

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

-AND-

**IN THE MATTER OF
NELSON FINANCIAL GROUP LTD., NELSON INVESTMENT GROUP LTD.,
MARC D. BOUTET, STEPHANIE LOCKMAN SOBOL,
PAUL MANUEL TORRES, H. W. PETER KNOLL**

SETTLEMENT AGREEMENT

PART I – INTRODUCTION

1. The Ontario Securities Commission (the “Commission”) will issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S-5, as amended (the “Act”), it is in the public interest for the Commission to make certain orders in respect of Nelson Financial Group Ltd. [the “Respondent”].

PART II – JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission (“Staff”) agree to recommend settlement of the proceeding commenced by Notice of Hearing dated May 12, 2010 (the “Proceeding”) against the Respondent according to the terms and conditions set out in Part V of this Settlement Agreement. The Respondent agrees to the making of an order in the form attached as Schedule “A”, based on the facts set out below.

PART III – AGREED FACTS

3. For this proceeding, and any other regulatory proceeding commenced by a securities regulatory authority, the Respondent agrees with the facts as set out in Part III of this Settlement Agreement.

OVERVIEW

4. In this Proceeding, Staff allege an illegal distribution of securities in breach of the Securities Act, R.S.O. 1990, c.S.5, as amended (the “Act”), by the respondent issuer Nelson Financial Group Ltd. (“Nelson Financial”), its related investment company Nelson Investment Group Ltd. (“Nelson Investment”), the directing mind of these entities Marc D. Boutet (“Boutet”), and by the other individually named respondents, H. W. Peter Knoll (“Knoll”), Paul Manuel Torres (“Torres”) and Stephanie Lockman Sobol (“Sobol”), who were employees and/or agents of Nelson Financial and/or Nelson Investment (collectively, the “Respondents”).
5. Between December 19, 2006 and January 31, 2010 (the “Material Time”), Nelson Financial, through Nelson Investment and/or its employees and agents, including the individual Respondents, raised investor funds of over \$50 million (net of redemptions) from approximately 500 Ontario investors by issuing non-prospectus qualified securities. Although Nelson Financial purported to rely upon the Accredited Investor Exemption (defined below) in selling securities of Nelson Financial, a significant percentage of investors were not accredited.
6. Throughout the Material Time, Nelson Financial operated at an increasing accumulated deficit and was unable to meet its obligations to investors without the receipt of new investor capital. In addition to its ongoing working capital requirements and contrary to express representations to investors about the use of their capital, Nelson Financial used investor funds that it had obtained in breach of the Act to pay other investors the returns on their investment and continued to accept additional investor funds in order to do so when Nelson Financial was

insolvent. As a means of inducing investors to remain invested in Nelson Financial and to make further investment in Nelson Financial through the purchase of additional securities, Nelson Financial, at the direction of Boutet, represented to investors that Nelson Financial was experiencing unprecedented financial success.

THE RESPONDENTS

7. Nelson Financial was incorporated in Ontario on September 14, 1990. Nelson Financial is not a reporting issuer and is not registered under the Act. Nelson Financial provides vendor assisted financing for the purchase of home consumable products, either through a vendor (or an aggregator of vendors), or directly to the consumer (the “Consumer Loans”).
8. Nelson Investment was incorporated in Ontario on September 14, 2006 for the sole purpose of selling securities of Nelson Financial. On December 19, 2006, Nelson Investment obtained registration under the Act as a dealer in the category of limited market dealer (“LMD”), now exempt market dealer (“EMD”).
9. Boutet is a resident of Ontario and was at all material times listed as the sole officer and director of Nelson Financial and Nelson Investment. Boutet was the directing mind of Nelson Financial and throughout the Material Time, acted as a salesperson at Nelson Investment and dealt with a select group of investors.
10. Throughout the Material Time, Boutet was registered with the Commission: first as a trading officer under the category of LMD with Nelson Investment and then subsequently as the ultimate designated person and chief compliance officer under the firm registration category of EMD.
11. Knoll was initially employed by Nelson Financial in the Fall of 2005 and was then later employed by Nelson Investment as a salesperson and its compliance officer from at least December 19, 2006 until September 15, 2009. In that period,

Knoll was registered with the Commission as a trading officer and the designated compliance officer of Nelson Investment. Upon Knoll's departure from Nelson Investment, Boutet took over as the compliance officer of Nelson Investment.

12. Torres was employed by and acted as a salesperson for Nelson Financial securities through Nelson Investment beginning in or around August 2008. Torres has been registered under the Act as a salesperson (now dealing representative) with Nelson Investment since November 13, 2008.
13. Sobol is employed by and was the de facto chief financial officer ("CFO") and de facto chief operating officer ("COO") of Nelson Financial and has been so employed since May 2008. Sobol was a key member of the management team of Nelson Financial. Sobol is not and has never been registered with the Commission.

BACKGROUND AND PARTICULARS

A. Illegal Distribution – Sections 25 and 53 of the Act

14. During the Material Time and through Nelson Investment, Nelson Financial raised approximately \$82 million through the sale and distribution of securities of Nelson Financial to (almost exclusively) Ontario investors. As of February 28, 2010, there were approximately 500 Nelson Financial investors with a total investment amount outstanding of approximately \$51.2 million, net of redemptions.
15. The securities sold and distributed by Nelson Financial were in the form of fixed term promissory notes and preferred shares and were offered by Nelson Financial at fixed/guaranteed annual rates of return of 12% and 10%, respectively, typically paid to investors on a monthly basis.
16. Nelson Investment, Boutet, Knoll and Torres each received commissions on the funds raised by the sale of Nelson Financial securities, including on amounts

“rolled over” by investors upon maturity of the promissory notes, i.e. where an investor opted to remain invested with Nelson Financial instead of redeeming their investment.

17. Throughout the Material Time, the scope of registration for Nelson Financial’s agent Nelson Investment and its sales staff, was limited to the sale of securities for which a prescribed exemption was properly available.
18. In distributing its securities, Nelson Financial purported to rely upon the accredited investor exemption as set out in section 2.3 of National Instrument 45-106 (the “AI Exemption”).
19. A significant percentage of the investors to whom securities were issued by Nelson Financial either did not meet the requirements necessary to qualify as accredited investors or there was insufficient information for Nelson Financial and its employees and/or agents to make that determination.
20. In many instances, Nelson Financial knew or ought to have known that the investors were not accredited and failed to make further inquiries to determine whether investors were, in fact, accredited.
21. For each investment up to October 2009, Boutet signed the respective offering and issuance documents in his capacity as President of Nelson Financial, including the term sheet for each promissory note/preferred share, and each promissory note issued by Nelson Financial. After that time and upon Boutet’s replacement of Knoll as the compliance officer of Nelson Investment, Sobol signed the issuance documents on behalf of Nelson Financial in lieu of Boutet. As of October 2009, Sobol was aware of significant compliance issues and/or deficiencies at Nelson Investment. In many instances, Boutet and Sobol knew or ought to have known that the investors were not accredited and failed to make further inquiries to determine whether investors were, in fact, accredited.

22. The trades in the securities of Nelson Financial were trades in securities not previously issued and were therefore distributions. No preliminary prospectus or prospectus was filed and no receipts were issued for them by the Director to qualify the trading of the securities.
23. Nelson Financial failed to ensure that the requirements of the AI Exemption were met and, therefore cannot rely on the AI Exemption in respect of many of the trades of Nelson Financial securities. Nelson Financial breached section 53 of the Act by distributing securities of Nelson Financial without a prospectus in circumstances where no exemption was properly available.
24. Further, as no exemption was properly available, the trades in the securities of Nelson Financial were beyond the registerable activity permitted by the category of registration under the Act and thus in breach of section 25 of the Act.

B. Conduct Contrary to the Public Interest

25. Nelson Financial relied on investors' funds for liquidity throughout the relevant period and raised new investor funds in a manner that was misleading to investors and abusive to the capital markets.
26. In soliciting investors, Nelson Financial expressly and implicitly represented to investors that Nelson Financial's business model, and consequently the success of the Nelson Financial investments, was premised upon applying investor capital to fund the Consumer Loans so that Nelson Financial would generate a higher return on the Consumer Loans than the returns promised to investors, as follows: a) investors' funds are used directly to fund the Consumer Loans; b) the Consumer Loans are extended at interest rates ranging from 29.9%; c) the fixed rates of return of 10-12% on the securities are paid to investors from the high interest rates earned on the Consumer Loans; and d) the "remaining spread" is used by Nelson Financial for "portfolio management, administration, underwriting and profit".

27. Throughout the Material Time, Nelson Financial made all of its monthly interest and “dividend” payments to investors and, for those who elected to redeem their investments upon maturity or otherwise, Nelson Financial repaid investors their full principal.
28. Throughout the Material Time, however, Nelson Financial’s operations did not generate sufficient revenue for it to cover its operating expenses or its interest, ”dividend”, and principal repayment obligations to investors. During the Material Time, Nelson Financial had no other source of financing available to it and was solely dependant on the receipt of new investor capital.
29. In addition to its ongoing working capital requirements and contrary to express representations to investors about the use of their capital, Nelson Financial used at least part of the new investor funds that it obtained in breach of ss. 25 and 53 of the Act to offset its growing accumulated deficit, to pay other investors their monthly returns and to repay investors their principal upon redemption. Nelson Financial’s continued acceptance of new investor funds in order to do meet its obligations to investors was abusive to investors in the circumstances.
30. At no time did Nelson Financial advise investors that it was insolvent or that their funds would be used either in whole or in part to pay or repay other investors. To the contrary, Nelson Investment and Nelson Financial, throughout the Material Time and at the direction of Boutet, made misrepresentations to investors that Nelson Financial was achieving record financial success as a means of inducing investors to remain invested in Nelson Financial and to make further investments in the securities of Nelson Financial.
31. On or about January 31, 2010, due to regulatory concerns raised by Staff following its on-site compliance review, Nelson Financial temporarily suspended the distribution of any of its securities.

32. On March 23, 2010, less than two months after suspending its capital raising activities, Nelson Financial sought and obtained an order of the Ontario Superior Court of Justice for creditor protection and restructuring under the *Companies' Creditors Arrangement Act* ("CCAA") on the basis that it was insolvent.

CCAA PROCEEDINGS AND REMOVAL OF BOUTET

33. By a further order of the Court dated June 15, 2010, representative counsel ("Representative Counsel") was appointed to represent and advise all persons holding promissory notes issued by Nelson Financial (the "Noteholders").
34. In or around July 19, 2010, Representative Counsel selected an advisory committee comprised of certain of the Noteholders for the purpose of advising and assisting Representative Counsel in the restructuring process under the *CCAA*.
35. Following its appointment, Representative Counsel, with the assistance of the Noteholders' Committee, took a number of steps to protect the Noteholders' interests, including seeking an order removing Boutet from the management of Nelson Financial on the basis, generally, that his continued involvement in managing Nelson Financial was detrimental to the Noteholders' interests in the restructuring process and going forward.
36. On November 22, 2010, the Court made an order approving certain heads of agreement (the "Heads of Agreement") between Boutet, A. John Page & Associates Inc. (as Monitor in the *CCAA* proceeding) and Representative Counsel which provided for the resignation of Boutet as a director, officer and employee of Nelson Financial and the appointment of Sherry Townsend, a member of the Noteholders' Committee, as the Interim Operating Officer of Nelson Financial to direct and manage the business operations of the company and to manage its efforts to develop a restructuring plan under the *CCAA*. Amongst other things and in addition to the above, the Heads of Agreement required Boutet to surrender

his ownership interest in Nelson Financial and to surrender and release any and all claims Boutet might otherwise have against Nelson Financial under the *CCAA*.

37. By Order entered March 4, 2011, the Ontario Superior Court ordered that the claims of Nelson Financial's creditors were to be paid in full before any claim by Nelson Financial's preferred shareholders are paid.
38. Pursuant to an Order dated March 4, 2011, the Ontario Superior Court accepted for filing a Plan of Compromise and Arrangement in respect of Nelson Financial. According to the Plan of Compromise and Arrangement "The effect of the Plan is that each Creditor holding a Proven Claim will receive a Capital Recovery Debenture in the principal amount of \$25.00, New Special Share with a stated capital and redemption value of \$25.00 and one Common Share with a stated capital of \$1.00 in full satisfaction of each \$100.00 of such Proven Claim." The purpose of the Plan of Compromise and Arrangement its to "enable the business ...to continue as a going concern" in its reorganized form. Pursuant to the Order, Nelson Financial sent to all Noteholders an Information Circular concerning these securities.
39. Pursuant to the Order of March 4 2011 of the Ontario Superior Court, Nelson Financial called a meeting of Noteholders (and other eligible creditors) for a meeting on April 16, 2011 to approve and sanction the Plan of Compromise and Arrangement that is Schedule A to the Order, and has obtained a Court date of April 20, 2011 for the Superior Court to review and sanction if approved the Plan of Compromise and Arrangement. The outcome of the vote of creditors is not currently known.

**PART IV – CONDUCT CONTRARY TO ONTARIO SECURITIES LAW
AND THE PUBLIC INTEREST**

40. By engaging in the conduct described above, Nelson Financial has breached Ontario securities law by contravening sections 25 and 53 of the Act and has acted contrary to the public interest.

PART V – TERMS OF SETTLEMENT

41. Nelson Financial agrees to the terms of settlement listed below.
42. The Commission will make an order pursuant to section 127(1) and section 127.1 of the Act that:
- (a) The settlement agreement is approved;
 - (b) Trading in any securities of or by Nelson Financial shall cease throughout the period of restructuring under the *CCAA*;
 - (c) Any exemptions contained in Ontario securities law shall not apply to Nelson Financial throughout the period of restructuring under the *CCAA*;
 - (d) The trading restrictions and removal of exemptions set out in (b) and (c) above shall expire upon the completion of the *CCAA* proceeding;
 - (e) Subsections (b) and (c) shall not apply to any securities to be issued, exchanged, redeemed or otherwise dealt with:
 - (i) pursuant to any order of the Court; or
 - (ii) in the course of transaction implementing any plan of compromise or arrangement of Nelson Financial pursuant to the *CCAA*, or Articles of Reorganization of Nelson Financial pursuant to section 186 of the Ontario Business Corporations Act that shall have been approved and sanctioned by the Court in the *CCAA* proceeding on notice to the Staff; and

- (f) Nelson Financial will cooperate fully in providing any documents or information required by the Commission in its proceedings involving any former officers, shareholders, or directors of Nelson Financial and without the requirement of any formal summons otherwise required under the Securities Act.

PART VI – STAFF COMMITMENT

- 43. If the Commission approves this Settlement Agreement, Staff will not commence any proceeding against the Respondent under Ontario securities law in relation to the facts set out in Part III of this Settlement Agreement, subject to the provisions of paragraph 44 below.
- 44. If the Commission approves this Settlement Agreement and the Respondent fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Ontario securities law against the Respondent. These proceedings may be based on, but are not limited to, the facts set out in Part III of this Settlement Agreement as well as the breach of the Settlement Agreement.

PART VII – PROCEDURE FOR APPROVAL OF SETTLEMENT

- 45. The parties will seek approval of this Settlement Agreement at a public hearing before the Commission scheduled for April 15, 2011, or on another date agreed to by Staff and the Respondent, according to the procedures set out in this Settlement Agreement and the Commission's Rules of Practice.
- 46. Staff and the Respondent agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing on the Respondent's conduct, unless the parties agree that additional facts should be submitted at the settlement hearing.

47. If the Commission approves this Settlement Agreement, the Respondent agrees to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.
48. If the Commission approves this Settlement Agreement, neither party will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the settlement hearing.
49. Whether or not the Commission approves this Settlement Agreement, the Respondent will not use, in any proceeding, this Settlement Agreement or the negotiation or process of approval of this agreement as the basis for any attack on the Commission's jurisdiction, alleged bias, alleged unfairness, or any other remedies or challenges that may otherwise be available.

PART X – DISCLOSURE OF SETTLEMENT AGREEMENT

50. If the Commission does not approve this Settlement Agreement or does not make the order attached as Schedule “A” to this Settlement Agreement:
 - i. this Settlement Agreement and all discussions and negotiations between Staff and the Respondent before the settlement hearing takes place will be without prejudice to Staff and the Respondent; and
 - ii. Staff and the Respondent will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations contained in the Statement of Allegations. Any proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this agreement.
51. Both parties will keep the terms of the Settlement Agreement confidential until the Commission approves the Settlement Agreement. At that time, the parties will

no longer have to maintain confidentiality. If the Commission does not approve the Settlement Agreement, both parties must continue to keep the terms of the Settlement Agreement confidential, unless they agree in writing not to do so or if required by law.

PART X – EXECUTION OF SETTLEMENT AGREEMENT

- 52. The parties may sign separate copies of this agreement. Together, these signed copies will form a binding agreement.
- 53. A fax copy of any signature will be treated as an original signature.

Dated this 13th day of April , 2011.

“Sherry Townsend”

Respondent, by its court appointed
Interim Operating Officer

“Doug Turner”

Witness

“Tom Atkinson”

Director, Enforcement Branch



Ontario
Securities
Commission
M5H 3S8

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SCHEDULE "A"

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

- AND -

IN THE MATTER OF NELSON FINANCIAL GROUP LTD., NELSON INVESTMENT GROUP LTD., MARC D. BOUTET, STEPHANIE LOCKMAN SOBOL, PAUL MANUEL TORRES, H. W. PETER KNOLL

ORDER

WHEREAS on May 12, 2010, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing and a Statement of Allegations in this matter pursuant to section 127 and 127.1 of the Securities Act, R.S.O. 1990, c. S.5, as amended (the "*Act*");

AND WHEREAS on November 10, 2010, the Staff of the Commission amended the Statement of Allegations;

AND WHEREAS Nelson Financial Group Ltd. ("Nelson Financial") is the subject of restructuring proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA");

AND WHEREAS Nelson Financial entered into a settlement agreement with Staff of the Commission ("Staff") dated April 13, 2011 (the "Settlement Agreement"), a copy of which is attached as Schedule "A" to this Order, subject to the approval of the Commission;

AND UPON reviewing the Settlement Agreement, and upon hearing submissions from counsel for Staff and Nelson Financial.

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this order;

IT IS ORDERED THAT

1. The Settlement Agreement is approved;
2. Trading in any securities of or by Nelson Financial shall cease throughout the period of restructuring under the *CCAA*, pursuant to s. 127(1)2 of the *Act*;
3. Any exemptions contained in Ontario securities law shall not apply to Nelson Financial throughout the period of restructuring under the *CCAA*, pursuant to s. 127(1)3 of the *Act*;
4. The trading restrictions and removal of exemptions set out in (b) and (c) above shall expire upon the completion of the *CCAA* proceeding;
5. Paragraph 2 and 3 shall not apply to any securities to be issued, exchanged, redeemed or otherwise dealt with:
 - (a) pursuant to any order of the Court; or
 - (b) in the course of transaction implementing any plan of compromise or arrangement of Nelson Financial pursuant to the *CCAA*, or Articles of Reorganization of Nelson Financial pursuant to section 186 of the Ontario *Business Corporations Act* that shall have been approved and sanctioned by the Court in the *CCAA* proceeding on notice to the Staff.

DATED at Toronto this 13th day of April, 2011.
