;
 - (C) the fact that the Offshore Trust Arrangements include trusts that have been settled by Melnyk;
 - (D) the fact that insider reports in relation to the Offshore Trust Arrangements can be found on SEDI under Melnyk's name; and
 - (E) the terms of the call options and other derivatives in respect of Biovail securities held by the Trusts on February 28, 2004 (including the number of underlying securities and the range of exercise prices and expiry dates);
- (v) By the Deadline, Melnyk will:
- (A) file a comprehensive report with the Office of the Secretary to the Commission based on information available to Melnyk after due inquiry containing a list of all trades in Biovail common shares and Biovail call options and other derivatives in respect of Biovail securities entered into by the Trusts and the New Trusts for the period from January 1, 2002 to the Deadline (the "Report"); and
 - (B) take all necessary steps within his control to ensure that Biovail issues a press release in respect of the Report and files a copy of the press release on SEDAR with a copy of the Report attached as an appendix. If Biovail does not file this press release, Melnyk

will make such other arrangements as may be acceptable to Staff or the Commission;

(vi) For the purposes of this Settlement Agreement, a “Material Amendment” is defined as:

- (A) a termination of any of the Offshore Trust Arrangements or any similar arrangement established by, on behalf of or for the benefit of Melnyk or any associate (as that term is defined in the Act) of Melnyk (an “Alternate Trust Arrangement”) for so long as Biovail securities or derivatives in respect of Biovail securities are held, directly or indirectly, in such Offshore Trust Arrangement or Alternate Trust Arrangement;
- (B) any entering into by Melnyk of an Alternate Trust Arrangement in respect of Biovail securities or derivatives in respect of Biovail securities;
- (C) any transaction involving, directly or indirectly, Biovail securities or derivatives in respect of Biovail securities entered into by a Trust, New Trust or Alternate Trust Arrangement as a result of a recommendation by Melnyk or as a result of an opportunity provided by Melnyk;
- (D) any change in the holdings of a New Trust (or any successor thereto) that represents an acquisition or disposition of 5% or more of the aggregate number of the Biovail common shares held by that New Trust (or any successor thereto); or
- (E) any change in the holdings of a New Trust (or any successor thereto) that represents in the aggregate, over a 12-month period, a change of 10% or more of the aggregate number of the Biovail

common shares held by that New Trust (or any successor thereto) as of the beginning of such 12 month period;

If, however, Melnyk does not know, and in the exercise of reasonable diligence could not have known of a change described in clauses (D) and (E) above, such change will not be considered a Material Amendment until such time as Melnyk knows or in the exercise of reasonable diligence could be expected to know of such change;

(vii) By the Deadline, Melnyk will file insider reports under MI 55-103 on SEDI under his name disclosing each Material Amendment that occurred between February 28, 2004 and the Deadline in accordance with terms set out in section 4 of the Schedule "B" to this Settlement Agreement (or in any other manner approved in advance by Staff or the Commission);

(viii) If at any time after the Deadline there is a Material Amendment, Melnyk will within 10 days (or such shorter period as may be prescribed) file insider reports under MI 55-103 on SEDI under his name disclosing the Material Amendment in accordance with terms set out in section 5 of the Schedule "B" to this Settlement Agreement (or in any other manner approved in advance by Staff or the Commission);

(ix) Melnyk will take all necessary steps within his control to ensure that future Biovail disclosure documents, including Biovail proxy circulars, will describe the existence and material terms of the Offshore Trust Arrangements in which Biovail securities are held, the number of Biovail common shares owned by the New Trusts and will state that the Offshore Trust Arrangements in which Biovail securities are held are trusts established by Melnyk;

(x) Melnyk will take all necessary steps within his control to arrange for the New Trustees to provide him with the information required to fulfill his

obligations under paragraphs (iii), (iv), (v), (vi), (vii), (viii) and (ix) above. Melnyk will provide a copy of this agreement to the New Trustees;

(xi) To the extent that any New Trust (or its successor) beneficially owns, directly or indirectly, or exercises control or direction (or shared control or direction) of 10% or more of any class of the securities of Biovail, Melnyk will, upon becoming aware of such fact, take all necessary steps within his control to ensure that the New Trustees comply with all applicable requirements contained in Ontario securities legislation, including compliance with insider reporting requirements under section 107 of the Act and MI 55-103 and early warning requirements under Ontario securities law;

(xii) On a going-forward basis, Melnyk will not directly or indirectly exercise control or direction (including shared control or direction) over any Biovail securities (or derivatives in respect of Biovail securities) owned or held by the New Trusts (or their successors) in any manner whatsoever without filing insider reports under section 107 of the Act. For greater clarity, Melnyk acknowledges on a going-forward basis that he will have exercised control or direction (including shared control or direction) over the Biovail securities (or derivatives in respect of Biovail securities) for the purposes of section 107 of the Act if he:

- (A) directly or indirectly exercises voting control over such Biovail securities or attempts to influence voting decisions by the New Trustees (or their successors) regarding Biovail securities in any manner whatsoever. However, Melnyk will not be required to file an insider report solely because Biovail sends out a management information circular in connection with a solicitation of proxies and Melnyk is a member of Biovail's management or its Board of Directors at the time that the circular is sent;
- (B) directly or indirectly exercises investment power over such Biovail securities (or derivatives in respect of Biovail securities) or

attempts to influence investment decisions regarding Biovail securities (or derivatives in respect of Biovail securities) by the New Trustees (or their successors) in any manner whatsoever, including influencing decisions to buy, sell or transfer such Biovail securities or (derivatives in respect of Biovail securities); or

- (C) directly or indirectly requests loans or cash payments from the Trustees or the New Trustees (or their successors) or attempts to influence the Trustees or the New Trustees (or their successors) to make loans or cash payments to him or his associates or any other person;

(xiii) Notwithstanding paragraph (xii) above, Melnyk may:

- (A) make good faith recommendations to the Trustees and the New Trustees regarding donations to charitable endeavours or causes or distributions to family members or others who are beneficiaries of the Trusts or the New Trusts (other than himself); and
- (B) give the Trustees and the New Trustees the opportunity to sell Biovail securities as part of a secondary offering.

These actions, if acted upon by the Trustees or the New Trustees, will constitute a Material Amendment, and Melnyk will file an insider report under MI 55-103 disclosing them as set out in paragraph (viii) above;

(xiv) By the Deadline, Melnyk will send a letter to the IDA in the form attached as Schedule “C”, apologizing for the conduct summarized under the heading “Communications with IDA Staff”, above; and

(xv) The obligations of Melnyk contained in subparagraphs (viii), (ix), (xi) and (xiii) above and the obligations of the New Trusts contained in the undertaking

referred to in subparagraph (ii)(B) above will only apply to Melnyk or the New Trusts as long as any Offshore Trust Arrangement or Alternate Trust Arrangement holds Biovail securities or derivatives in respect of Biovail securities and Melnyk is an insider of Biovail or Melnyk's direct and indirect holdings of Biovail securities, combined with the Biovail securities held by the Offshore Trust Arrangements and the Alternate Trust Arrangements represent more than 10% of any class of the outstanding shares of Biovail.

74. Melnyk represents to Staff and the Commission that he does not own directly or indirectly or have any direct or indirect beneficial interest in, nor has he settled any trust owning directly or indirectly any Biovail securities or derivatives in respect of Biovail securities not previously disclosed to Staff.

75. Melnyk acknowledges that Staff continue to conduct an investigation in relation to his conduct concerning matters that are not addressed in the Statement of Allegations or in this settlement agreement.

VII. STAFF COMMITMENT

76. If this settlement agreement is approved by the Commission, Staff will not initiate any other proceeding under the Act against Melnyk in relation to the matters set out or referred to or described in the Statement of Allegations or in this settlement agreement, subject to the provisions contained in paragraph 77 below.

77. If this settlement agreement is approved by the Commission, and at any subsequent time Melnyk fails to honour the terms and undertakings contained in Parts VI, VIII and IX of this agreement, Staff reserve the right to bring proceedings under Ontario securities law against Melnyk based on the facts set out the Statement of Allegations, as well as the breach of the terms and undertakings.

VIII. PROCEDURE FOR APPROVAL OF SETTLEMENT

78. Approval of this settlement agreement will be sought at a public hearing of the Commission scheduled for a date to be determined by Staff, Melnyk and the Secretary to the Commission (the "Settlement Hearing"). Melnyk will attend the Settlement Hearing in person. Melnyk will request that the portion of the Settlement Hearing dealing with the review of this settlement agreement be held in camera, and Staff will not oppose this request.

79. Staff and Melnyk may refer to any part, or all, of this settlement agreement at the Settlement Hearing. Staff and Melnyk agree that this 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.

80. If this settlement agreement is approved by the Commission, Staff and Melnyk undertake that they will not make any statement inconsistent with this settlement agreement.

81. If this settlement agreement is approved by the Commission, Melnyk agrees to waive his right to a full hearing, judicial review or appeal of this matter.

82. Whether or not this settlement agreement is approved by the Commission, Melnyk undertakes that he will not, in any proceeding, refer to or rely upon this 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. He may, however, rely upon this settlement agreement in any proceeding relating to Staff's commitment set out in paragraph 76 above.

83. If, for any reason whatsoever, this settlement agreement is not approved by the Commission, or an order in the form attached as Schedule "A" is not made by the Commission, each of Staff and Melnyk will be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations in the Statement of Allegations, unaffected by this settlement agreement or the settlement negotiations.

IX. DISCLOSURE OF SETTLEMENT AGREEMENT

84. This settlement agreement and its terms will be treated as confidential by Staff and Melnyk until approved by the Commission. The terms of this settlement agreement will be treated as confidential forever if this settlement agreement is not approved by the Commission, except with the written consent of both Staff and Melnyk or as may be required by law.

85. Notwithstanding the foregoing, Melnyk may disclose this settlement agreement and its terms to his legal, accounting, financial and other advisors and to his lenders and to others who are advising or assisting Melnyk in relation to the matters set out in the Statement of Allegations, as may be necessary or desirable to give effect to the terms of settlement set out above, all of whom shall be informed of its confidential nature.

86. Any obligations of confidentiality will terminate upon approval of this settlement agreement by the Commission.

X. EXECUTION OF SETTLEMENT AGREEMENT

87. The settlement agreement may be signed in one or more counterparts which together will constitute a binding agreement.

88. A facsimile copy of any signature will be as effective as an original signature.

DATED this 17th day of May, 2007

“James Doris”
Witness:

“Eugene N. Melnyk”
Eugene N. Melnyk

DATED this 16th day of May, 2007

“Michael Watson”
Michael Watson
Director, Enforcement Branch
Ontario Securities Commission