



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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Toronto ON M5H 3S8

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20, rue queen ouest
Toronto ON M5H 3S8

**IN THE MATTER OF
GREGORY DEACON**

SETTLEMENT AGREEMENT

PART I - INTRODUCTION

1. This matter concerns a licensed insurance agent who sold securities to his clients without the registration, product knowledge, suitability analyses or prospectus disclosure required by Ontario securities law.

2. The Ontario Securities Commission (the "Commission") will issue a Notice of Hearing (the "Notice of Hearing") to announce that it will 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 (the "Act"), it is in the public interest for the Commission to make certain orders against the insurance agent, Gregory Deacon (the "Respondent"), in respect of the conduct described herein.

PART II - JOINT SETTLEMENT RECOMMENDATION

3. Staff of the Commission ("Staff") recommend settlement of the proceeding (the "Proceeding") against the Respondent commenced by the Notice of Hearing, in accordance with the terms and conditions set out in Part VI of this Settlement Agreement. The Respondent consents to the making of an order (the "Order") in the form attached as Schedule "A" to this Settlement Agreement based on the facts set out below.

4. For the purposes of the Proceeding, and any other regulatory proceeding commenced by a securities regulatory authority, the Respondent agrees with the facts set out in Part III of this Settlement Agreement and the conclusion in Part IV of this Settlement Agreement.

PART III - AGREED FACTS

A. BACKGROUND AND CONDUCT

5. The Respondent is a 61-year-old resident of Ontario who has worked in the insurance industry for approximately 40 years. He is licensed with the Financial Services Commission of Ontario (“FSCO”) as a Life Insurance and Accident & Sickness Insurance Agent, but has never been registered with the Commission in any capacity.

6. Between June and December 2014 (the “Material Time”), the Respondent sold to 20 individuals, most of whom were his insurance clients, convertible debentures in the aggregate principal amount of \$2,720,000. The convertible debentures were issued by Biosenta Inc. (“Biosenta”), an Ontario corporation in the business of developing, producing and selling mold-elimination products. The convertible debentures provided for a two-year term, a 6% annual interest rate and that, upon conversion, a holder would receive common shares of Biosenta (“Shares”), which are listed on the Canadian Stock Exchange.

7. The Respondent’s sales activities included:

- (a) soliciting investors, including meeting with them in their homes to discuss the merits of Biosenta, its products and the convertible debentures and providing them with product samples;
- (b) taking orders for the convertible debentures and communicating them to Biosenta;
- (c) collecting subscription proceeds; and
- (d) delivering to investors executed convertible debentures.

8. In exchange, Biosenta or an authorized representative paid the Respondent \$153,000 in commissions.

9. The Respondent’s activities in relation to the convertible debentures constitute the business of trading in securities without an exemption from the registration requirement. Although the Respondent was aware that a license from FSCO is required to sell insurance, he

never registered or sought to register with the Commission to sell securities, in breach of the registration requirement of the Act.

10. The Respondent did not comply with the know-your-product and suitability obligations applicable to him as a registrant, being a person required to be registered under the Act. He lacked the education, training and experience that a reasonable person would consider necessary to engage in the business of trading in securities competently. His understanding of the convertible debentures, including their key features and risks, was limited. The Respondent did not evaluate investors' needs in the manner required of registrants and did not ensure that purchases of the convertible debentures were suitable for them.

11. The Respondent's sales of the convertible debentures were in breach of the prospectus requirement of Ontario securities law. As trades in securities that had not been previously issued, the sales were distributions. No preliminary prospectus or prospectus was filed with the Commission in respect of the convertible debentures and no prospectus receipts were issued to qualify their sale.

12. The Respondent did not determine whether any exemptions from the prospectus requirement applied to the distributions. He did not obtain any documents from investors to demonstrate that any exemptions were available. None applied to five of the distributions.

13. Eighteen of the convertible debentures stated on their face that they were issued to the Respondent's insurance company "in trust" for the applicable investor; however, neither the Respondent nor his company acted as trustee for any of these holders. During the Material Time, the Respondent understood that the purpose of the "in trust" language was to reduce the paperwork regarding investors' financial situations that would otherwise be required. The Respondent advised certain investors that grouping their investments in this manner allowed them to invest in Biosenta when they otherwise would not have been able to do so. The Respondent also improperly directed the flow of certain investor funds through accounts controlled by him and not by Biosenta representatives.

14. None of the convertible debentures sold by the Respondent is outstanding. In 2016, Biosenta completed a court-supervised restructuring, in connection with which investors in

convertible debentures could choose to receive cash or Shares in partial satisfaction of their claims. In connection with the restructuring, all of the investors to whom the Respondent sold convertible debentures received Shares.

B. MITIGATING FACTORS

15. The Respondent represents and warrants to Staff and the Commission that:
- (a) the Respondent has repaid the commissions by transferring to Biosenta \$153,000 (the “Repayment Amount”); and
 - (b) neither the Respondent nor any person controlled by the Respondent will seek or accept any assets from Biosenta, directly or indirectly, in respect of the Repayment Amount.
16. To Staff’s knowledge, the representations and warranties set forth in paragraph 15 are not untrue.
17. The Respondent cooperated with Staff’s investigation.

PART IV - NON-COMPLIANCE WITH ONTARIO SECURITIES LAW AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

18. The Respondent acknowledges and admits that, during the Material Time:
- (a) the Respondent engaged or held himself out as engaging in the business of trading in securities without being registered to do so and where no exemption from the registration requirement was available, contrary to subsection 25(1) of the Act;
 - (b) the Respondent performed an activity which requires registration without having the education, training and experience that a reasonable person would consider necessary to perform the activity competently, and in particular did not have the requisite understanding of the convertible debentures, contrary to subsection 3.4(1) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (“NI 31-103”);

- (c) the Respondent did not take reasonable steps to ensure that purchases of the convertible debentures were suitable for investors, contrary to subsection 13.3(1) of NI 31-103;
- (d) the Respondent distributed securities when neither a preliminary prospectus nor a prospectus in respect of the securities had been filed nor receipts issued for them and where no exemption from the prospectus requirement was available, contrary to subsection 53(1) of the Act; and
- (e) as set out in sub-paragraphs (a) through (d) above, the Respondent engaged in conduct contrary to the public interest.

PART V – RESPONDENT’S POSITION

19. The Respondent intends to request that the panel at the Settlement Hearing (as defined below) consider the following mitigating circumstance: the Respondent represents that in addition to repaying the commissions, the Respondent has provided ongoing financial support to Biosenta, including providing office space and paying Biosenta’s rent, utilities, taxes and employee benefits.

PART VI – TERMS OF SETTLEMENT

20. The Respondent agrees to the terms of settlement set forth below.
21. The Respondent consents to the Order, pursuant to which it is ordered that:
- (a) this Settlement Agreement be approved;
 - (b) trading in any securities or derivatives by the Respondent cease for a period of 10 years commencing on the date of the Order, pursuant to paragraph 2 of subsection 127(1) of the Act;
 - (c) the acquisition of any securities by the Respondent be prohibited for a period of 10 years commencing on the date of the Order, pursuant to paragraph 2.1 of subsection 127(1) of the Act;

- (d) any exemptions contained in Ontario securities law not apply to the Respondent for a period of 10 years commencing on the date of the Order, pursuant to paragraph 3 of subsection 127(1) of the Act;
- (e) the Respondent be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;
- (f) the Respondent immediately resign any position that the Respondent holds as a director or officer of an issuer, registrant or investment fund manager, pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act;
- (g) the Respondent be prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager for a period of 10 years commencing on the date of the Order, pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act;
- (h) the Respondent be prohibited from becoming or acting as a registrant, investment fund manager or promoter for a period of 10 years commencing on the date of the Order, pursuant to paragraph 8.5 of subsection 127(1) of the Act;
- (i) the Respondent pay an administrative penalty in the amount of \$25,000 pursuant to paragraph 9 of subsection 127(1) of the Act, which amount shall be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act;
- (j) the Respondent pay costs in the amount of \$10,000, pursuant to section 127.1 of the Act; and
- (k) the amounts set out in sub-paragraphs (i) and (j) be paid by certified cheque prior to the issuance of the Order.

22. The Respondent consents to a regulatory order made by any provincial or territorial securities regulatory authority in Canada containing any or all of the sanctions set out in paragraph 21, other than sub-paragraphs 21(a), 21(e) and 21(i) through 21(k). These sanctions may be modified to reflect the provisions of the relevant provincial or territorial securities law.

23. The Respondent acknowledges that this Settlement Agreement and the Order may form the basis for orders of parallel effect in other jurisdictions in Canada. The securities laws of certain Canadian jurisdictions allow orders made in this matter to take effect in them automatically, without further notice to the Respondent. The Respondent should contact the securities regulator of any other jurisdiction in which the Respondent intends to engage in any securities- or derivatives-related activities, prior to undertaking such activities.

PART VII - FURTHER PROCEEDINGS

24. If the Commission approves this Settlement Agreement, Staff will not commence or continue any proceeding against the Respondent under Ontario securities law based on the misconduct described in Part III.A of this Settlement Agreement, unless the Respondent breaches this Settlement Agreement (including by: (a) making any representation in it that is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the representation not misleading; or (b) failing to comply with any term in it), in which case Staff may bring proceedings under Ontario securities law against the Respondent that may be based on, among other things, the facts set out in Part III.A of this Settlement Agreement or the breach of this Settlement Agreement.

25. The Respondent waives any defences to a proceeding referenced in paragraph 24 that are based on the limitation period in the Act, provided that no such proceeding shall be commenced later than six years from the date of the occurrence of the last failure to comply with this Settlement Agreement.

PART VIII - PROCEDURE FOR APPROVAL OF SETTLEMENT

26. The parties will seek approval of this Settlement Agreement at a public hearing (the "Settlement Hearing") before the Commission, which shall be held on a date determined by the Secretary to the Commission in accordance with this Settlement Agreement and the Commission's *Rules of Procedure* (2014), 37 O.S.C.B. 4168.

27. The Respondent will attend the Settlement Hearing in person.

28. The parties confirm that this Settlement Agreement sets forth all of the agreed facts that will be submitted at the Settlement Hearing, unless the parties agree that additional facts should be submitted at the Settlement Hearing.

29. If the Commission approves this Settlement Agreement:

- (a) the Respondent irrevocably waives all rights to a full hearing, judicial review or appeal of this matter under the Act; and
- (b) 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.

30. 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 Settlement Agreement as the basis for any attack on the Commission's jurisdiction, alleged bias, alleged unfairness or any other remedies or challenges that may be available.

PART IX - DISCLOSURE OF SETTLEMENT AGREEMENT

31. If the Commission does not make the Order:

- (a) this Settlement Agreement and all discussions and negotiations between Staff and the Respondent before the Settlement Hearing will be without prejudice to Staff and the Respondent; and
- (b) Staff and the Respondent will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations contained in the Statement of Allegations in respect of the Proceeding. Any such proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this Settlement Agreement.

32. The parties will keep the terms of this Settlement Agreement confidential until the Settlement Hearing, unless they agree in writing not to do so or unless otherwise required by law.

PART X - EXECUTION OF SETTLEMENT AGREEMENT

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

34. A facsimile copy or other electronic copy of any signature will be as effective as an original signature.

[The remainder of this page is intentionally left blank.]

DATED at Toronto, Ontario as of the 7th day of July, 2017.

“Tegan Salonia”

Witness: Tegan Salonia

“Gregory Deacon”

GREGORY DEACON

DATED at Toronto, Ontario, as of the 7th day of July, 2017.

ONTARIO SECURITIES COMMISSION

By: “Jeff Kehoe”

Name: Jeff Kehoe

Title: Director, Enforcement Branch

**SCHEDULE “A”
FORM OF ORDER**



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Commission des
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de l'Ontario

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20 Queen Street West
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20, rue queen ouest
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**IN THE MATTER OF
GREGORY DEACON**

- , Chair of the Panel
- , Commissioner
- , Commissioner

[date]

ORDER
**(Sections 127 and 127.1 of the
Securities Act, R.S.O. 1990, c. S.5)**

THIS APPLICATION, made jointly by Staff of the Commission and Gregory Deacon (the “Respondent”) for approval of a settlement agreement dated as of **[date]** (the “Settlement Agreement”), was heard on **[date]** at the offices of the Commission, located at 20 Queen Street West, 17th Floor, Toronto, Ontario;

ON READING the Statement of Allegations dated **[date]**, the Joint Application Record for a Settlement Hearing dated **[date]**, including the Settlement Agreement, and on hearing the submissions of the representatives of the Respondent and Staff;

IT IS ORDERED THAT:

1. the Settlement Agreement be approved;
2. trading in any securities or derivatives by the Respondent cease for a period of 10 years commencing on the date of this Order, pursuant to paragraph 2 of subsection 127(1) of the Act;

3. the acquisition of any securities by the Respondent be prohibited for a period of 10 years commencing on the date of this Order, pursuant to paragraph 2.1 of subsection 127(1) of the Act;
4. any exemptions contained in Ontario securities law not apply to the Respondent for a period of 10 years commencing on the date of this Order, pursuant to paragraph 3 of subsection 127(1) of the Act;
5. the Respondent be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;
6. the Respondent immediately resign any position that the Respondent holds as a director or officer of an issuer, registrant or investment fund manager, pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act;
7. the Respondent be prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager for a period of 10 years commencing on the date of this Order, pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act;
8. the Respondent be prohibited from becoming or acting as a registrant, investment fund manager or promoter for a period of 10 years commencing on the date of this Order, pursuant to paragraph 8.5 of subsection 127(1) of the Act;
9. the Respondent pay an administrative penalty in the amount of \$25,000 pursuant to paragraph 9 of subsection 127(1) of the Act, which amount shall be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act; and
10. the Respondent pay costs in the amount of \$10,000, pursuant to section 127.1 of the Act.